



2014
Korea Law Project
Conference

Korean Law and its Development
in a Globalizing World

Time 2014. 11. 28 (Friday)

Venue Seoul Palace Hotel Royal Ballroom (1F)

Host by Korea Legislation Research Institute (KLRI)

Supervised by KLRI Office of Comparative Law Research

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Dae Yong Kim (Head, Asia Team, CID, Korea Development Institute)	
Jong Koo Park (Legislative Officer, Ministry of Government Legislation)	
Min Cheung Cho (Attorney at Law, Korea International Cooperation Agency)	
Woong Jo You (Legislative Researcher, National Assembly Research Service)	
Hyun Soo Kim (Research Fellow, KLRI)	
Yong Chul Park (Associate Professor, Sogang University Law School)	
Sang Mo Lee (Visiting Researcher, KLRI)	

Program

Time	Content
09:00 ~ 09:10	<p>Chair: Kwang Dong Park (Senior Research fellow, Korea Legislation Research Institute)</p> <p>Welcoming Remark - Lee, Won (President, Korea Legislation Research Institute)</p>
09:10 ~ 09:40	Photo Session & Break
Session 1: Main Issues of Korean Law in Global Perspective	
Chair: Kee Chang Kim (Professor, Korea University)	
09:40 ~ 10:20	<p>Presentations</p> <p>1. "Unconstitutional Constitutional Clauses?: Courts and Constitutionalism in Korea" Speaker: Marie Seong-Hak Kim (Professor, St. Cloud State University) Discussant: Woo Young Rhee (Professor, Seoul National University)</p>
10:20 ~ 11:00	<p>2. "A Comparative Legal Study on Constitution Court of Korea and Russia" Speaker: Anna V. Bondarenko (Professor, Far Eastern Federal University) Discussant: In Hyuk Son (Constitutional Researcher, Constitutional Court of Korea)</p>
11:00 ~ 11:40	<p>3. "International Human Rights and Constitution of Korea" Speaker: Sung Jin Yoo (Research Fellow, KLRI) Discussant: Dae Won Kim (Professor, Seoul City University)</p>
11:40 ~ 12:20	<p>4. "Citizen Participation in the South Korean Legal Process" - What the World Can Learn - Speaker: Matthew J. Willson (Professor, University of Akron) Discussant: Tae Sang Kwon (Professor, Ewha Womens University)</p>
12:20 ~ 13:40	Lunch
Session 2: Globalization of Korean Law in German, Australia, U.S. and China	
Chair: Michael Palmer (Professor, Shantou University)	

13:40 ~ 14:20	<p>Presentations</p> <p>5. “Korean Law in Germany: Current Status and Future Perspectives” Speaker: Moritz Bälz (Professor, Goethe University Frankfurt) Discussant: Kwang Jun TSCHE (Professor, Kyunghee University)</p>
14:20 ~ 15:00	<p>6. “Asia, Korea and Law: A view From the South” Speaker: Veronica L. Taylor (Professor, Australian National University) Discussant: Hyung Gun Kim (Research Fellow, KLRI)</p>
15:00 ~ 15:40	<p>7. “Teaching Comparative Korean Law in the U.S. and Korea” Speaker: Yong-Sung Jonathan Kang (Professor, Yonsei University) Discussant: Jung Wook Hwang (Professor, Hankuk University of Foreign Studies)</p>
15:40 ~ 16:20	<p>8. “Chinese Legal Studies in Foreign Country” Speaker: Jiangyu Wang (Professor, National University of Singapore) Discussant: Yeu Sun Kim (Professor, JeJu National University)</p>
16:20 ~ 16:40	Coffee Break
Session 3: Development and Future of Korean Law	
Chair: Kwang Jun TSCHE (Professor, Kyunghee University)	
16:40 ~ 18:00	<p>Panel Discussion</p> <p>Seok Woo Lee (Professor, Inha University) Dae Yong Kim (Head, Asia Team, CID, Korea Development Institute) Jong Koo Park (Legislative Officer, Ministry of Government Legislation) Min Cheung Cho (Attorney at Law, Korea International Cooperation Agency) Woong Jo You (Legislative Researcher, National Assembly Research Service) Hyun Soo Kim (Research Fellow, KLRI) Yong Chul Park (Associate Professor, Sogang University) Sang Mo Lee (Visiting Researcher, KLRI)</p>
18:00 ~ 18:10	<p>Chair: Kwang Dong Park (Senior Research fellow, Korea Legislation Research Institute)</p> <p>Closing Remark - Lee, Won (President, Korea Legislation Research Institute)</p>
Dinner	

KLP Welcoming Remark

Lee, Won

(President of the Korea Legislation Research Institute)

Good morning. Korea Law Researchers, Distinguished Guests, Ladies and Gentleman. This is Lee Won, President of the Korea Legislation Research Institute.

I would like to welcome all of you here for the “KLP Working Group” international conference under the theme of “Korean Law and its Development in a Globalizing World”. It is my great honor to welcome you to today’s event on behalf of the Korea Legislation Research Institute. Thank you for making the personal and professional commitment to be here today.

It is generally known that Korea became an independent country following the at the end of World War II. Korea started out as the one of the least-developed countries, however achieved remarkable economic growth and political democratization since then. Korea’s successful experiences as a developing nation are one of the biggest reasons why Korea is widely viewed as a benchmark model of legislation for transition economies or developing ones such as Southeast Asia and Middle East countries.

The Korea Legislation Research Institute puts a great efforts in continuous exchange of resources and discussion of new visions on Korean legal education and law research. The international conference titled “Global Korea Law” was held in December of 2012 with a aim of Globalization of Korean Law is such an excellent example of this. We also foster the implementation of the “Korea Law Project” with an aim to enhance our national stature. Specifically, the KLRI has been publishing a series of “Introduction to Korea Law” in multiple languages including: English, German, and Chinese.

Furthermore, the KLRI is holding Working Group Meeting for profound discussions of the “Globalization of Korea Law” by inviting legal experts around the World. The working group meeting is divided into Europe, America and China Regions. The working group meeting was held in Hawaii last year, and Beijing, China this year. The meeting ended successfully, and drew a great attention from the legal experts around the world.

Therefore, the main purpose of today’s conference is to have productive discussions about current status of “Globalization of Korean Law” and the future direction of “Globalization of Korea Law”. I hope this opportunity serve as a turning point for improvement and exchange of ideas for further development of globalization Korea Law; at the same time, contribute to other nation’s development and legislation. Your insight and wisdom will be a great asset as we move forward to the advancement and globalization of the Korea legislative system. I am sure it will also be very beneficial for the development of Korea Legislation Research Institute.

Thank you very much.



Lee, Won
(President of KLRI, Korea)

Education

- Bachelor of Laws, Korea University, Korea
- Master of Laws, Hitotsubashi University, Japan
- Completed Ph.D in Law, Choongang University, Korea

Professional Experience

- The 11th and Incumbent President of Korea Legislation Research Institute (August, 2013 -)
- Head of Administrative Appeal Management Bureau, Ministry of Government Legislation
- Standing Member of the Administrative Appeals Commission, Ministry of Government Legislation
- Standing Member of the Administrative Appeal Committee, Anti-Corruption & Civil Rights Commission
- Member of the Statutory Interpretation and Review Commission, Ministry of Government Legislation



Kwang dong Park
(Senior Research Fellow, KLRI, Korea)

Education

- Ph.D., Law

Area of Scholarly Interests

- The Real Estate Law & The Legislative Exchange Support Business

Professional Experience

- Adjunct Professor of Kangnam Uni., Korea (2010-2014)
- Legislative Exchange advisory committee member of Ministry of Government Legislation, Korea (2013-2014)
- Legislative Officer of Ministry of Government Legislation, Korea (2012-2014)
- Funeral Services Task Force member of Ministry of Health and Welfare (2012)
- Foreign professor of Center for Asian Legal Exchange(CALE) of Nagoya Univ., Japan (2008)
- Foreign Researcher of University of Tokyo, Japan (2006-2007)
- Research committee member of Inspection Negotiations for KOICA Vietnam Judicial Academy Foundation project (2012)
- Project for Establishment of Cambodia ICT MasterPlan the 3rd Expert(2013)

Publication

- The Situation of the Digital Register Application for Properties and the Way for Improving the Property Register Act and Scheme etc.

Session 1

<Main Issues of Korean Law in Global Perspective>

Chair: Kee Chang Kim
(Professor, Korea University)

■ Presentations

1. "Unconstitutional Constitutional Clauses?
: Courts and Constitutionalism in Korea"
Speaker: Marie Seong-Hak Kim (Professor, St. Cloud State University)
Discussant: Woo Young Rhee (Professor, Seoul National University)
2. "A Comparative Legal Study on Constitution Court of Korea and Russia"
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Speaker: Sung Jin Yoo (Research Fellow, KLRI)
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4. "Citizen Participation in the South Korean Legal Process"
– What the World Can Learn –
Speaker: Matthew J. Willson (Professor, University of Akron)
Discussant: Tae Sang Kwon (Professor, Ewha Womens University)





Kee Chang Kim
(Professor, Korea University Law School)

Education

- law at Seoul National University (LLB)
- Chicago Law School (LLM)
- Cambridge University(PhD)

Area of Scholarly Interests

- His research interests are internet and the law, encryption and information protection technology and regulation of online transactions.

Professional Experience

- He teaches contract, tort, e-commerce law at Korea University Law School.
- He is a Member of the Korean Bar Association, with frequent involvement (either as an arbitrator or as an expert witness) in international arbitrations.
- He is currently serving as an advisor to Culture, Media and Telecommunications Team of Legislation Research Commission of the National Assembly of Korea.
- He has been leading the Open Web Movement in Korea, which advocates standard compliance in internet technology.
- He is a founding member of Open Net Korea, a charitable foundation promoting individual's rights and freedom in the cyber space.

Publication

- His publications include Inconvenient Truth of the Korean Internet (2009).



Marie Seong-Hak Kim
(Professor, St. Cloud State University)

Education

- J.D. University of Minnesota Law School
Areas of Specialization: Legal History, Comparative Law
- Ph.D. University of Minnesota, History
Early Modern France, East Asia
- M.A. Ewha Womans University, Seoul, Korea, History
Early Modern and Modern Europe, East Asia
- B.A. Ewha Womans University, Seoul, Korea, History
Minor in French Language/Literature

Area of Scholarly Interests

- Comparative legal history, Europe, East Asia

Professional Experience

- Professor of History : St. Cloud State University, 2004-Present
- Attorney at Law : Member of the Minnesota State Bar, 1995-Present
- Affiliated Researcher (chercheuse associée)
: Institut d'Asie Orientale, Ecole Normale Supérieure de Lyon, France, 2012-Present

Award/Honor

- Fellowship, The Netherlands Institute of Advanced Study (NIAS), Wassenaar, the Netherlands, 2013-2014.
- Fellowship, Collegium de Lyon, Institut d'études avancées, Lyon, France (Residential Fellowship), 2011-2012.
- Travel Grant, Harvard-Yenching Library, Harvard University, 2011.
- National Endowment for Humanities (NEH) Fellowship (Research), 2010-2011.

A. Books

- LAW AND CUSTOM IN KOREA: COMPARATIVE LEGAL HISTORY, Cambridge University Press, 2012, 360 pages. ISBN 9781107006973.
http://www.cambridge.org/us/knowledge/isbn/item6801560/?site_locale=en_US
- MICHEL DE L'HOPITAL: THE VISION OF A REFORMIST CHANCELLOR DURING THE FRENCH RELIGIOUS WARS, Sixteenth Century Essays and Studies, Vol. XXXVI, Kirksville: Truman State University Press, 1997, 216 pages. ISBN 0-940474-38-7.
<http://tsup.truman.edu/item.asp?itemId=339>

B. Articles in Refereed Journals

- "Travails of Judges: Judicial Process under Authoritarian Rule in South Korea," The American Journal of Comparative Law, Vol. 63, No. 3 (2015) (forthcoming).
- Review Article of Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan by Par Kristoffer Cassel, 2011, Harvard Journal of Asiatic Studies, Vol. 73, No. 2 (2013): 382-392.
- "Constitutional Jurisprudence and the Rule of Law in Korea: Revisiting the Yusin Period (1972-1980)," The Hague Journal on the Rule of Law, Vol. 5, No. 2 (2013): 178-203.
- "In the Name of Custom, Culture, and the Constitution: Korean Customary Law in Flux," Texas International Law Journal, Vol. 48, Issue 3 (2013): 357-391.
- Review article of Japanese Assimilation Policies in Colonial Korea, 1910-1945 by Marc Caprio, 2009, The Journal of Japanese Studies, Vol. 37, No. 2 (2011): 434-439.
- "Civil Law and Civil War: Michel de L'Hôpital and the Ideals of Legal Unification in Sixteenth-Century France," Law and History Review, Vol. 28, No. 3 (2010): 791-826.
- "L'Hôpital's Laws," Law and History Review, Vol. 28, No. 3 (2010): 843-848.
- "Colonial Jurisprudence and the Construction of Customary Law in Korea," The American Journal of Comparative Law, Vol. 57, No. 1 (2009): 205-247.
- "日本統治下における韓国の慣習法の構成" ("Nihon tōjika ni okeru kankoku no kanshūhō no kōsei" [The Construction of Korean Customary Law under Japanese Rule], 東洋文化研究 Tōyō Bunka Kenkyū [Journal of Oriental Studies], Gakushuin University Research Institute for Oriental Studies, Tokyo, Vol. 11 (2009): 179-193.
- "'Comparing the Incomparable': Local Customs and Law in Sixteenth-Century Korea and France," Journal of Early Modern History, Vol. 12, No. 6 (2008): 507-538.
- "比較史的側面からみた梅謙次郎の法思想と朝鮮における民法典構想の意義" (Higakushi teki sokumen kara mita Ume Kenjirō no hōshisō to chōsen ni okeru minpōten kōsō no igi [Ume Kenjirō's Legal Thought and the Vision of a Korean Civil Code: Some Comparative Reflections]), 東洋文化研究 Tōyō Bunka Kenkyū, Vol. 10 (2008): 99-136. etc,



Woo-Young Rhee
(Professor of Law, Seoul National University School of Law)

Education

- Stanford Law School (J.S.D. 2001)
- Harvard Law School (LL.M. 1997)
- Seoul National University Graduate School of Law (LL.M. 1996)
- Seoul National University College of Law (LL.B. 1994)

Area of Scholarly Interests

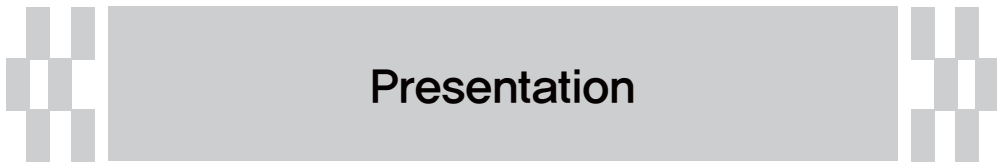
- Constitutional Jurisprudence
- Government Structure
- Legislative Process and Statutory Interpretation
- Constitutional Adjudication
- System of Representation

Professional Experience

- Professor of Public Law, Seoul National University School of Law (2004-present)
- Attorney-at-Law (2001-2003, San Jose, California, under California license)

Publication

- articles and research reports primarily in the areas of the standard of review in constitutional adjudication, legislative process, systems of representation and election, government structure, and the freedom of expression

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Presentation

Unconstitutional Constitutional Clauses? Courts and Constitutionalism in Korea

28 November 2014
Marie Seong-Hak Kim
St. Cloud State University

1

Research in Korean Law

- Traditionally treated as an afterthought
- “A model that worked”
 - Economic success
 - Political transformation
- Constitutional history under authoritarian rule
- The need for comparative, theoretical approach

2

An unconstitutional constitution

- A contradiction in terms?
- Can a judge declare that a constitutional provision is unconstitutional because of its incompatibility with the general principles of the constitution?
- A global trend of calling for judicial review of constitutional amendments
- Is Korea moving in the same direction?

3

Transnational Constitutionalism

- Constitutional jurisprudence on a transnational basis (natural law)
- The emergence of a hierarchy in constitutional norms
- A global trend to move toward an ever-increasing role of the judiciary

4

The Korean Context

- Art. 53 of the 1972 Constitution:
 - The President has the power to take emergency measures; these measures are not subject to judicial review
- Supreme Court (2010, 2013), Constitutional Court (2013):
 - Emergency Decrees are unconstitutional
 - the Supreme Court under Yusin Constitution should have conducted judicial review

5

Jurisprudential Turnabout

- The Supreme Court (1975): the Emergency Decrees are not subject to judicial review; no grounds to rule them unconstitutional.
- The Supreme Court (2010): Emergency Decrees are unconstitutional. Article 53 was a constitutional norm that should have been overridden by other “superior” constitutional norms that contained fundamental rights.
- “Unconstitutional constitution”

6

Unconstitutional Constitutional Clause?

- Neither courts took the step of declaring that the Yusin Constitution was unconstitutional or Article 53 was unconstitutional, but by denying the constitutionality of the Emergency Decrees, they seemed to leave the door open for the theoretical possibility of “unconstitutional constitutional norms.”

7

Postwar Constitutional Jurisprudence

- The Germany experience still matters
 - Positivist legality of the Hitler regime led to the transmutation of natural law into constitutional norms
 - a classification of constitutional norms
 - the possibility of invalidating constitutional provisions became recognized

8

Limitations on Constitutional Amendment Power

- Explicit limits
 - “Absolutely Unmodifiable Articles” in German Federal Constitution: Articles 1-20; Article 79 (3)
 - Article 89 of the French Constitution (1958): “The republican form of government shall not be the object of any amendment.”

Limitations on Constitutional Amendment Power

- Implicit limits
 - the concept of “supra-constitutional laws”
- *Kesavanda Bharati v. State of Kerala* (Supreme Court of India, 1973)
 - The “basic structure” of the constitution doctrine
- Portugal, Brazil, Italy, Austria, Czech Republic, Turkey, Greece, Pakistan, etc.
- Expanding scope of substantive limits on the constitution by the Court

Limits on Constituent Power

- Distinction between original Constituent Power (*le pouvoir constituant*) and Constituted Power (*le pouvoir constitué*).
- The latter subject to judicial control; the former?
- Can supra-constitutional laws bind even constituent power?

11

Germany, the Trend-Setter

- The Federal Constitutional Court, The Southwest Case, BverfG (1951):
 - There are constitutional provisions that are so fundamental and to such an extent an expression of a law that precedes even the constitution that they also bind the framer of the constitution, and other constitutional provisions that do not rank so high may be null and void, because they contravene those principles.
- The Federal Constitutional Court, BverfG (1991):
 - Even the original creator of a constitution (i.e., the "*pouvoir constituant*") [is bound] to heed "basic requirements of justice which include the principle of equality before the law and the prohibition of arbitrariness.

12

The Korean Context

- The theory of unconstitutional constitutional norms in the South Korean context
- Is Korea moving in line with the global trend of acknowledging an “unconstitutional constitution”?

13

The 2010 and 2013 Decisions

- Reasoning for finding the Emergency Decrees unconstitutional: violation of the “fundamental liberal democratic order”
- Ab initio unconstitutional
- The clear language of Art. 53(4)
- Did the Supreme Court in the 1970s voluntarily abstain from judicial review power?

14

Korea: Implications

- Constitutional change: a new creation or an amendment?
- “liberal democratic basic order” (Preamble); “democratic basic order” (Art. 7(3))
- A transitional constitution toward the liberal democratic basic order?
- Can a judicial body reject a constitution or constitutional amendments passed by the voters?

15

Arguments for and against

- Are there distinctions between superior and inferior constitutional norms?
- No: all norms of one constitution are of equal value, and, as equal ingredients of the same constitution, must be constitutional
- Yes: even an original constitution-maker may create injustice

16

Constitutionalism in Korea

- Post 1987 judicial activism
- Substitution of judicial supremacy for legislative supremacy
- A sign of the politicization of the judiciary?

17

Moving toward “judicial activism”?

- Customary constitutional law (2004)
- Possibility of the judiciary’s interference with the legislative process
- What are the limits of the control of constitutionality by the court?

18

Lessons to Draw from History

- The idea that constitutional change is a political act (“political question” doctrine)
- Understanding that judicial review of the legality of constitutional amendments may blunt the people’s vigilance
- Limits originating from within the constitutional order may constrain possible political responses.

19

Conclusion

- Need for comparative understanding of political-institutional reality
- Practical solutions
- Blind faith in the courts will not solve political problems

20

Coda: Lessons for Less-Mature Democracies

- Tension between constitutionalism and democratic principles
- Contribution to the transition to and consolidation of democracy in post-authoritarian polities



– Speaker –



Anna V. Bondarenko
(Professor, Far Eastern Federal University)

Education

- Far East National University, School of Law, 2003
- Far East National University, School of International Languages

Area of Scholarly Interests

- Constitutional Law (Constitutional Court)

Professional Experience

- Far East National University, post-graduate courses
- Far Eastern Federal University, Deputy Vice president for campus development



In Hyuk Son

(Constitutional Researcher, Constitutional Court of Korea)

Education

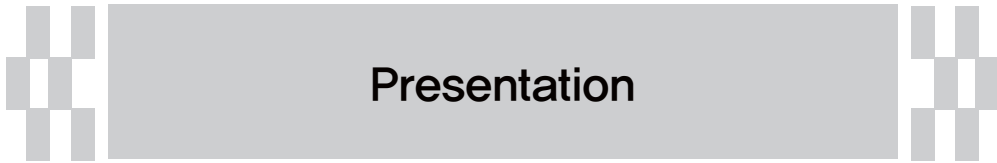
- Yonsei Univ.(Bachelor of Law)
- Judicial Reserch and Training Institute
- Bonn Univ.(Visiting Scholar)

Area of Scholarly Interests

- Constitutional Law
- Constitutional Judicial Law

Professional Experience

- Constitutional Resercher
- Visiting Resercher(Federal Constitutional Court of Germany)

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Presentation

**2014 Korea Law Project Working Group
Meeting**

**A Comparative Legal Study on
Constitution Court
of Korea and Russia**

**Anna V. Bondarenko (Far Eastern Federal
University)
Seoul, November 28, 2014**

1

**Developmental stages of
constitutionalism in**

Russian Federation

the Republic of Korea

1. Major changes in the RSFSR Constitution, double system of superior governmental bodies was formed (1989 – 1990)
2. Institution of presidency is established; Commonwealth of Independent States is created (1990 – 1991)
3. Russian Federation is formed; the Constitutional Court and new governmental bodies are established (1991 – 1993)
5 Constitutions were adopted – 1918 1924 1937 1977 1993

1. Foundations of democratic society during 1st and 2nd republics; introduction of basic constitutional norms (1948-1962)
2. Restoration of democratic constitutional norms during 3-4th republics (1963-1981)
3. Restoration of constitutionalism during 6th Republic; establishment of the Constitutional Court – since 1987
9 Constitutions were adopted
1948 1952 1954 1960 1962
1969 1972 1980 1987

2

Constitutional Court jurisdiction

Russian Federation

*Federal Constitutional Law of July, 21, 1994
On Constitutional Court of R F , Art.3*

- making decisions on the constitutionality of statutes
- settling competence disputes
- making decisions on complaints
- interpreting the Constitution of RF
- confirming that the rules of advancing the charges of treason or other serious crime in the actions of the President were observed
- checking the questions to be voted on during a referendum for conformity to the Constitution
- initiating legislation within its jurisdiction
- other jurisdictions granted by the RF Constitution, Federal Agreement, and federal Constitutional Courts

Republic of Korea

*Constitutional Court Act of August 5, 1988
Art.2*

- making decisions on the constitutionality of statutes
- settling competence disputes between state agencies
- settling constitutional complaints
- impeachment of the President
- dissolution of a political party

3

Adjudication on the constitutionality of statutes

Article 3, 84 of Constitutional Court Law

Within a procedure of abstract norm control:

Federal laws, normative acts of the President, supreme governmental bodies, constitutions of republics, statutes, acts and other normative acts of Russian Federation subjects, agreements between governmental bodies, and international agreements of the Russian Federation that have not entered into force

Within a procedure of concrete norm control assessment on complaints.

Article 2, 41 of Constitutional Court Act

Within a procedure of concrete norm control:

statutes (laws, adopted by the National Assembly, emergency presidential orders, treaties and universally accepted international laws), or their provisions applied or subject to application in a specific case in an ordinary court ex officio or on the initiative of one of the parties, provided that the request is filed through the Supreme Court.

4

Interpretation of Constitution

Article 105 of the Constitutional Court

Law:

the right to file a request for interpretation of the Constitution with the Constitutional Court is granted to:
President, Federal Council, State Duma, Government, legislative bodies of Russian Federation subjects

Constitutional Court of the Republic of Korea has no separate jurisdiction of interpreting the Constitution and executes the interpretation if requested by ordinary courts within a procedure of specific compliance assessment when a specific case is processed in court.

Dissolution of political parties

Constitutional Court of Russia has no such jurisdiction.

The decision about dissolution of a political party can be taken by the Supreme Court based on requests of authoritative governmental bodies.

Constitutional Court of the Republic of Korea has such jurisdiction

Article 55 of Constitutional Court Act:

If a political party violates the constitutional order, the Government appeals to the Constitutional Court for a decision to dissolve this political party

5

Adjudication on Impeachment

Articles 107-109 of Constitutional Court

Law:

The Constitutional Court of the Russian Federation decides on the rules of advancing the charges against the President of RF of treason or other serious crime based on the request from the Council of the Federation and confirmed by the conclusion of the RF Supreme Court on the presence of the elements of crime in the actions of the RF President.

Article 48 of Constitutional Court Act of the Republic of Korea:

Constitutional Court makes decisions on impeaching top governmental officials on the initiative of the National Assembly

6

Adjudication on competence disputes

Article 111 of Constitutional Court Law, the Constitutional Court of Russia settles competence disputes:

- between federal governmental bodies;
- between federal governmental bodies of the Russian Federation and governmental bodies of the Russian Federation subjects
- between supreme governmental bodies of the Russian Federation subjects.

Article 61, 62 of the Constitutional Court Act, the Constitutional Court of the Republic of Korea settles competence disputes:

- between a governmental body and a local government on request of one of the parties;
- between the National Assembly, the Government, ordinary courts, and National Election Commission;
- between a governmental body and a local government (administration);
- between the Government and a local government;
- between local governments.

7

Adjudication on the constitutional complaints

Article 97 of the Constitutional Court Law

a constitutional complaint can be filed:

- if a law violates constitutional rights and freedoms of citizens;
- if a law is applied in a specific case completed by the court.

Article 68 (1), (2) of Constitutional Court Act

a constitutional complaint can be filed:

- if the violation of basic rights was caused by exercising or non-exercising of the governmental power; complaints against decisions of ordinary courts cannot be filed
- if an ordinary court refuses to file a request for verification of the constitutionality of a law or its provision before they are applied in a specific case

8

Conclusion

- Forming of the constitutional control bodies in their current state was predetermined by social, political, and economic conditions of the society.
- The differences found in the process of comparative analysis reflect the differences in trends and levels of social and economic development, legal traditions and levels of democracy in Russia and in the Republic of Korea.
- There are substantial reasons for further studies of the Courts operation in our countries in order to perfect and implement new legal means of more efficient functioning of the constitutional justice systems that will protect our basic rights and freedoms.

9

-A comparative analysis of the constitutional and legal structure of different countries teaches the students to develop proper political and legal priorities and to evaluate both domestic and foreign constitutional laws.

-Studying of the Constitutional law is extremely important for those students who either already work or are planning to work in public administration and local governments.

-Due to the significance of the study object – constitutions and constitutional law - students come to understand the social significance of democratic political and legal institutions.

10

“러시아연방과 한국의 헌법재판제도에 관한 비교법적 연구
(A Comparative Legal Study on Constitutional Court of Korea and
Russia)”에 대한 토론문

헌법재판소 헌법연구관 손인혁

1. 들어가며

하나의 국가공동체가 성격이 전혀 다른 국가공동체로 이행하기 위해서는 새로운 공동체의 성격과 이념, 그리고 체제를 결정하여야 하는 과제를 가진다. 그러한 과제의 이행은 궁극적으로 헌법제정권자인 국민의 헌법적 결단으로 나타나지만, 왜 그러한 결단을 하게 되었는지는 짧게는 새 헌법을 제정하기 위한 헌법제정기관의 활동을 분석함으로써, 길게는 그 공동체가 걸어온 오랜 역사를 분석함으로써 비로소 이해할 수 있을 것이다. Bondarenko 교수님의 발제문에서 자세히 언급되지는 않지만, 러시아연방과 한국의 헌법재판제도에 대한 비교법적 연구 역시 양국의 입헌주의 역사와 경험에 대한 이해로부터 출발하여야 한다. 이는 이번 학술대회의 취지인 한국법의 교육에 있어서도 마찬가지이다.

2. 체제전환의 결과로서 연방헌법에 대한 강화된 보호

널리 알려진 바와 같이 1993년 제정된 러시아연방헌법과 그에 근거한 러시아연방헌법재판소는 사회주의국가에서 자유주의국가로의 체제전환의 산물이다. 다소 성격이 다르긴 하지만 이는 한국의 헌법재판소가 1987년 권위주의·형식적 법치주의에서 자유주의·실질적 법치주의로 전환하는 과정에서 탄생한 것과 비유될 수 있을 것이다. 러시아연방의 체제전환은 소비에트사회주의공화국연방(USSR)의 성립과 해체과정에 대한 분석을 통해 거시적으로 접근할 수도, 소비에트연방을 이루는 한 공화국인 러시아소비에트연방사회주의공화국(RSFSR)의 체제전환과정에 대한 분석을 통해서도 접근할 수 있다. 어느 방법이든 소비에트연방의 성립과 해체과정에서 러시아연방이 가장 핵심적이고 주도적인 역할을 담당했다는 점을 부인할 수는 없으므로 그 결과에서 차이는 없을 것이다.

러시아연방의 체제전환과정에서 헌법재판제도는 비교적 신속하게 도입되었다. 아마도 체제전환과정에서 발생하는 반동(反動)적인 움직임에 대해 가장 효율적이고 실효적인 대응이 헌법재판을 통한 절차적이고 사법적인 접근이라 믿었기 때문으로 생각된다. 실제로

연방헌법재판소의 전신으로 1989년 설치된 헌법감독위원회(Committee of Constitutional Supervision)는 거주허가증 등 기존의 주민통제제도에 대해 적극적으로 위헌심사를 하였고, 그 결과 국민에게 입헌주의의 의미를 체험하게 하는 계기를 부여했다.¹⁾

체제전환과정인 1991년 창설되고 새로운 연방헌법이 제정된 1993년 새로 출범한 연방헌법재판소도 그 관할과 권한의 측면에서 여전히 이와 같은 역할과 기능이 강조되고 있다고 생각된다. 먼저 실제법상 헌법재판의 가장 중요한 심사의 척도인 연방헌법 제1장(헌법질서의 기초)과 제2장(인간과 시민의 권리와 자유) 부분에 대한 헌법개정을 매우 어렵게 하고 있는 점이다. 연방대통령·연방회의·국가두마·러시아연방정부 등 연방 및 연방구성주체의 기관과 연방회의·국가두마의 재적의원 1/5 이상의 요구에 의해 발의되는 일반적인 헌법개정절차와는 달리, 이들 부분에 대한 헌법개정절차에는 재적의원 3/5 이상의 발의가 요구되며, 심의와 의결을 위해 헌법회의의 소집이 필요하고(재적의원 2/3 이상), 국민투표를 통해 비로소 헌법개정안이 확정된다.²⁾

그리고 절차법상 헌법재판소의 규범통제권한이 다른 나라에서는 유례를 발견하기 어려울 정도로 매우 확장되어 있다는 점이다. 연방헌법은 연방헌법재판소의 권한을 정하면서 추상적 규범통제와 구체적 규범통제를 모두 인정하고 있고, 그 대상 역시 입법기관인 연방의회와 국가두마의 법률 뿐 아니라 연방대통령 및 연방정부의 행정명령, 연방을 이루는 구성주체의 모든 규범정립행위(법률과 그밖에 하위규범), 국제조약 등 사실상 모든 유형의 규범으로 확정하고 있다.³⁾

그 결과 연방과 연방을 이루는 구성주체의 모든 규범정립행위가 빠짐없이 연방헌법재판소의 규범통제권한에 포섭되어 체제전환에 대한 반동으로부터 적극적으로 헌법을 보호하는 역할과 기능을 수행한다고 생각된다.

3. 연방헌법의 해석권과 관련하여

발제문에도 언급되어 있듯이 러시아연방헌법재판소는 연방대통령, 연방회의, 국가두마, 러시아 연방 정부, 연방구성주체 입법기구들의 청구가 있으면 연방헌법에 대한 해석을 제

1) 김승대, 러시아헌법론-자유민주주의에로의 체제전환에 관한 헌법적 연구, 법문사, 1998, 36면.

2) 이에 반해 제1장과 제2장 외의 다른 장에 대한 헌법개정은 이러한 절차를 요하지 않는다. 연방헌법률의 개정절차에 따라 채택되며 연방구성주체의 2/3 이상의 찬성을 얻으면 효력을 발생한다.

3) 이에 비해 한국헌법은 헌법재판소의 권한을 제한적으로 열거하고 있는데(헌법 제111조 제1항), 구체적 규범통제만을 인정하고 그것도 명령·규칙의 위헌심사는 대법원이 최종적으로 판단하도록 하고 있다(제107조 제1항, 제2항).

시할 수 있다. 그리고 연방헌법재판소의 헌법해석은 공식적이며 연방과 구성주체의 모든 국가기관과 공무원, 일반시민, 시민단체를 기속한다(연방헌법재판소법 제105조, 제106조). 이는 한국의 제2공화국 헌법에서 최초로 헌법재판소를 설치하면서 구체적인 사건과 관계없이 헌법재판소에 누구나 헌법해석을 신청할 수 있도록 한 것과 유사한 제도로 볼 수 있다(헌법 제83조의3 제1호, 헌법재판소법 제9조 제1항, 제10조 제2항). 성문헌법을 가지고 있고 일반법원이 아닌 독립적인 헌법재판기관을 가지고 있는 경우, 헌법질서와 헌법해석의 통일성을 확보하기 위해 헌법재판기관에 최종적인 헌법해석권한을 부여하는 것은 불가피하다. 그렇지 않으면 헌법해석이 이원화되기 때문이다. 독일도 일반법원 외에 독립적인 헌법재판기관을 만들면서 이를 인식하고 연방헌법재판소법에서 구체적인 사건과 관계없이 헌법재판소에 헌법해석에 대한 감정의견을 구할 수 있도록 하였다. 헌법해석의 통일성을 확보하기 위한 제도로 이해되었으나 재판에 대한 헌법소원을 통해 헌법해석의 통일성이 보장되므로 독일에서는 폐지되었다.

러시아의 헌법재판실무에서 실제로 연방헌법재판소에 헌법해석을 구하는 청구가 있었는지, 있었다면 그 사안이 무엇인지 궁금하다. 그리고 러시아 학계에서는 이와 같은 헌법해석권의 역할과 기능을 어떻게 이해하고 있는지 궁금하다.

4. 헌법소원과 관련하여

한국 헌법 제68조 제1항은 공권력의 행사 또는 불행사로 인해 헌법상 보장된 기본권을 침해받은 사람에게 헌법소원심판을 청구할 수 있도록 하고 있다. 입법·행정·사법 등의 국가작용으로 인해 헌법상 보장된 기본권을 침해당한 개인에게 국가기관을 거치지 않고 직접 헌법재판소에 기본권 침해에 대한 구제를 청구할 수 있게 한 것이다. 다만, 법원의 재판을 헌법소원의 대상에서 제외하면서 헌법소원의 보충성(다른 권리구제절차를 거칠 것)을 또한 엄격히 요구함으로써, 법원의 재판과 법원의 재판을 사실상 다투는 결과가 되는 행정처분의 경우 헌법소원의 대상에서 제외되는 문제가 있다. 이 범위에서 기본권 구제에 공백이 발생하는 셈이다. 헌법소원의 대상을 제한하지 않는 독일, 스페인, 이탈리아 등과 비교하면 헌법소원의 역할이 그만큼 제한적이다.

그러나 러시아 연방헌법재판소의 헌법소원의 관할은 한국의 헌법재판소보다도 더욱 좁게 설정되어 있다. 즉, 법률이 직접 개인의 권리와 자유를 침해하거나 일반법원에 의해 구체적 사건에 적용된 법률에 의하여 개인의 권리와 자유가 침해된 경우에 한해 헌법소

원을 청구할 수 있도록 하고 있다. 법률에 대해서만, 그것도 법률이 구체적인 사건에서 개인의 권리와 자유를 침해한 경우에만 헌법소원의 대상이 된다.

이와 같이 헌법소원의 대상을 법률로 한정하고 그 외의 집행 및 사법 행위에 대해서는 헌법소원의 대상성을 부인하는 것은 기본권 침해에 대한 구제의 차원에서 심각한 문제를 야기한다. 한국의 경우 법원의 재판에 대해서만 헌법소원의 대상성을 부정하고 있음에도 이를 통해 사실상 최종적인 헌법해석권한이 헌법재판소와 대법원으로 나누어지는 문제가 발생하고 있기 때문이다.⁴⁾

러시아연방에서 헌법소원의 대상을 이와 같이 매우 제한적으로만 인정한 이유는 무엇이며, 이로 인해 발생하는 기본권 구제의 공백을 메우는 다른 제도적인 수단이 있는지 궁금하다.

4) 일반법원의 헌법해석이 법원의 심급구조를 통해 교정되지 않는 한 위헌적인 법률해석이 시정될 기회가 없을 뿐 아니라, 그 부분에서는 헌법재판소와 법원의 서로 다른 헌법해석이 양립하는 문제가 발생한다. 이로써 국가기관은 자신에게 유리한 방향으로 헌법을 해석하고 적용하게 되어 헌법우위가 지배하는 헌법국가에서는 용인할 수 없는 문제가 발생한다.





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Publication

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- Creating A Regional Human Rights Convention for Protecting North Korean Defectors in East Asia, HUFs Global Law Review, Vol.5, No.2(2013)
- Invoking International Human Rights Treaties for Human Rights Cases in the Highest National Courts, Ajou Law Review, Vo.7, No.1(2013)
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- Dissertation(S.J.D.), Building Pillars and Doors for domestic incorporation of international human rights laws focusing on National Human Rights Institutions and Highest National Courts in South Africa, United States, and South Korea, Univ. of Wisconsin-Madison (2012)



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Presentation



International Human Rights & the Constitution of Korea

*: human rights legalization,
institutionalization, and globalization
in Korea*

Sungjin Yoo
Research Fellow

KLRI KOREA LEGISLATION
RESEARCH INSTITUTE

28 Nov., 2014

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- **Human Rights and Constitutional Rights**
- **Human Rights in the Constitution of Korea**
- **Human Rights legalization & Institutionalization in Korea**
- **The Human Rights Situation in Korea within the International Human Rights Regime**

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I. Human Rights and Constitutional Rights

1. Hum. Rights & int'l Instruments

- “All men are by nature equally free and independent and have certain **inherent rights**.”

(Virginia Declaration of Rights in 1776)

- “**Natural, inalienable and sacred rights** of man.”

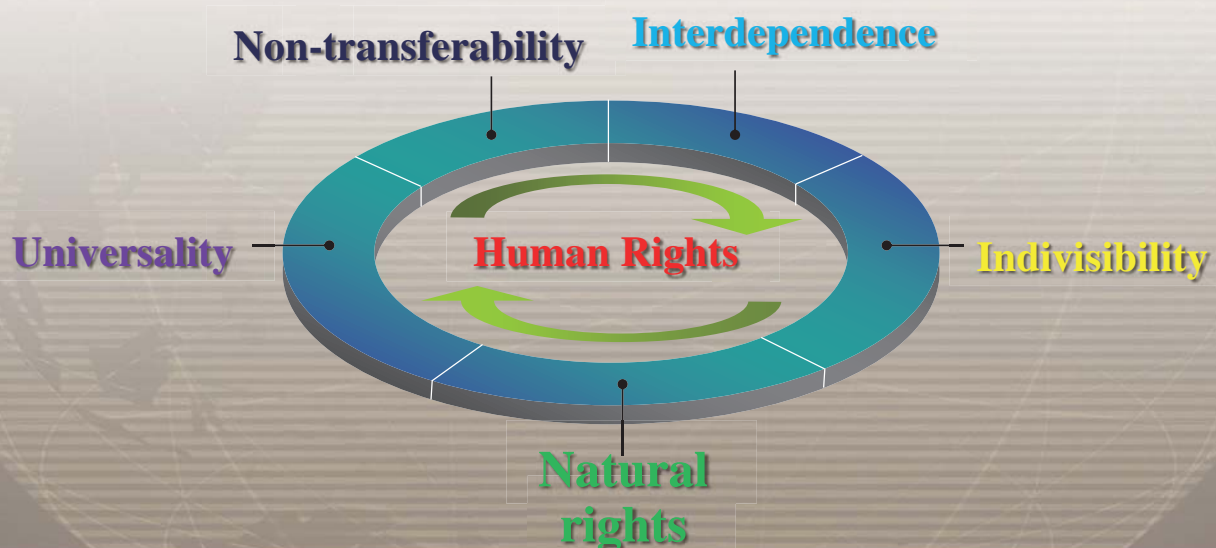
(Declaration of the Rights of Man and of the Citizen in France)

- “All human beings are born **free and equal in dignity and rights**.” (Universal Declaration of Human Rights in 1948)

I. Human Rights and Constitutional Rights

2. Characteristics of Hum. Rights

- The 1993 Vienna Declaration and Programme of Action held in Vienna, Austria stated that human rights have five characteristics:

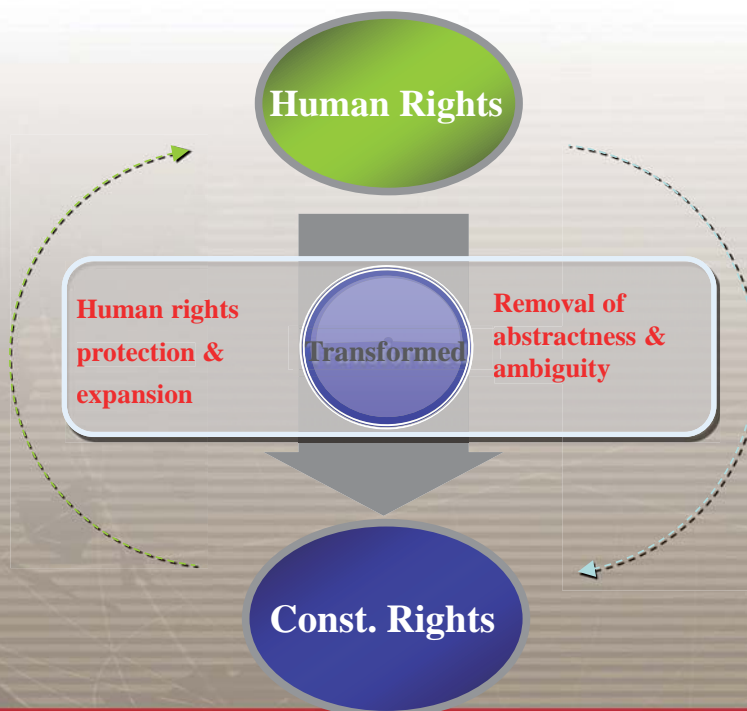


I. Human Rights and Constitutional Rights

3. Similarity and differences b/t Hum. R. & Const. R.

	Hum. Rights	Const. Rights
Similarity	Originate out of consideration for <u>human dignity and rights</u>	
Differences	<ul style="list-style-type: none"> • Inherent rights in human nature => <i>Natural rights</i> (Freedom, Equality) • Ethical rights • No limitation of time & space 	<ul style="list-style-type: none"> • National people's basic rights under national const. => <i>Positive rights</i> (right of freedom, rights to equality, political rights...) • Hum. R. confirmed, restructured, and developed by Const. • For national people and the nation
Relationship b/t Hum. R. & Const. R.	<p>Abstractness and ambiguity of Hum. R. ▶ Necessity of means of actualization and achievement of it ▶ Listing Hum. R. & requesting protection duty to nation(positive legalization) ▶ Const. R. (the strongest way of legalization)</p>	

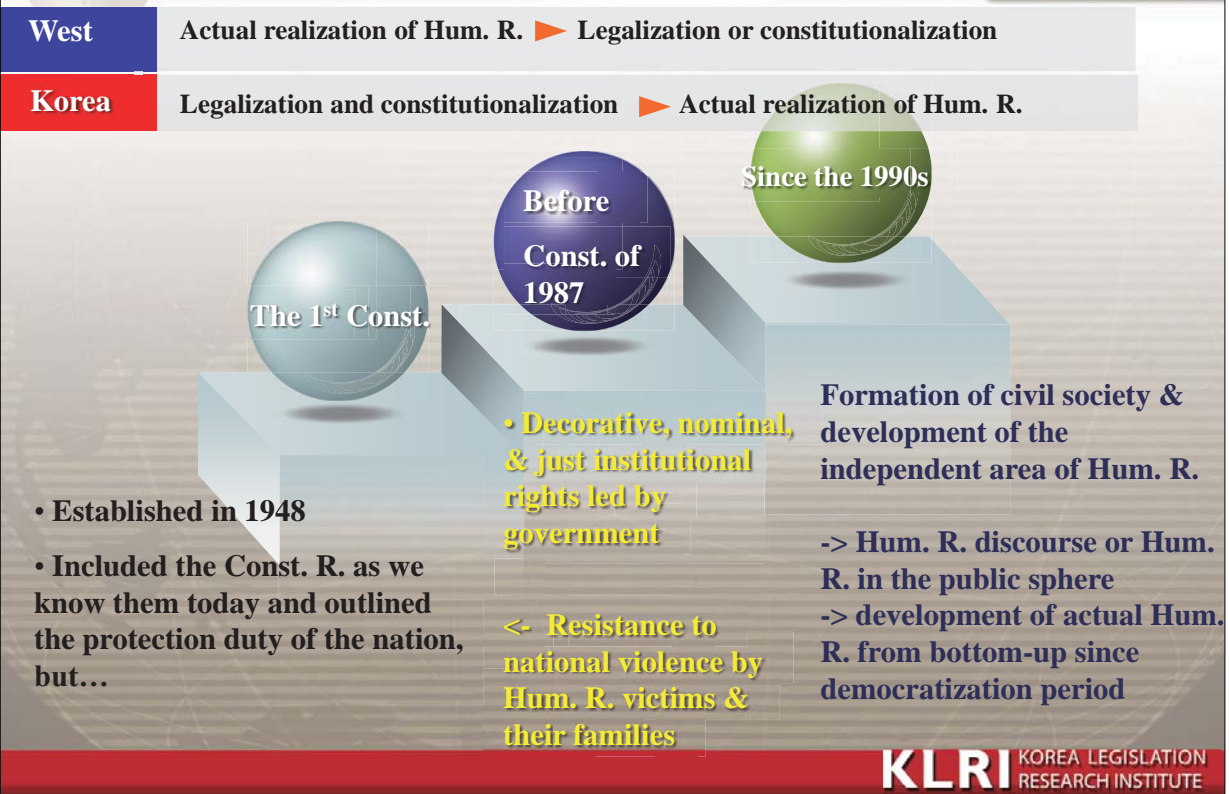
I. Human Rights and Constitutional Rights



Relationship b/t human rights & constitutional rights

II. Human Rights in the Constitution of Korea

1. Human Rights development in modern history of Korea



II. Human Rights in the Constitution of Korea

2. Understanding Constitutional Rights in Korea

(1) Structure of the Korean Constitution



II. Human Rights in the Constitution of Korea

2. Understanding Constitutional Rights in Korea

(2) Constitutional rights in Korea

	Contents	Art. No.
Hum. dignity & right	Confirmation of hum. dignity & right to happiness	10
Right to equality	Prohibition of discrimination w/o rational reasons & relative equality	11
Rights of Freedom	Person. Liberty & Integrity	Due pro.(rule of warrant, Miranda rule etc.), Prohibition against double jeopardy
	Privacy rights	Freedom & Privacy of Person. Life, Search, Seizure etc.
	Spiritual freedom	Conscience, Religion, Learning, Intellectual Rights
	Freedom of expression	Speech, Press, Assembly, Association
	Social & econ. freedom	Property, Residence, Movement, Occupation
	Political rights	Right to vote, Right to Public Office
Right to claim	Petition, R. to Trial, False Imprisonment, State & Official's Liability, Crim. victims right	26 - 30
Social Constitutional Rights	R. to Education, R. to work, Labor's three primary rights, R. to have basic standard of human life, Environ. rights, R. to Marriage, Family, Mothers, Health	31 -36
Unenumerated rights	Fundamental rights	37

II. Human Rights in the Constitution of Korea

2. Understanding Constitutional Rights in Korea

(3) Unenumerated rights in the Korean Constitution

• **1st view** –
The front part of art. 10: declaration of supernatural & inherent Hum. R.
▶ art. 37 section 1 reaffirms

• **2nd view** –
New Const. R. could be created within the range of art. 10

• **3rd view** –
Art. 10 exists independently & art. 37 sec. 1 could create new rights

Const. Court
New Const. R.
Ex) personality rights, rights of self-determination, general right to freedom of action, and right to know etc.

My opinion –
The front part of art. 10 + art. 37 sec. 1
▶ declare hum. dignity and recognize the possibility of creating new Const. R. ▶ Along w/the latter part of art. 10(the nation's obligation to protect Hum. R.

III. Human Rights legalization & Institutionalization in Korea

1. Legalized & Institutionalized Hum. R. in Korea

- National Human Rights Commission Act article 2 –
“Human right means any of human dignity, worth, liberty and rights which are guaranteed by the Constitution and Acts of the Republic of Korea, international human rights treaties to which the Republic of Korea is a party and international customary laws.”
- Act on The Prohibition of Discrimination Against Disabled Persons, Remedy Against Infringement of Their Right
- Act on Prohibition of Age Discrimination In Employment and Elderly Employment Promotion
- Act on Equal Employment and Support for Work-Family Reconciliation
- Basic ordinances on human rights
by local govern.(about 45 local govern.)

III. Human Rights legalization & Institutionalization in Korea

2. The National Human rights institution in Korea



Nat'l HR Commission of Korea

- Established in 2001 under the Paris Principle
- National Action Plan for Hum. R. promotion

IV. The Hum. R Situation in Korea within the Int'l Hum. R Regime

1. Globalizing Human Rights in Korea

• Participation in the World Conference on Human Rights in 1993

- Vienna Declaration and Programme of Action adopted
- Obligation to protection and promotion of Hum. R. – Nat'l govern.
- Int'l Hum. R. promotion – importance of int'l cooperation

• Korea

- Requested use of int'l Hum. R. laws in nat'l trials
- Used remedies procedures provided by int'l Hum. R. institutions

(e.g., shadow reports, individual complaints & communications, actively participated in the creation and adoption of the Disability Rights Convention(2006), Local Government and Human Rights Resolution(2013) etc.)

IV. The Hum. R Situation in Korea within the Int'l Hum. R Regime

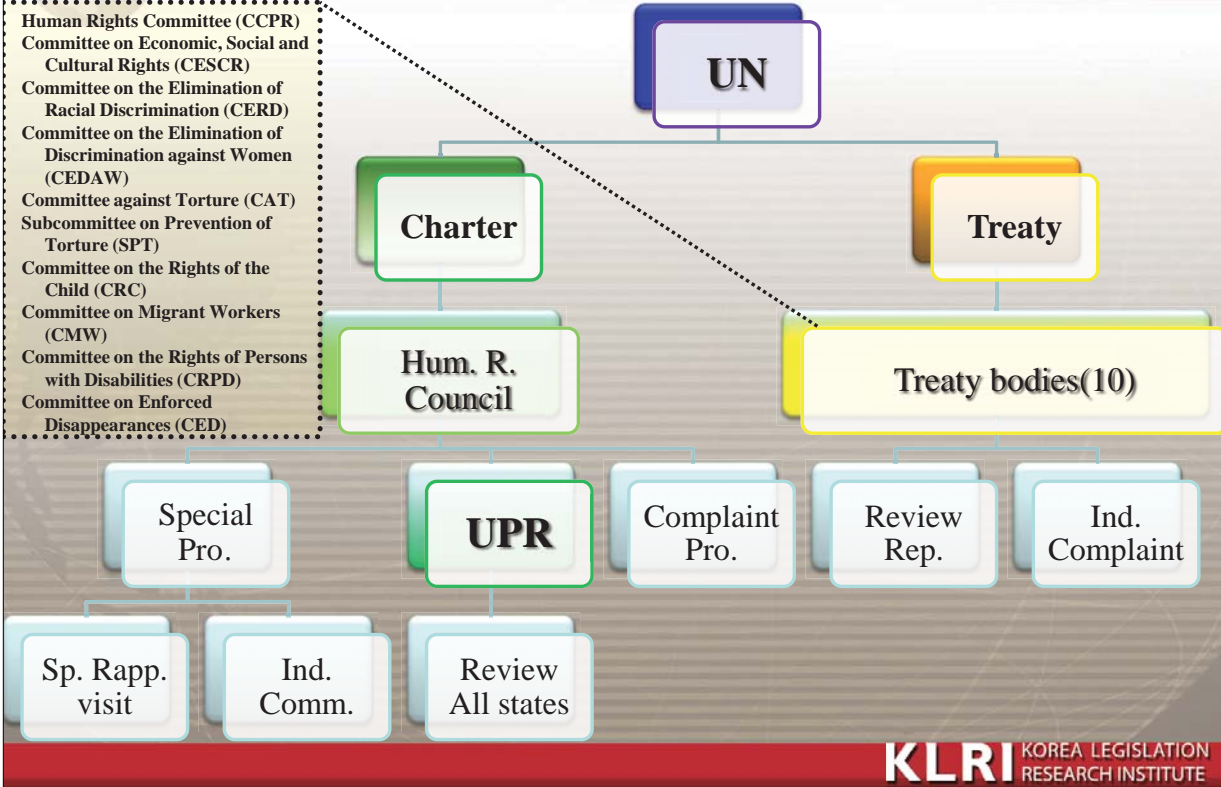
2. Korean Ratification of international human rights laws

Treaty Description (Treaty Name)	Signature Date	Ratification Date, Accession(a), Succession(d)
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment(CAT)		09 Jan 1995 (a)
International Covenant on Civil and Political Rights(CCPR)		10 Apr 1990 (a)
Convention for the Protection of All Persons from Enforced Disappearance		
Convention on the Elimination of All Forms of Discrimination against Women(CEDAW)	25 May 1983	27 Dec 1984
International Convention on the Elimination of All Forms of Racial Discrimination(CERD)	08 Aug 1978	05 Dec 1978
International Covenant on Economic, Social and Cultural Rights(CESCR)		10 Apr 1990 (a)
Int'l Conv. on the Protection of the Rights of All Migrant Workers & Members of Their Families		
Convention on the Rights of the Child(CRC)	25 Sep 1990	20 Nov 1991
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	06 Sep 2000	24 Sep 2004
Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography(CRC-OP-SC)	06 Sep 2000	24 Sep 2004
Convention on the Rights of Persons with Disabilities(CRPD)	30 Mar 2007	11 Dec 2008

IV. The Hum. R Situation in Korea within the Int'l Hum. R Regime

3. Universal Periodic Review

(1) Int'l Hum. R. Regime



IV. The Hum. R Situation in Korea within the Int'l Hum. R Regime

3. Universal Periodic Review(UPR)

(2) Universal Periodic Review

- Created through the UN General Assembly on 15 March 2006
- Review process of the Hum. R. records of all UN Member States
- Designed to ensure equal treatment for every country
- The 1st periodic review – end of 2007 – 2011
- The 2nd periodic review – June, 2012 – end of 2016
- Review cycle - Every 4years and 5months

IV. The Hum. R Situation in Korea within the Int'l Hum. R Regime

3. Universal Periodic Review

(3) Six steps of UPR

- Documents submitted as part of the review
 1. State report
 2. OHCHR(Office of the High Commissioner for Hum. R.) compilation of information from treaty bodies and special procedures' reports and other official UN documents
 3. OHCHR summary of information provided by other relevant stakeholders, including NGOs

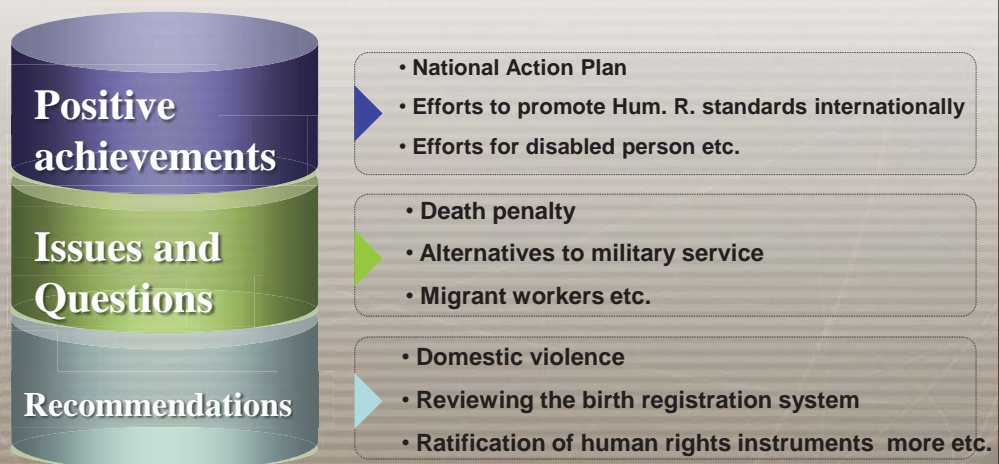


IV. The Hum. R Situation in Korea within the Int'l Hum. R Regime

3. Universal Periodic Review

(4) Summary of the second UPR report of Korea(2012)

67 states participated in the Korea session in October, 2012, and gave 70 recommendations



V. Conclusion

- Universal Hum. R. vs. Const. R.
- The development of Hum. R. protection in Korea
 - 1948 – 1987: nominal, decorative constitutional rights
 - After the 1990s: expansion and improvement of Hum. R.
- Const. R. in Korea
(art. 10 – 37 in the Const.)
- Nat'l laws related with Hum. R. & National Hum. R. Inst.
- Korean Hum. R. situation within the int'l Hum. R. regime
(UPR in particular)

“THANK YOU”

“Unbearable pity for the suffering of mankind”
- Bertrand Russell





Matthew J. Wilson

(Dean and Professor of Law, University of Akron School of Law, USA)

Education

- Juris Doctor – Temple University School of Law
- Bachelor of Arts in Asian Studies – University of Utah
- Bachelor of Science in Political Science – University of Utah

Area of Scholarly Interests

- Japanese law, Korean law, international business law, international dispute resolution, intellectual property, electronic commerce, and commercial litigation

Professional Experience

- University of Akron School of Law (Dean & Professor of Law / Ohio USA)
- University of Wyoming College of Law (Associate Dean & Professor of Law)
- Kyung Hee University Law School (International Scholar / Seoul)
- Temple University Japan Campus (Senior Associate Dean & General Counsel / Tokyo)
- Temple University School of Law (Associate Professor / Pennsylvania USA)
- Advanced Telecommunication Network (General Counsel / Florida USA)
- Akerman Senterfitt law offices (Associate / Florida USA)
- Woodcock Washburn law offices (Law clerk / Pennsylvania USA)
- White, Pierce, Mailman & Nutting (Law clerk / Saipan)
- GE Yokogawa Medical Systems (Law clerk / Tokyo)
- Apple Box / Sony Group (Translator / Tokyo)
- Yokogawa Weathac (International Marketing-Translation / Ashikaga, Japan)

Award/Honor

- Chair of East Asian Law & Society Section of AALS (2013-14)
- Evaluator for ALB Japan Law Awards (2011, 2012, 2013)
- Japan-U.S. Fulbright Program Interviewer/Evaluator (2008, 2006)
- Lectured on private international law and various academic/vocational opportunities in the international field over 350 times at nearly 150 U.S. law schools and universities

Publication

Books and Book Chapters

- "Japan and Civil Jury Trials: The Convergence of Forces," forthcoming book via Edward Elgar Publishing [2015].
- "Clinical Legal Education in Japan," forthcoming chapter in World Developments in Clinical Legal Education (Palgrave MacMillan) [2015].
- "Seeking to Change Society Through Legal Reform in Japan," chapter in Contemporary Japan (Routledge) [2013].
- Trial Advocacy Techniques (2nd Edition), Chapter 2: Art of Trial Advocacy [Nihon Hyoronsha 2009]. Published in Japanese as 『法廷弁護技術』 「第2章 法廷弁護技術の基本」 [日本評論社 2009].
- Trial Advocacy Techniques, Chapter 2: Art of Trial Advocacy (Nihon Hyoronsha 2007). Published in Japanese as 『法廷弁護技術』 「第2章 法廷弁護技術の基本」 [日本評論社 2007].
- Governments of the World [Japan chapter], Macmillan Press (2005).

Articles

- "Importance, Functions, and Role of the American Civil Jury Trial System and Related U.S. Supreme Court Cases, Japanese Journal of American Law [2014]. Published in Japanese as アメリカ民事陪審制度の重要性、機能、役割と合衆国最高裁の判決動向。
- "Prime Time for Japan to Take Another Step Forward in Lay Participation: Exploring Expansion to Civil Trials," Akron Law Review, Vol. 46 No. 3 [2013].
- "Improving the Process: Transnational Litigation and the Application of Private Foreign Law in U.S. Courts," New York University Journal of Int'l Law and Politics [2013].
- "E-Elections: Law in Asia & Online Political Activities," 12 Wyo. L. Rev. 238 [2012].
- "Demystifying the Determination of Foreign Law in U.S. Courts: Opening the Door to a Greater Global Understanding," 46 Wake Forest L. Rev. 887 [2011].
- "E-Elections: Time for Japan to Embrace Online Campaigning," 2011 Stanford Technology Law Review 4 [2011].
- "Reducing Legal Risks: Online Commerce, Information Security, and the World," Wyoming Lawyer [October 2010].
- "U.S. Law School Education Methods and Ideals: Application to the Japanese and Korean Systems," 18 Cardozo Journal of International and Comparative Law 295 [2010].
- "Japan's New Criminal Jury Trial System: In Need of More Transparency, More Access, and More Time," 33 Fordham University Int'l Law Journal 487 [Jan. 2010]. etc.



– Discussant –

Tae-Sang Kwon

(Professor/Attorney at Law, Ewha Womans University, Korea)

Education

- Ph.D. in Law, Seoul National University

Area of Scholarly Interests


- The right of publicity, privacy, personality rights
- Personal information

Professional Experience


- Passed Korean Bar Examination.
- Worked as an Attorney at Yoon & Yang.
- Taught civil law at Dankook University.

Publication

- <The Theoretical Construction of the right of publicity, 2013>



Presentation



KOREAN LAW & ITS DEVELOPMENT IN A GLOBALIZING WORLD

Citizen Participation in Government

Matthew J. Wilson

*Dean and Professor of Law
Univ. of Akron School of Law
Ohio (U.S.A.)*

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GLOBALIZATION

With the expansion of globalization, South Korea has the potential to play an even bigger role on an international stage. Its companies have increased their overseas presence and reputation. Its culture has influenced people around the world. Interest in South Korean and its history is increasing. Now is a prime time for the country to step forward and educate the world about its successes, its challenges, and its legal system.



WHY IS IT IMPORTANT FOR OTHERS TO KNOW ABOUT SOUTH KOREAN LAW?



- ◆ Bridging mechanism to facilitate commercial dealings between parties from other countries.
- ◆ Ongoing movement for uniformity and harmonization of laws
- ◆ Helps in the acquisition of knowledge
- ◆ Exchanging ideas can lead to creation of lay and improvement of legal systems
- ◆ Helps understand culture, society, history, and economics of South Korea.

CITIZEN PARTICIPATION IN GOVERNMENT

- Citizen participation in government comes in various forms: campaigning, voting, jury service, petitions, demonstrating, public office, military service, and others. There are many benefits associated with such participation including:
 - Facilitates transparency, which helps in checking government, preventing corruption, and shielding against oppression
 - Enables the citizen to better understand, appreciate, respect, and connect with government.
 - Builds trust (“rule of law” versus “rule by law”)
 - Leads to a desire to engage in civic service and greater sense of community.
 - In a democratic society, it is important for citizens to “connect not just with each other, but also with the state in ways that are inspiring, empowering, educational, and habit forming.”
 - Spurs economic success

CIVIC SERVICE IN THE JUDICIARY

World-wide trends

- Rich history: United States and U.K.
- Rushing to embrace citizen participation in the judiciary
 - *East Asia:* Japan, Taiwan, China, and South Korea
 - *Central and South America:* Mexico, Venezuela, Bolivia, and Argentina
 - *Central Asia:* Uzbekistan, Kajikistan, Croatia, Russia, and other Soviet republics
 - *Western Europe:* Spain

5

CIVIC SERVICE IN THE JUDICIARY

World-wide trends – over 50 countries

- Rich history: United States and U.K.
- Rushing to embrace citizen participation in the judiciary
 - *East Asia:* Japan, Taiwan, China, and South Korea
 - *Central and South America:* Mexico, Venezuela, Bolivia, and Argentina
 - *Central Asia:* Uzbekistan, Kajikistan, Russia, and other Soviet republics
 - *Western Europe:* Spain

Goals

- Insulation from government oppression and corruption
- Transparency and trust
- Education about the judicial system
- Open the door to a sense of achievement, civic pride, democratic empowerment, and support for the system
- Injection of common sense and practical observations into system dominated by sheltered judges

6

SOUTH KOREA - JURY TRIALS

- South Korea's dramatic transformation from dictatorship to democracy in the late 1980s brought strong demands for democratizing the administration of justice.
- In 1999, President Kim Dae-jung, who had himself been sentenced to imprisonment/death by martial law courts, appointed a committee that recommended citizen participation in the courts.
- Rampant concern about the negative public sentiment against the judiciary.
- In 2004, the Korean Judicial Reform Commission debated the use of citizen judges despite the absence of a public movement for lay participation together with the introduction of a new law school system and reform of criminal procedure rules.
- In 2007, the National Assembly promulgated the *Act on Citizen Participation in Criminal Trials* (Gukmin-eui Hyongsa Jaepan Chamyeo-e Gwanhan Beobryul)
- "Trials with a jury" began in January 2008, in conjunction with a five-year period of experimentation with a consultative jury.

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WORLD INTEREST IN S. KOREA'S EXPERIMENT

- ***Transformation to a democracy and democratic institutions***
 - French political observer Alexis de Tocqueville concluded that "I do not know whether the jury is useful to those who are in litigation; but I am certain it is highly beneficial to those who decide the litigation; and I look upon it as one of the most efficacious means for the education of the people which society can employ."
- ***Structure***
 - Global debate about ideal type of jury trial
 - All-citizen / mixed tribunal
 - Jury size (5, 7, 9)
 - Majority versus unanimity
 - Advisory function – Effect of non-binding determination?
 - Scope: why limit to only serious criminal cases?
 - Unanimity versus majority

8

WORLD INTEREST IN SOUTH KOREA'S EXPERIMENT

- **Process**
 - Defendant's consent necessary -- ability to opt out of jury trial
 - Pre-trial procedure / criminal procedure
 - Length and speed of trial
 - Jury selection
 - "Proof beyond a reasonable doubt" / presumption of innocence
 - Respect for the jury determination / appeals?
 - Prosecutors ability to appeal
- **Constitutional considerations**
 - Power of judges
 - Right to jury trial
- **Interaction between Citizens and Judges**
 - Education (jury comfortable with procedure/judges role)
 - Citizen judges able to consult with presiding judge?
 - Requirement that jury hear views of presiding judge if they cannot reach unanimous verdict on first vote

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CITIZEN PARTICIPATION IN TRIALS

The
University
of Akron

- ***Will the purposes of South Korea's experiment be realized:***
 - Enhance public confidence in the legitimacy and credibility of courts that were considered autocratic, secretive, frequently corrupt and always under the influence of official and business elites.
 - Bolster broader reforms designed to end Korea's inquisitorial "paper trials"
 - Create open, adversarial, open hearings featuring in-court testimony subject to cross-examination before impartial professional and lay adjudicators
- ***Political and cultural considerations***
 - Politically charged trials
 - What features of the system are unique to South Korea's distinctive culture and contemporary society

10

POSSIBLE TEACHING METHODS

- Participatory Learning
 - Problem solving method
 - Writing seminar
 - Simulation (trial advocacy)
 - Designing a system

- Learning about the judiciary and criminal procedure through the jury trial process

- Comparative examination of systems

토론문 (Korean Law & its Development in a Globalizing World - Citizen Participation in Government)

이화여자대학교 법학전문대학원 권태상 교수

우선 먼 미국에서 오셔서 좋은 발표를 해 주신 Matthew J. Wilson 교수님께 깊은 감사를 드립니다. 특히 시민의 정부에 대한 참여라는 큰 관점에서 시민의 재판 참여 제도를 설명해 주셔서, 시민의 재판 참여 제도의 성격을 다시 생각해 보는 좋은 계기가 되었습니다. 무엇보다 미국에 계시면서도 한국의 국민참여재판제도의 핵심을 잘 소개해 주셔서 다시 한 번 감사드립니다. 아래에서는 토론자의 입장에서 몇 가지 말씀드리겠습니다.

첫째, 한국의 국민참여재판제도는 배심제와 참심제의 요소가 혼합된 독특한 성격을 갖고 있습니다. 일반적으로 배심제(all-citizen jury)란 일반국민 중에서 선정된 배심원들이 판사로부터 독립하여 사실문제에 대해 판단하고 판사가 이 판단에 기속되는 제도를 말합니다. 미국, 영국 등의 배심제가 그 예입니다. 그리고 참심제(mixed tribunal)란 일반국민 중에서 선정된 참심원들이 판사와 함께 재판부를 구성하고 사실문제와 법률문제에 대해 함께 판단하는 제도입니다. 독일, 프랑스 등이 참심제를 채택하였고, 최근 일본도 참심제 성격의 제도(재판원 제도)를 채택하였습니다.

한국의 국민참여재판제도는 배심제와 참심제의 요소를 혼합하여 가지고 있습니다. 즉 판사와 별도로 배심원단이 구성되지만, 배심원들이 사실문제는 물론이고 법률문제에 대해서도 판단하게 됩니다. 그러나 배심원들의 평결이 법원을 기속하지 않고 권고적 효력만 갖는다는 특징이 있습니다.

둘째, 한국의 국민참여재판제도는 그동안 확대되어 왔습니다. 국민참여재판을 도입할 당시는 국민참여재판의 대상사건의 유형이 일부 중한 범죄로 한정되었습니다. 그러나, 2012. 7. 1.부터는 국민참여재판의 대상사건이 형사 합의부 관할 사건 전체로 확대되었고, 이에 따라 국민참여재판을 신청하는 사건수도 급격히 확대되었습니다. 통계에 의하면 2008. 1. 1.부터 2013. 6. 30. 까지 전국 법원에서 국민참여재판으로 2,627건이 접수되었다고 합니다. (다만 이 사건들 중 1,056건에 대해서는 피고인이 신청의사를 철회하였고, 458건에 대해서는 법원이 국민참여재판을 하지 않기로 하는 배제결정을 내렸습니다.)

그리고 한국의 국민참여재판제도를 개선하자는 여러 의견도 제시되어 왔습니다. 가장 눈에 띄는 것은 배심원 평결에 사실상 기속력을 인정하자는 의견입니다. 그런데 현재 배심원 평결에 권고적 효력만 인정하는 가장 큰 이유는, 한국 헌법 제27조 제1항에서 “헌법과 법률이 정한 법관에 의하여” 재판을 받을 권리를 기본권으로 규정하고 있기 때문으로 보입니다. 즉 법관이 아닌 사람이 재판을 하는 것, 다시 말해 사실문제나 법률문제에 대해 판단하는 것은 위 헌법 규정에 위배될 수 있으므로 배심원 평결에 기속력을 인정하기 어렵다는 것입니다. 이러한 배심원 평결의 기속력 문제를 포함하여, 한국의 국민참여재판제도를 향후 어떤 방향으로 개선하는 것이 좋을지에 대해서 발표자의 의견을 듣고 싶습니다.

셋째, 한국의 국민참여재판제도는 형사재판에만 적용되고 민사재판에는 적용되지 않습니다. 그런데 미국의 경우 민사재판에도 배심원이 참여하는 민사배심제도가 있는 것으로 알고 있습니다. 미국의 경우 이러한 민사배심제도가 활발히 운영되고 있는지 어떤지 조금 소개해 주실 것을 부탁드립니다. 그리고 한국에서 민사배심제도를 도입하는 것이 바람직한지에 대해서도 발표자의 의견을 듣고 싶습니다.

Session 2

<Globalization of Korean Law in German, Australia, U.S. and China>

Chair: Michael Palmer

(Professor, Shantou University)

■ Presentations

5. “Korean Law in Germany: Current Status and Future Perspectives”

Speaker: Moritz Bälz (Professor, Goethe University Frankfurt)

Discussant: Kwang Jun TSCHE (Professor, Kyung hee University)

6. “Asia, Korea and Law: A view From the South”

Speaker: Veronica L. Taylor (Professor, Australian National University)

Discussant: Hyung Gun Kim (Research Fellow, KLRI)

7. “Teaching Comparative Korean Law in the U.S. and Korea”

Speaker: Yong-Sung Jonathan Kang (Professor, Yonsei University)

Discussant: Joung Wook Hwang (Professor, Hankuk University of Foreign Studies)

8. “Chinese Legal Studies in Foreign Countries”

Speaker: Jiangyu Wang (Professor, National University of Singapore)

Discussant: Yeu Sun Kim (Professor, JeJu National University)





Michael Palmer

(Dean & Professor, Shantou University Law School, China)

Education

- B.Sc. (Econ.), London School of Economics and Political Science (University of London), 1967.
- M.A. (Chinese Studies), SOAS (University of London), 1968.
- LL.B., Trinity College, University of Cambridge, 1978.
- LL.D., University of London, 2002.

Area of Scholarly Interests

- Mainly in the field of comparative law, and cover a wide range of areas including civil justice and dispute resolution, legal history, family law reform, human rights, environmental welfare, consumer protection and criminal law

Professional Experience

- 1988 (June) to 2010: Academic Convenor, "Practical Training Scheme for Young Chinese Lawyers" (now known as the "Lord Chancellor's Fellowship Scheme for Young Chinese Lawyers"). Renewed in 1998 for a second 10-year term under the auspices of the Lord Chancellor's Department (now "Department for Constitutional Affairs").
- 1998 (July) to 2010: Academic Convenor, Great Britain-China Centre & Supreme People's Court of the People's Republic of China (PRC), "Lord Chancellor's Training Scheme for Chinese Judges", renewed in 2005 for a further 3 years under the auspices of the Department for Constitutional Affairs.
- 2000 (April) to 2005 (July): Programme Advisory Group Member, "EU-China Legal and Judicial Co-operation Programme," and Academic Convenor of the UK elements in the Programme. As a result of this work, I have also advised on the second phase of this programme, which is to involve the development of an "EU-China Law School" in Beijing.
- Barrister-at-Law – in practice as an Associate Tenant at:
 - : Serle Court (Chambers of Alan Boyle QC), New Square, Lincoln's Inn (my academic responsibilities preclude me from accepting a full tenancy which has been, and which continues to be, on offer); and McNair Chambers, Doha, Qatar (Chambers of Khawar Qureshi QC).

Award/Honor

- Emeritus Professor of Law at the University of London

Publication

- include: (with Simon Roberts) *Dispute Processes: ADR and the Primary Forms of Decision Making*, first published July 1998 in "Law in Context Series", London and New York: Butterworths. Second Edition, Cambridge: Cambridge University Press, September 2005; third edition in preparation; second edition translated into Chinese for publication by Peking University Press, 2011). Authors' contributions are equal (50% each).



Moritz Bälz

(Professor of Japanese Law and its Cultural Foundations, Goethe University Frankfurt)

Education

- doctor of law (Hamburg University) 2005
- New York bar exam 2002
- LL.M. (Harvard Law School) 2002
- Second Legal State Examination (Hamburg) 2001
- First Legal State Examination (Berlin) 1998

Area of Scholarly Interests

- Japanese Law,
- comparative business law,
- commercial law
- dispute resolution

Professional Experience

- chair of Japanese Law and its Cultural Foundations, Goethe University Frankfurt (since 2008)
- Director Interdisciplinary Centre for East Asian Studies (IZO), Goethe University Frankfurt (2008-2010)
- attorney with Freshfields Bruckhaus Deringer New York / Frankfurt 2003-2008
- Joseph Story Research Fellow, Harvard Law School 2002-2003
- research assistant Max Planck Institute for Comparative and International Private Law, Hamburg

Award/Honor

- scholarships inter alia from German National Academic Foundation (Studienstiftung), German Academic Exchange Service (DAAD) and Harvard Law School

Publication

- Formalisation and Flexibilisation in Dispute Resolution (co-edited with J. Zekoll & I. Amelung) (2014)
- Zur Entwicklung des Rechts der Forderungsabtretung aus deutscher Sicht, in: Tadaki/Baum (eds.), 債権法改正に関する比較法的検討—日独法のしてんから (2014), pp. 101-326
- Japan, in: Kirchsteiger-Meier & Baumgartner (eds.), Global Food Legislation (2014), 143.175 (with G. Koziol)
- Staatshaftung für Asbestschäden, ZJapanR / J.Japan.L 36 (2013), 117-141 (with H. Kawamura)
- Business Law in Japan: Cases and Comments. Writings in Honour of Harald Baum (co-edited with M. Dernauer, A. Petersen-Padberg & Ch. Heath) (2012)
- Handbuch Japanisches Handels- und Wirtschaftsrechts (co-edited with H. Baum) (Köln, 2011)
- Of Traditional Values and Modernity: A New Japanese Litigiousness?, in: Hansen & Schüssler-Langeheine (eds.), Patent Practice in Japan and Europe. Festschrift für Guntram Rahn (2011), 3-25 (with H. Baum).
- Japans später Beitritt zum UN-Kaufrecht, Rabels Zeitschrift für Rechtsvergleichung 73 (2009), 683-702
- Wider den Exotismus? Zur Bedeutung der Kultur für das Verständnis des modernen japanischen Rechts, ZJapanR 25 (2008), 153-164
- Collective Litigation German Style – The Act on Model Proceedings in Capital Market Disputes, in: Gottschalk, Michaels, Rühl & von Hein (eds.): Conflict of Laws in a Globalized World (2007), 126-149 (with F. Blobel)
- Die japanischen Regeln für die Spaltung von Gesellschaften „kaisha bunkatsu“, in: Riesenhuber & Takayama (eds.), Rechtsangleichung: Grundlagen, Methoden und Inhalte (2006), 421-445
- Liberalized Rules for the Restructuring of Japanese Companies: Mergers, Demergers, and Share Exchanges under the New Company Law, ZJapanR 21 (2006), 19-35
- Die Spaltung im japanischen Gesellschaftsrecht (2005)
- Appraisal Rights in Japanese Corporate Law, ZJapanR 13 (2002), 152-173



Kwang Jun TSCHE
(Professor, Kyung Hee Univ. Law School, Korea)

Education

- LL.B., University of Cologne, Faculty of Law, Germany
- LL.M., University of Cologne, Faculty of Law, Germany
- Dr. jur., University of Cologne, Faculty of Law, Germany

Area of Scholarly Interests

- civil law, contracts, private international law
- comparative law
- legal education
- legal history

Professional Experience

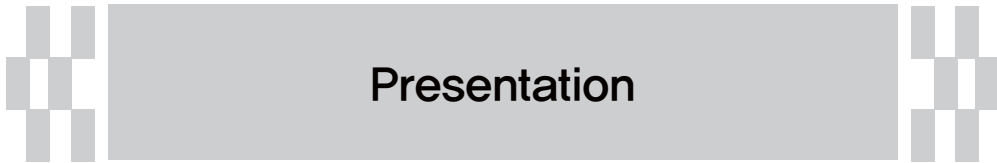
- Professor, Pusan National University, 1994-1999
- Professor, Kyung Hee University Law School, since 1999
- Visiting Scholar, New York University School of Law, USA
- Visiting Scholar, University of Tokyo, Japan
- Visiting Professor, Osaka University School of Law and Politics (taught “current issues in comparative law”)

Award/Honor

- Alexander von Humboldt Foundation Fellow
- National President of Korea, World Jurist Association

Publication

- various articles in Korean, Japanese and German law journals.



Presentation

2014 Korea Law Project
Working Group Meeting
Seoul, 28 November 2014



Korean Law in Germany: Current Status and Future Perspectives

Prof. Dr. Moritz Bälz, LL.M., Goethe University, Frankfurt am Main

Overview

- A. The Background: A Strong Base to Build On
- B. The Status Quo: Still in the Making
- C. Why Should We Study Korean Law?
- D. Obstacles to Overcome
- E. Future Perspectives

A. The Background: A Strong Base to Build on

A Wealth of Historical and Personal Connections

- ◆ Legacy of the reception of German law in Korea (in part via Japanese law during the occupation)
- ◆ A rich tradition of comparative law research on German law by Korean scholars (esp. dissertations)
- ◆ Many personal contacts, joint conferences, university partnerships, etc.
- ❖ But: still rather one-sided, few Germans have more than a superficial knowledge of Korean law, can read Korean

2

B. The Status Quo: Still in the Making



Major Asian Law Capacities

Max Planck Institute Hamburg:
Japanese law department, Chinese law department (some Korean law expertise)

Göttingen University:
Master in Chinese law

Hagen Distance Learning University:
Japanese law courses (to be extended to Korean law)

University of Cologne:
Associate Professor of Chinese Legal Culture

Frankfurt University:
Chair of Japanese law; additional expert on East Asian IP law, some courses on Chinese law)

Trier University:
Course in Japanese law

Heidelberg University:
Start-up professorship Social Sciences (East Asian law)

Freiburg University:
Chair of International Economic Law (focus on East Asia)

3

B. The Status Quo: Still in the Making

Research and Teaching of Korean Law in Germany

- ◆ Substantial body of literature on Korean law in German:
 - ◆ Dissertations, journal articles, *Festschrift* contributions
 - ❖ But: few comprehensive treatises, lack of teaching material



- ◆ Korean studies (*Koreanistik*) in Germany rather small, traditionally focusing on language, history, and culture
- ◆ German Korean Lawyers Association (DKJG) since 1986, about 150 members (<http://www.dkjg.net/>)

4

C. Why Should We Study Korean Law?

Teaching and research of Korean law should be strengthened in Germany ...

- ◆ ... not primarily in order to enable people to practice Korean law
 - ◆ ... in order to better understand Korea
 - ◆ its economy,
 - ◆ its politics,
 - ◆ its society
- ⇒ practical use

5

C. Why Should We Study Korean Law?

Teaching and research of Korean law should be strengthened in Germany ...

- ◆ ... because it is interesting, *inter alia*
 - ◆ as factor in a country's economic success and democratization process
 - ◆ as the law of a country sharing the experience of being divided (and hopefully one day managing a reunification)
 - ◆ as an example for the adoption, adaptation and further development of western legal concepts in a different context
 - ◆ as a test object for theoretical models developed within the western context
- ⇒ source of inspiration and educational tool

6

D. Obstacles to Overcome

- ◆ Language barrier
- ◆ Lack of general knowledge about Korea
- ◆ Distorted perceptions of Korean law
- ◆ General situation of German universities
- ◆ Focus of legal research and education in Germany
- ◆ Competition by Japanese and Chinese law

7

What to aim at:

- ◆ Continuity, comprehensiveness, Institutionalization
- ◆ Interdisciplinary approach
- ◆ Preserving the special Korean-German comparative law tradition, while transcending bilateral approaches: Korean-European perspective, Korean-German-Japanese or Korean-German-US comparisons etc.
- ◆ Promoting interest in particular among German students and doctoral candidates

8

How to get there?

- ◆ Pulling the existing strings together, building networks
- ◆ Cooperating with other Asian law centers
- ◆ Cooperating with Korean studies, last not least with regard to language training
- ◆ Building institutional capacities
 - ◆ Establishing a (also-German) journal focused on Korea
 - ◆ Building up library resources at some places
 - ◆ Establishing a junior professorship / a chair of Korean law

9



Thank you very much for your attention!





Veronica L. TAYLOR

(Professor of Law and Dean, College of Asia and the Pacific, Australian National University)

Education

- BA (Hons); LLB, Monash University Australia
- LLM (Asian and Comparative Law), University of Washington

Area of Scholarly Interests

- Professor Taylor began her academic career as a specialist in Japanese commercial law and regulation, later contributing to the fields of Asian law, law and development, legal education and regulatory reform. Her particular interest is the communities of professional actors and how they reshape regulatory systems. Her current research interests are re-regulation in Japan, governance reforms in the Philippines (access to justice and legal pluralism); and the development of rule of law in fragile and conflict-affected settings such as Myanmar and Afghanistan.

Professional Experience

- Until 2014 Professor Taylor was Professor and Director of the Regulatory Institutions Network (RegNet) at ANU and Director of the ANU Japan Institute. She joined ANU in 2010 from the University of Washington, where she was the Dan Fenno Henderson Professor of Asian Law and Director of the Asian Law Center (2000-2010). She has held visiting appointments at the University of Tokyo, Kobe and Nagoya universities in Japan.

Award/Honor

- Inaugural Hague Visiting Professor in Rule of Law, Hague Institute for Internationalization of Law / Leiden University (2010)

Publication

Recent publications include:

- Asian Law e-Journal (www.ssrn.com) (with D Clarke)
- Australian Journal of Asian Law
Founding Editor, with T Lindsey, MB Hooker(www.ssrn.com)
- 'Navigating Law's 'Asian Century' in Haley and Takenaka (eds) Legal Innovations in Asia (Edward Elgar, 2014)



Hyung-Gun Kim
(Research Fellow, KLRI, Korea)

Education

- Master of Laws(LL.M.) & Doctor of Juridical Science(S.J.D.), Maurer School of Law, Indiana University at Bloomington (Sep. 2002 – Dec. 2009)

Area of Scholarly Interests

- Intellectual Property Law, Science & Technology Law

Professional Experience


- Research Fellow, Office of Global Legal Research, Korea Legislation Research Institute (Jan. 2011 – Present)
- Legal Counsel(Full-Time Seconded), Legal Team, Global Green Growth Institute (GGGI, International Organization)(Mar. 2011 – Dec. 2011)
- Postdoctoral Researcher & Research Assistant Professor, BK21 Global Science & Technology Law Expert Program, Sungkyunkwan University Law School (Sep. 2010 – Jan. 2011)

Award/Honor


- The Environment Minister's Award (Jun. 2014)

Publication

- Hyung-Gun Kim, Current State of the Patent Eligibility of DNA-Related Inventions: Implications of the U.S. Supreme Court's Decision in *Association for Molecular Pathology v. Myriad Genetics, Inc.*, *Journal of Legislation Research* (Vol. 46)
- Hyung-Gun Kim, A Study on Copyright Protection for Artificial Life: Focusing on the Copyrightability of Synthesized DNA, *Copyright Quarterly* (Vol. 25 No. 2)
- Hyung-Gun Kim, A Study on the Access to Research Tool Patents: A Comparative Analysis of the Applicability of Research Exemptions and Compulsory Licenses, *Property Law Review* (Vol. 27 No. 3)



Presentation



Asia, Korea and Law: A View From the South

Veronica L. Taylor
Professor of Law
Dean
College of Asia and the Pacific, Australian National University

What does the current era of teaching and researching Japanese and Asian law suggest about future trajectories for Korean law as a field?

What students and employers demand from contemporary legal education

- Dynamic, interactive pedagogy
- Opportunities to acquire specialist knowledge
- Experiential learning:
 - exposure to real clients, situations and simulations
- International mobility (regional and multi-destination)
- Direct exposure to other legal systems / international organizations
- Interdisciplinary projects
 - linking law to other fields (environment, economics, medicine, technology, international relations)

3

Challenges in preparing graduates for contemporary legal practice

- Restructuring and diversification of legal services
 - Over-supply of graduates
 - Over-supply of conventional legal services in domestic markets
 - Emergence of multidisciplinary legal practices
 - Outsourcing
- Rise of regulation
 - Diminishing function and prestige of law in public policy arenas
 - Need for 'supra-legal' knowledge
- Spread of hybrid and pluralist legal systems worldwide
 - e.g. Islamic law, legal systems in most developing countries
- Dependence upon technology for producing legal knowledge
- Millennial generation's learning styles

4

How this translates in Australia

- Australia's 'Asian century' + 'New Colombo plan'
 - (government support for undergraduate student mobility to Asia)
- 32 (mainly public) law schools
 - → 14,000 law graduates per year
 - Relatively high intensity of Asian awareness
- Diverse post-graduate careers
 - ANU as largest law school (1500 students); 47% will go into non-law careers
- Double degree programs at undergraduate level (70%)
 - law + economics, international relations, Asian Studies, medicine, environmental science etc.
- Institutional support : Australia-Korea Foundation + Korea Foundation

5

Korea's diverse profile in law schools

Australian National University	ANU Korea Institute
Sydney	Centre for Asia and Pacific Law (CAPLUS) Australia-Korea Internship Program (AKIP)
Melbourne	Asian Law Centre
U Queensland	Korean Law Program
University of Western Australia	Korean Studies Program
Griffith University	Griffith Asia Institute

6

Perennial tensions: Korea' v. 'Asia'

Part of our desire to seriously engage with South East Asia stemmed from the hypothesis that our institutional knowledge of, and networks in, Japan, **Korea** and Taiwan, could be directly relevant for the legal and regulatory issues confronting Thailand, Indonesia and Vietnam, and this proved to be the case.

Asia was becoming more globally integrated, politically, economically and legally. Thus it became much more accessible and relevant as a source of examples of legal and social issues of universal concern, whether environmental sustainability, asylum seeker and refugee flows... **Korean law** was ripe for expansion within the United States as ties between Korean, Korean American and other professors in American and Korean law schools expanded and the Korea Foundation stepped up its institutional support.

Taylor (2014) 'Navigating Law's 'Asian Century' in Haley and Takenaka (eds)
Legal Innovations in Asia (Edward Elgar)

7

What do we mean by 'Korean Law'?

Taylor (1997) 'Beyond Legal Orientalism' in Taylor (ed) *Asian Laws Through Australian Eyes* (Law Book Co)

- arguing that 'Asian law' is a fiction, but a useful one; that individual Asian legal systems need to be studied on their own terms; that the interactions between and among those systems are as important as descriptions of their domestic characteristics

Ginsburg, Nottage, Sono (Eds.), (2001) *The Multiple Worlds of Japanese Law: Disjunctions and Conjunctions* (Wiley)

- Arguing that personal intellectual formation of scholars and geo-political position shapes our views of the target country for comparison

Ruskola (2014) *Legal Orientalism* (Harvard UP) (on US legal views of China)

- Arguing that the discourses that shape our perception of foreign legal systems (in this case, China) are constructed, and often politically influenced

8

The many worlds of 'Korean Law'

- East Asian democratization story
- East Asian development model
- Legal technology innovator
- Case study in reunification and (future) law and development
- Regional trade and investment power
- Co-regulator of complex problems in the region (refugees, climate, labor, green growth etc)
- Free trade agreement partner

9

Models of Asian law knowledge diffusion (1)

- **Emissary** (send professors abroad)
- **Silk Road strategy** (language and law in Asia)
- **Capture** (resource foreign professors abroad)
- **Implant** (hire foreign professors at home)
- **Key node** (partner with committed university centres)
- **Bibliographic** (stock libraries and databases abroad)
- **Diaspora** (young professors emigrate and work in specialist areas)

10

Models of Asian law knowledge diffusion (2)

- **Student mobility** (exchanges, internships)
- **Joint course/joint degree** (share programs and sites of learning)
- **Network** (resource and coordinate multiple countries, people and institutions)
- **Collaborative** (partner on substantive projects)
- **Associative** (LSA; ASLI; Asian Law Association (Japan); Asian Soc Intl Law etc)
- **Technological** (MOOCs; Youtube; online open access repositories; electronic journals etc)

11

Is this a binary 'soft power' game?



- China
- ASEAN
- Shari'a /Islamic Law
- Indonesia
- Mongolia
- Vietnam
- Malaysia

12





Yong-Sung Jonathan Kang
(Professor, Yonsei University Law School)

Education

- J.D., magna cum laude, Harvard Law School, 1998
- B.A., First Class Honors, University of Oxford, Jesus College, Philosophy, Politics and Economics, 1995

Area of Scholarly Interests

- Comparative Law
- Contract Law
- Legal Philosophy
- International Business Law & Dispute Resolution

Professional Experience

- Associate Professor, Yonsei Law School, September 2013~
- Affiliate Professor of Law, University of Washington School of Law, June 2014~
- Assistant Professor, University of Washington School of Law, Seattle, WA, July 2006~June 2014
- Visiting Assistant Professor, Fordham Law School, New York, NY, May 2004~June 2006

Publication

- The Insularity of Korean Law from an International and Comparative Perspective, 2009 Korea Research Foundation Social Science Webzine, No. 4 (December 2009)
- Raising the Profile of Korean Legal Studies in U.S. Comparative Law Teaching and Scholarship, 18 SUNGKYUNKWAN UNIV. LAW REVIEW 15 (2006)
- Developments in the Law - Alternatives to Incarceration - Introduction, 111 HARVARD LAW REVIEW 1866 (1998) (with Maya Manian)
- Developments in the Law - The Civil Jury - The Value of the Civil Jury, 110 HARVARD LAW REVIEW 1421 (1997)
- Criminal Liability for the Actions of Subordinates—The Doctrine of Command Responsibility and its Analogues in United States Law, 38 HARVARD INTERNATIONAL LAW Journal 272 (1997) (with Timothy Wu)



Jung Wook Hwang

(Professor, Hankuk University of Foreign Studies Law School)

Education

- Harvard Law School (JD, 2001)
- Harvard University (BA in Economics, 1998)

Area of Scholarly Interests


- Law & Economics, Corporate Law, Financial Regulation, Dispute Resolution

Professional Experience


- Hankuk University of Foreign Studies (2012.9~Present)
- Yoon & Yang LLC (Seoul, 2009.7~2012.5)
- Sullivan & Cromwell LLP (Tokyo, 2005.9~2009.1)
- Cleary Gottlieb Steen & Hamilton LLP (New York, 2002.10~2005.8)
- Dechert LLP (Philadelphia, 2001.9~2002.7)

Publication

- "Macprudential Banking Policy," Global Legal Issues 2012 II (Korea Legislation Research Institute)
- "Optimal Patent Policy for Developing Countries," working draft
- "Law and Economics of Medical Device Regulation," working draft
- "Economic Analysis of Investment Treaty Arbitration," working draft



Presentation



Why Study (Comparative) Korean Law?

Yong-Sung Jonathan Kang
Yonsei Law School

The Marginalization and Insularity of Korean Legal Studies

- The neglect of Korean legal studies in the U.S. and internationally
- Korean law is also rarely addressed in other areas of the typical law school curriculum, including in broader courses on international and comparative law
- Is this neglect justified? Why study Korean law?
- Korean law as “foreign law” vs. Comparative Korean law

Why Study Korean Law?

- Economic Significance:
 - 15th largest economy in the world in terms of nominal GDP, according to the World Bank and the IMF.
 - 12th largest economy by purchasing power parity.
 - Korea is the 7th largest merchandise exporter in the world, and the 9th largest importer, according to the WTO.
 - In terms of commercial services. Korea is the 13th largest exporter and importer.

Law & Development: Law's Role in Korea's Economic and Political Success

- Phenomenal economic success, past & present
- Balanced economic growth
 - Lowest Gini coefficient of any country in Asia excluding Pakistan, according the CIA World Factbook
 - Lowest Gini coefficient (before taxes and transfers) in the OECD
- Challenges to the traditional law & development orthodoxy of “legal origins” and the endowment model:
 - Heterodox model of economic growth: Alice Amsden, Hajoong Chang, etc.
- Combination of economic growth with political transformation from authoritarianism
 - Democratization since 1987

Legal Transplants, Path Dependency and the Colonial Legacy

- Together with Taiwan, Korea stands as a fascinating example of:
 - The Chinese legal tradition
 - Colonization by non-Western nation
 - A diverse array of legal transplants: European, Japanese, and U.S. influences
- Byong Ho Park: Five periods of legal transplantation
 - Three Kingdoms Period: Codes of Wei, Tsin, and T'ang
 - Koryō Dynasty: Codes of T'ang, Sung and Yuan
 - Chosŏn Dynasty: Great Ming Code
 - Taehan Empire Period: Continental law
 - Post-liberation: Continental and Anglo-American law
- In addition: Japanese law in the colonial period.
- Modernity and tradition in law

Democratization and Constitutionalism: The Role of Law in Political Transformation

- Democratization in Korea since 1987
 - Critical role of law, lawyers and judges
- The Constitutional Court: the role of judges in political transformation
 - Established in 1988 and widely considered a critical contributor to the development of constitutional democracy in Korea.
 - Nine justices, serving six-year terms
 - Appointment by the President, with 3 each to be nominated by the President, the National Assembly, and the Chief Justice of the Supreme Court
 - Supermajority rule: 6 votes required
 - Non-binary decisionmaking model: constitutional, unconstitutional, "nonconforming," unconstitutional as applied, constitutional if interpreted in a particular way.

Constitutional Court Case Statistics (as of October 31, 2014)

Type	Total	Constitutionality of Statutes ¹⁾	Impeachment	Dissolution of a Political Party	Compe-tence Dispute	Constitutional Complaint			
						Sub total	§68 I	§68 II	
Filed	26,487	846	1	1	82	25,557	20,795	4,762	
Settled	25,720	796	1		79	24,844	20,381	4,463	
Dismissed by Panel	13,260					13,260	11,097	2,163	
Unconstitutional ²⁾	493	238				255	80	175	
Unconformable ³⁾	164	56				108	46	62	
Conditionally Unconstitutional ⁴⁾	69	18				51	19	32	
Decided by Full Bench	Conditionally Constitutional ⁵⁾	28	7			21		21	
	Constitutional Upholding ⁶⁾	1,960	296			1,664	4	1,660	
	Rejected	496				16	480	480	
	Dismissed	6,691		1		20	6,670	6,670	
	Other	1,764	62			30	1,672	1,406	266
	Withdrawn	6					6	5	1
	Pending	789	119			13	657	574	83
Pending	767	50		1	3	713	414	299	

Challenges of Teaching Comparative Korean Law

- Parochialism
 - In the U.S.: Lack of engagement with other jurisdictions, encouraged by the globalization of U.S. law
 - In Korea: Lack of engagement and understanding of foreign legal *systems*, as opposed to foreign legal *rules*
- The reception of both U.S. public and private law widely seen as pervasive, inevitable, and desirable
 - Constitutional law accompanied by U.S.-style judicial review
 - Securities regulation
 - Intellectual property regulation
 - Legal practice and legal education

Globalization and Americanization of Law

- Kagan: U.S. adversarial legalism is not transportable. Contrast to opposed to bureaucratic legalism (France?) and hierarchical exercises of discretion (Germany? Japan?)
 - Different legal cultures (U.S. is anti-statist, many countries are not)
 - Political nature and broad powers of U.S. courts
 - Adversarial legalism in the U.S. regulatory process
 - U.S. tort law system
 - Limited social provision and employee protections in U.S. law
 - Limited obligations of U.S. tax law
 - U.S. criminal justice system's adversarial legalism: punitive sanctions, permissive gun laws, plea bargaining, high levels of incarceration, etc.

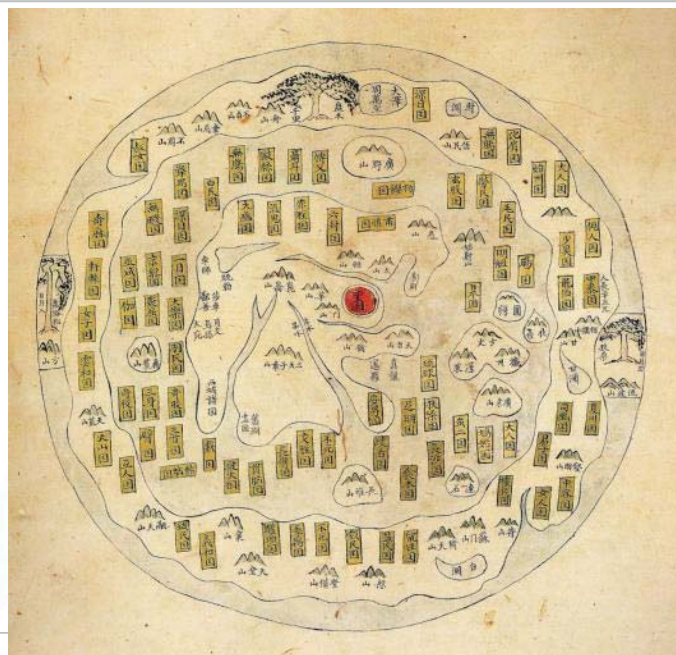
Challenges of Teaching Comparative Korean Law

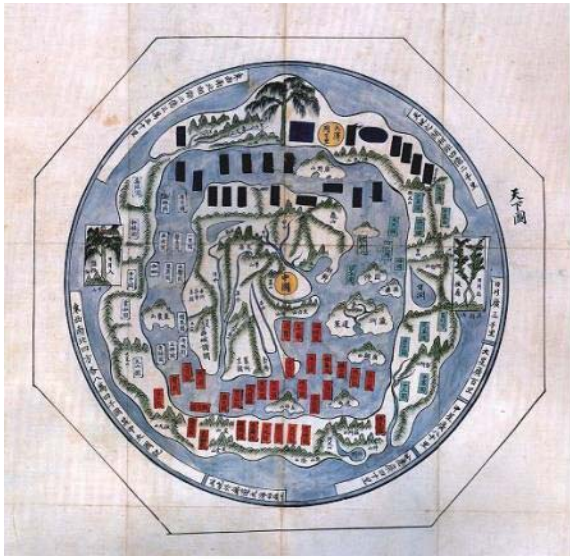
- Methodology
 - Comparative law is a discipline with great methodological diversity and challenges
 - Many of the methods of comparative law require, or would benefit from, training in other disciplines
 - Parallelism and the exposition of foreign law is *not* comparative law
 - Need for historical and contextual understandings of different legal systems in order to conduct meaningful comparative analysis

Challenges of Teaching Comparative Korean Law

- Training in foreign languages
 - The historical study of Korean law ideally requires training in Chinese, Korean and Japanese.
- Lack of scholarly references and teaching materials
 - Lack of legal materials on the core areas of private law and the civil code, as opposed to specialized subject areas and constitutional law.

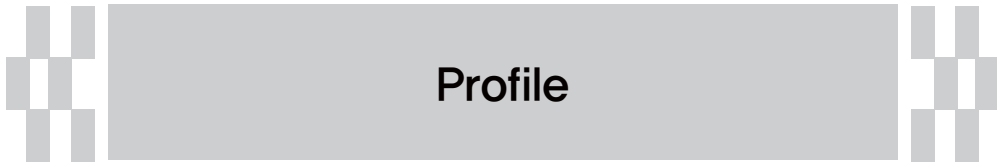
Ch'ŏnhado 天下圖





Korean Law in an International and Comparative Context







Jiangyu Wang

(Deputy Director, Centre for Asian Legal Studies(CALS) and Associate Professor, Faculty of Law, NUS Law)

Education

- SJD, University of Pennsylvania; MJuris, Oxford; LLM, Peking University; LLB, China University of Political Science and Law

Area of Scholarly Interests

- International law & international relations, comparative corporate & securities law; comparative legal systems; law and development

Professional Experience

- He was on secondment as an Associate Professor and Director for the MPhil/PhD Programme at the Faculty of Law of The Chinese University of Hong Kong from August 2006 to July 2009.
- His teaching and research interests include international economic law, Chinese corporate and securities law, law and development, and Chinese legal system. He practiced law in the Legal Department of Bank of China and Chinese and American law firms.
- He served as a member of the Chinese delegation at the annual conference of the United Nations Commission on International Trade Law Conference in 1999.
- He is a member of the Chinese Bar Association and the New York Bar Association, also a director on the Executive Board of the WTO Institute of the China Law Society, a Senior Fellow at the Law and Development Institute (LDI), and a fellow of the Asian Institute of International Financial Law (Hong Kong).
- He has also been invited expert/speaker for the WTO, International Trade Centre (UNCTAD/WTO) and United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP).

Award/Honor

- He recently received the 2007 Young Researcher Award of The Chinese University of Hong Kong in recognition of his accomplishment in research from 2007-2008.

Publication

- Dr. Wang has published extensively in Chinese and international journals and newspapers on a variety of law and politics related topics. He is a regular contributor to leading newspapers and magazines in Singapore, Hong Kong, and mainland China. He served as an external reviewer for dozens of international journals and publishers and research funds.



Yeu Sun, Kim
(Professor, JeJu National University Law School)

Education

- B.A., Law Department of Kyong-gi University
- Ph.D., Law school of Wuhan University, China

Area of Scholarly Interests


- International Economic Law
- International Investment Law
- Chinese Legal System

Professional Experience


- Professor, Henan University (Kaifeng, China)
- Visiting Scholar, University of Wisconsin Law School
- Advisory Committee of Ministry of Government Legislation

Publication

- International Economic Law(Korean), BubMunSa, Seoul
- Chinese International Transaction Law, Hiedu Press.



Presentation



Chinese Legal Studies in Foreign Countries

Wang Jiangyu
Centre for Asian Legal Studies
Faculty of Law
National University of Singapore
25 November 2014



Outline

- Study of Chinese law overseas: History
- State of affairs
- Reasons for the development of Chinese legal studies abroad
- Relevance to promoting Korean law abroad

History of overseas study of Chinese law

Chinese Legal Studies Abroad

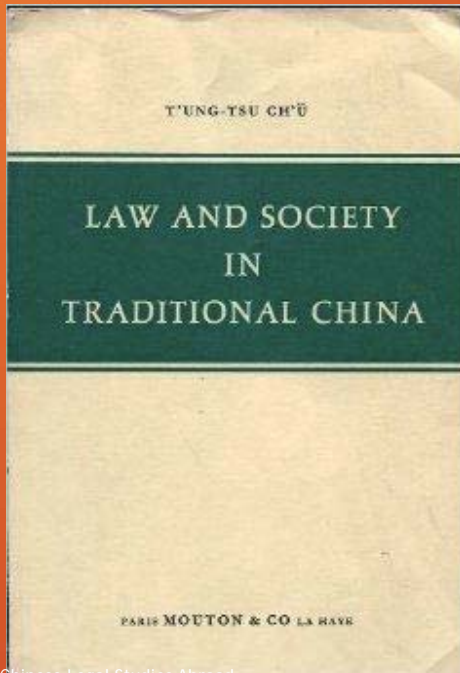


History of the study of Chinese law: U.S. as an example

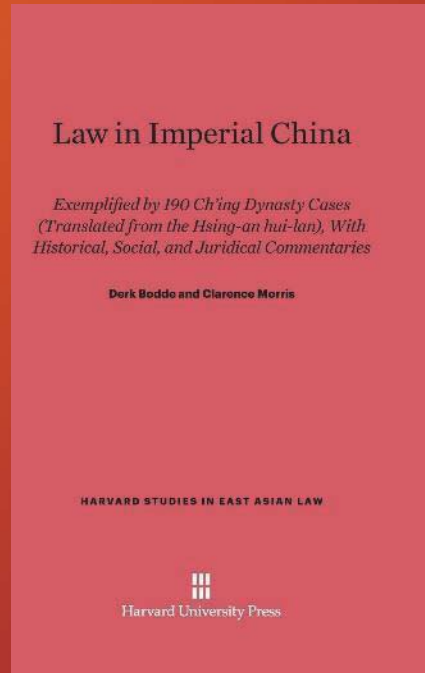
- The 1960s and before: the study of imperial Chinese law
 - The focus of the study was ancient Chinese law, especially the legal system of Tsing Dynasty.
 - Two ground keeping publications:
 - T'ung-Tsu Chu 瞿同祖 (Qu Tongzu), *Law and Society in Traditional China* (Paris: Mouton & Co., 1961).
 - Derk Bodde and Clarence Morris, *Law in Imperial China* (Harvard University Press, 1967)
- Interest in contemporary Chinese law begun to grow but constrained by scarce resources
 - Pioneer researchers: Jerome Cohen, Stanley Lubman
 - Useful researches were usually conducted in Hong Kong (e.g. the China Service Centre of the Chinese University of Hong Kong)

Chinese Legal Studies Abroad





Chinese Legal Studies Abroad



- Clarence Morris of the University of Pennsylvania Law School began to offer a course on Chinese legal thought in the Law School in 1961, possibly the first course on Chinese law ever offered by an American law school.



Chinese Legal Studies Abroad



Clarence Morris' contribution

- A Chinese law course that interested students and faculty members
- Translation of imperial Chinese cases
- Publications on Chinese law
- Organization of the first national get-together of people interested in Chinese law
- Developed or helped developed the tools and research methodologies for the study of Chinese law.

Chinese Legal Studies Abroad



The Goat, by Hsieh-chai, which has been at the Law School since 1963, now stands in the Haaga Lounge, beneath a dramatic skylight which reveals Silverman Hall.



- “Perhaps Clarence’s greatest contribution to the study of Chinese law was his basic humanistic approach. At a time when most Americans studying China, especially contemporary China, were strongly influenced by cold-war ideology, Clarence viewed Chinese law as a vital touchstone of a major non-Western civilization and a key to a better understanding of our own institutions. Along with his interest in law went a much broader interest in Chinese civilization as a whole. He read extensively about China, developed a taste for Chinese painting, acquired a creditable collection of Chinese jade, and is one of the few men I have ever known to learn to read classical Chinese on his own.” W. Allyn Rickett (1973)

Chinese Legal Studies Abroad



- The 1970s:
 - Sino-American détente in 1972, and China's Opening Up after the Cultural Revolution, inspired further interest in the Chinese law
 -

- 1980-2000: "Exploring an Uncharted Forest"
 - China's Reform and Opening Up lead to the boom of new laws, cases and legal institutions
 - Scholarly activity began to focus on these new developments
- 2000 – present: emergence of new research methods
 - Traditional methods: doctrinal, comparative, and documents based social-legal-political
 - New: empirical, law and economics, law and politics, etc.

Current state of affairs

Chinese Legal Studies Abroad



- Several dozens of centres, institutes, and programmes
- Several hundreds scholars with established reputation
- Number of students interested in Chinese law is rapidly increasing

Chinese Legal Studies Abroad



Centres, programmes, institutes

- The most well-known include
 - East Asian Legal Studies (Harvard Law)
 - Centre for Chinese Legal Studies (Columbia Law)
 - The China Centre (Yale)
 - Centre for Chinese Legal Studies (NUS Law)
 - Chinese Legal Studies Program (Michigan Law)
 - Centre for Asian Legal Studies (UBC)
 - East Asian Legal Studies Centre (U of Wisconsin Law)
 - Asian Law Centre (Melbourne Law)
 - UCLA Centre for Chinese Studies (UCLA)
 - China Studies Centre (Sydney)
 - Centre for Contemporary Chinese Studies (Melbourne Law)
 - ...

scholars

- Clarence Morris
- William Jones, Jerry Cohen, Stanley Lubman, etc.
- William Alford, Donald Clarke
- Randall Peerenboom, Ben Liebman, Jacques deLisle, etc.
- The younger generation

Observations and relevance

Chinese Legal Studies Abroad



Factors underlying Chinese legal studies abroad

1. Interests in Chinese culture/civilization: keep the species alive
2. China's economic reform, market size and growing impact on world order: reasons for rapid development
3. The roles of Hong Kong, Taiwan and Macau
4. China's mysteriousness (complexities, contradictions, puzzles, etc.) has made it one of the most interesting topics in academic research

Chinese Legal Studies Abroad



Relevance to Korea

- The key is to create interest in Korean law, which first of all depends on the natural faculty/attributes that Korea can offer to others.
- Government-driven approaches may be helpful.
- Internationalization to make the Korean law “value-added” in international business transactions

Session 3

<Development and Future of Korean Law>

Chair: Kwang Jun TSCHE
(Professor, Kyung Hee University)

■ Discussions

Seok Woo Lee (Professor, Inha University)

Dae Yong Kim (Head, Asia Team, CID, Korea Development Institute)

Jong Koo Park (Legislative Officer, Ministry of Government Legislation)

Min Cheung Cho (Attorney at Law, Korea International Cooperation Agency)

Woong Jo You (Legislative Researcher, National Assembly Research Service)

Hyun Soo Kim (Research Fellow, KLRI)

Yong Chul Park (Associate Professor, Sogang University)

Sang Mo Lee (Visiting Researcher, KLRI)





Kwang Jun TSCHE
(Professor, Kyung Hee University Law School)

Education

- LL.B., University of Cologne, Faculty of Law, Germany
- LL.M., University of Cologne, Faculty of Law, Germany
- Dr. jur., University of Cologne, Faculty of Law, Germany

Area of Scholarly Interests

- civil law, contracts, private international law
- comparative law
- legal education
- legal history

Professional Experience

- Professor, Pusan National University, 1994-1999
- Professor, Kyung Hee University Law School, since 1999
- Visiting Scholar, New York University School of Law, USA
- Visiting Scholar, University of Tokyo, Japan
- Visiting Professor, Osaka University School of Law and Politics (taught "current issues in comparative law")

Award/Honor

- Alexander von Humboldt Foundation Fellow
- National President of Korea, World Jurist Association

Publication

- various articles in Korean, Japanese and German law journals.



Seok woo Lee
(Professor, Inha University Law School)

Education

- He holds a D.Phil. (Oxford)
- LL.M.s (NYU, Minnesota, and Korea University)
- LL.B. (Korea University).

Area of Scholarly Interests

- His research focuses on Territorial and Boundary Disputes, Law of Title to Territory, Law of the Sea, and International Human Rights Law.

Professional Experience

- He is Professor of International Law, Inha University Law School, Korea, where he is also working as Director of Inha Int'l Ocean Law Centre. He was Vice Dean for External Affairs, Inha Law School (2009; 2012-2014).
- He is also Chairman of the Foundation for the Development of International Law in Asia (DILA) and Executive Editor of The Korean Journal of International and Comparative Law. He served as Chairman of Research Committee, SLOC (Sea Lanes of Communication) Study Group-Korea (2010-2013) and Director of International Relations, Korean Society of International Law (2010-2011).
- Prior to taking his current post at Inha Law School, he conducted research at a number of universities including the Universities of Tokyo, Harvard, Georgetown, Oxford, Durham, and George Washington, and taught at Xiamen University, China (2009), University of Hawai'i at Mānoa, USA (2013), and Zhejiang University, China (2013).
- His representative recent governmental and societal activities are: Ministry of Foreign Affairs, Advisory Board for the Dokdo Policy; Korea Coast Guard, Committee on the International Law of the Sea; Northeast Asian History Foundation, Dokdo Research Institute, Advisory Board for Dokdo Policy; and Province of Gyeongsangbuk-Do, Legal Advisor to Dokdo Safeguard Team.

Publication

- He has authored more than 50 publications in English in addition to his more than 50 publications in Korean. His representative recent book publications in English are:
- *The Limits of Maritime Jurisdiction* (co-edited; Brill/Martinus Nijhoff (2014));
- *Ocean Resources: New Challenges and Emerging Regimes* (co-edited; Brill/Martinus Nijhoff (2013));
- *Northeast Asian Perspectives on International Law: Contemporary Issues and Challenges* (co-edited; Brill/Martinus Nijhoff (2013));
- *Asian Approaches to International Law and the Legacy of Colonialism and Imperialism: The Law of the Sea, Territorial Disputes and International Dispute Settlement* (co-edited; Routledge (2013));
- *Dokdo: Historical Appraisal and International Justice* (co-edited; Martinus Nijhoff (2011)).
- His representative recent journal publications in English are:
- "A Tribunal Navigating Complex Waters: Implications of The Bay of Bengal Case", *Ocean Development & International Law* (2013) (co-worked);
- "Republic of Korea v. Araye: Korean Supreme Court Decision on Universal Jurisdiction over Somali Pirates", *American Journal of International Law* (2012) (co-worked);
- "DOKDO: The San Francisco Peace Treaty, International Law on Territorial Disputes, and Historical Criticism", *Asian Perspective* (2011);
- "The 1951 San Francisco Peace Treaty and Its Relevance to the Sovereignty of Dokdo", *Chinese Journal of International Law* (2010) (co-worked).
- His tripartite research on territorial disputes in East Asia was published in *Boundary and Territory Briefing* by International Boundaries Research Unit, University of Durham, which include *Towards a Framework for the Resolution of the Territorial Dispute over the Kurile Islands* (Vol.3: No.6, 2001.9);
- *Territorial Disputes among Japan, China, and Taiwan concerning the Senkaku Islands* (Vol.3: No.7, 2002.9);
- *The Resolution of the Territorial Dispute between Korea and Japan over the Liancourt Rocks* (Vol.3: No.8, 2002.12).



Dae yong Kim

(Head, Asia Team, Center for International Development(CID), KDI, Korea)

Education

- B.A, Economics, Sungkyunkwan University(SKKU)
- M.A, Economics, SKKU
- Ph.D Candidate, Economics, SKKU

Area of Scholarly Interests

- Development Cooperation (Policy or Development Consulting)
- International Development Cooperation Project's Evaluation
- Region and Country-specific Analysis (Asian and LAC countries)
- Development Economics, Applied Economics (International or Industrial issues, etc)

Professional Experience

- Researcher, Center for Econometric Research, SKKU
- Research Associate, Department of Industry and Corporate, KDI
- Research Associate, ODECO or Real Asset Research Team, KDI
- Head, Policy Consultation Unit 1 or Unit 3, CID, KDI
- Head, Asia Team, Division of Policy Consultation&Evaluation, CID, KDI

Award/Honor

- Official Commendation from the Deputy Prime Minister and Minister of Strategy and Finance (2013)
- Official Commendation from the President of the Korea Development Institute (2013)

Publication

- Daeyong Kim (2012), "Analysis of current status for the Evaluation of Korea's Development Cooperation Project and its future agenda", " Journal of Korea's Development Cooperation (Korea EXIM-Bank), 3(3), 97-116 (in Korean)

- MoonJoong TCHA and Daeyong Kim (2012), "Trend of Korea's ODA and its international comparison," International development cooperation analysis quarterly (KDI), 2(5), 61-77 (in Korean)

- MoonJoong TCHA and Daeyong Kim (2012), "The analysis of OECD-DAC Countries' Aid and Development Effectiveness,", International development cooperation analysis quarterly (KDI), 1(5), 69-82 (in Korean)

- * A Number of Writings in Newspapers, Magazines and Unpublished Papers and Consulting Work, etc.

Development and Future of Korean Law

- in collaboration with the KSP -

Center for International Development
Korea Development Institute



Daeyong Kim
Head, Asia Team

CONTENTS

1. Knowledge Sharing Program (KSP)
2. KLP and the KSP

1. Knowledge Sharing Program (KSP)

- 1.1. Background
- 1.2. Vision and Objectives
- 1.3. Characteristics of the KSP
- 1.4. Structure of the KSP
- 1.5. KSP Program Cycle
- 1.6. KSP Achievement
- 1.7. KSP Partner Countries
- 1.8. KSP Consultation Area

3

1.1. Background

The Miracle of Han River

**Bridging
Developing and
Developed countries**

\$25,977 2013 GDP per Capita

Donor Country
joined OECD/DAC

\$91 1961 GDP per Capita

Aid Recipient Country



Children Drinking Aid Milk (Daegu, 1954)

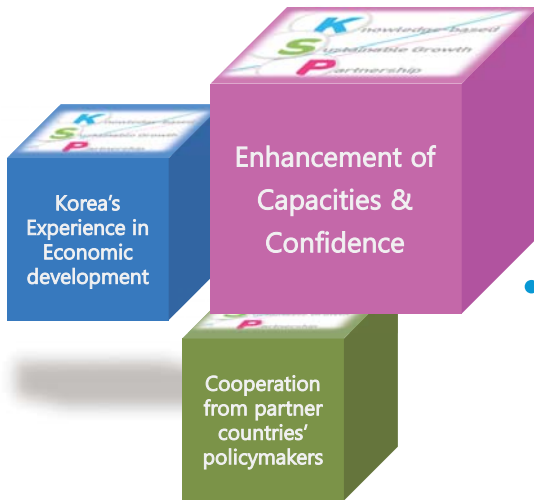


Gangnam Street (Seoul, 2014)

1.2. Vision and Objectives

• VISION OF KSP:

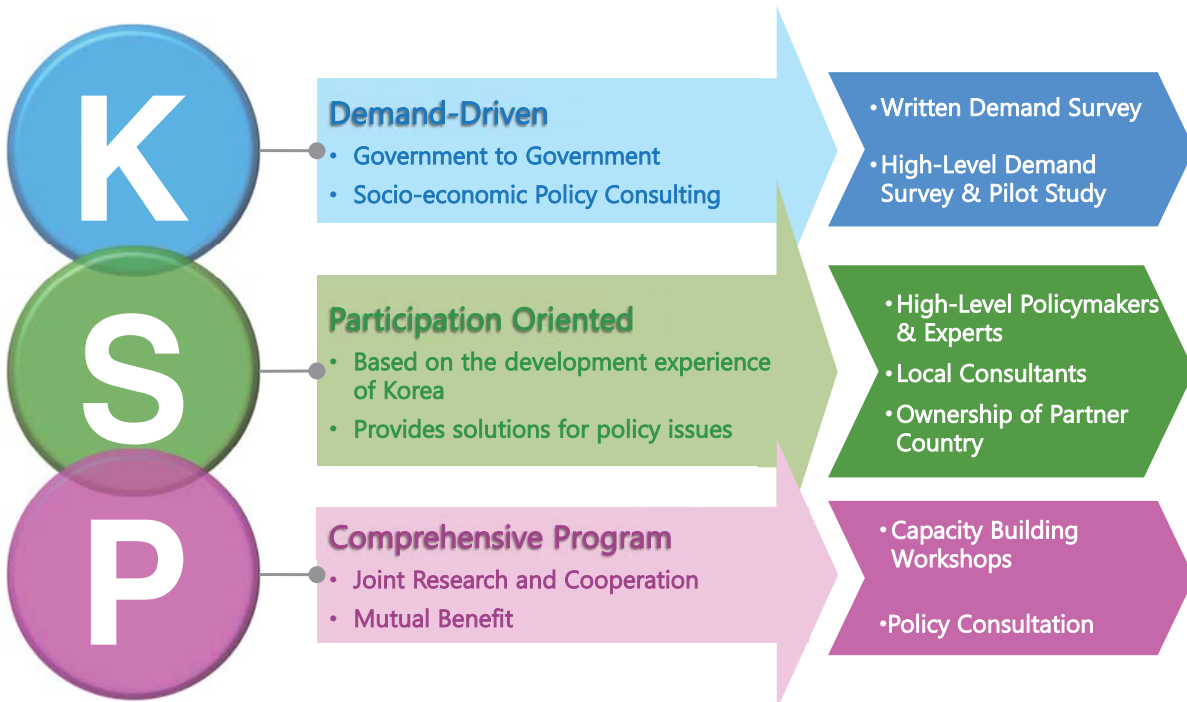
Promoting Knowledge-driven development



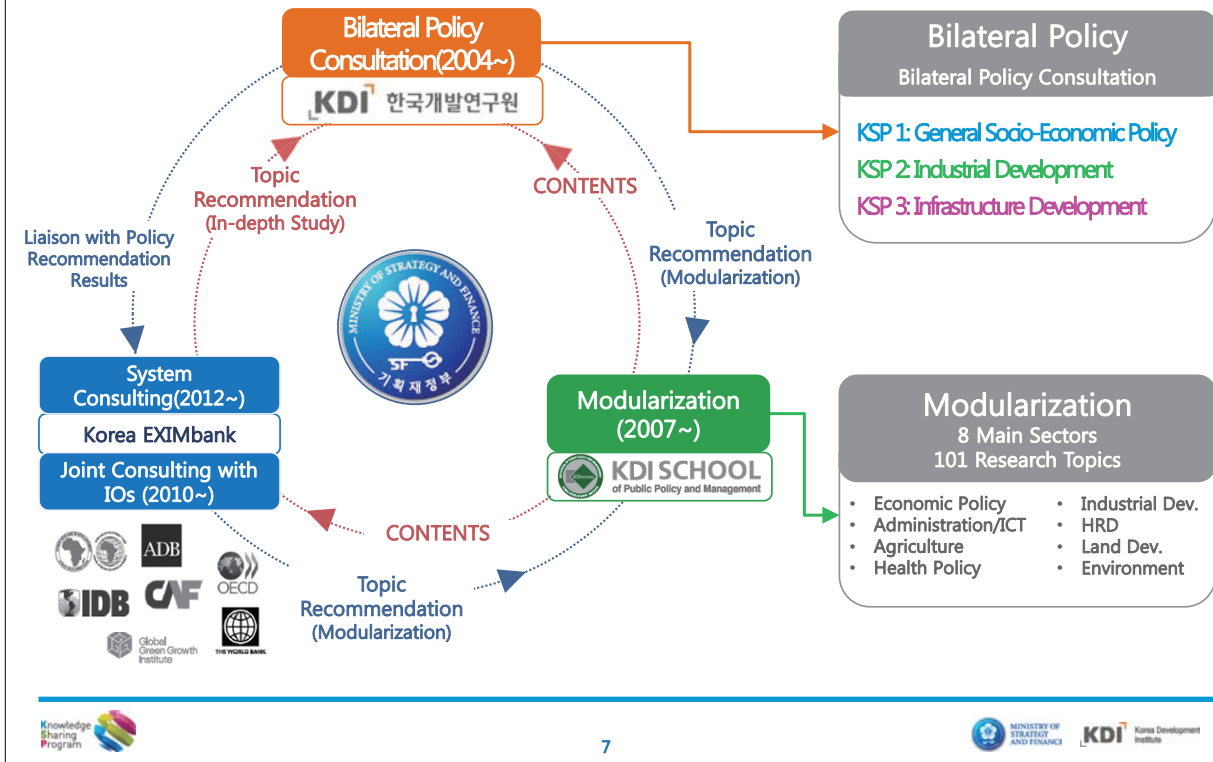
• OBJECTIVES

- Seeking Solutions (Policy Recommendations)
- Enhancing policy making & management capabilities
- Nurturing Mutually Beneficial Relationships

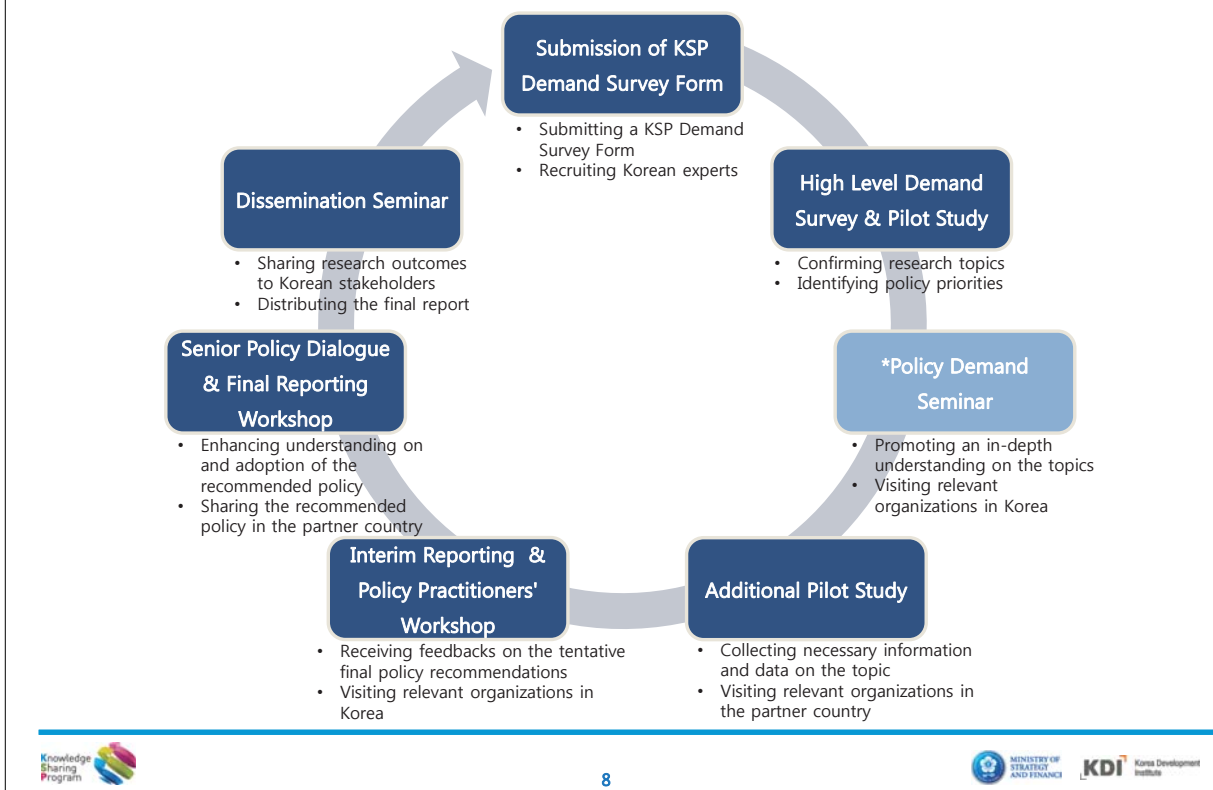
1.3. Characteristic of the KSP



1.4. Structure of the KSP

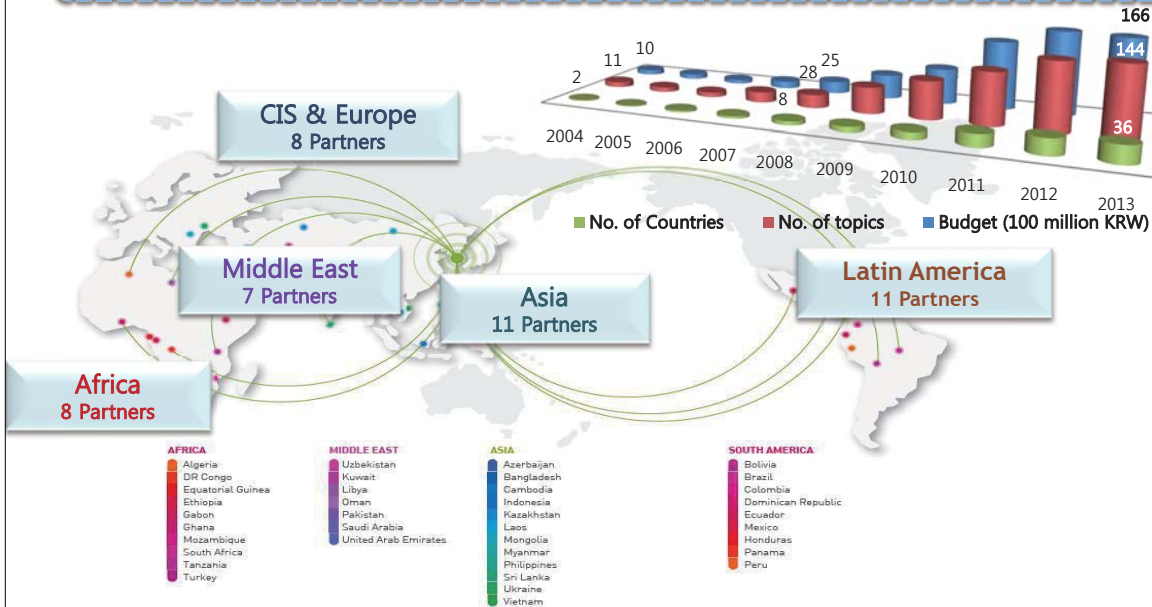


1.5. KSP Program Cycle



1.6. KSP Achievement

Since 2004, we are working with **45 partner countries** from all over the world on more than **606 policy consulting topics**



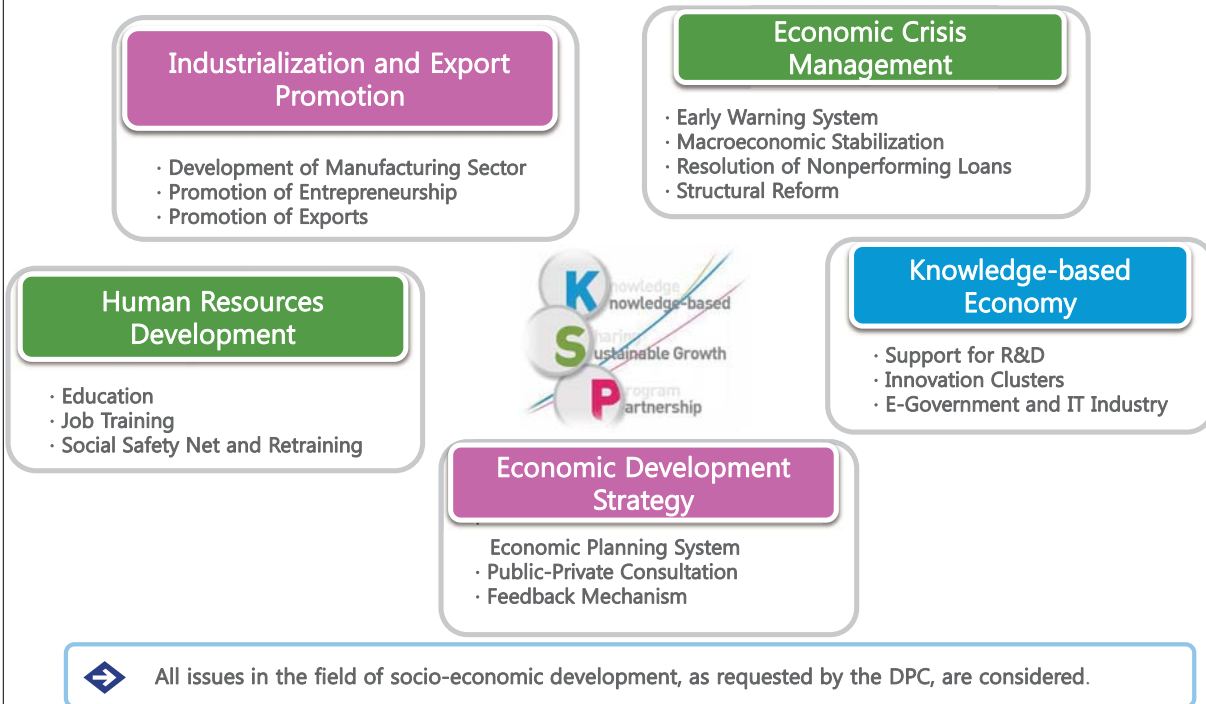
1.7. KSP Partner Countries (2004-2013)

Latin America & Caribbean	Middle East & North Africa	Sub-Saharan Africa	Asia	CIS & Europe
Belize	Algeria	DR Congo	Bangladesh	Azerbaijan
Colombia	Egypt	Ethiopia	Cambodia	Hungary
Costa Rica	Kuwait	Equatorial Guinea	Indonesia	Kazakhstan
Dominican Republic	Saudi Arabia	Gabon	Lao PDR	Russia
Honduras	Libya	Mozambique	Myanmar	Turkey
Mexico	Oman	Tanzania	Pakistan	Uzbekistan
Brazil	United Arab Emirates	South Africa	Mongolia	Romania
Panama		Ghana	Sri Lanka	Ukraine
Ecuador			Philippines	
Peru			Vietnam	
Bolivia			China	
11 Countries	7 Countries	8 Countries	11 Countries	8 Countries
Total: 45 countries				

1.7. KSP Partner Countries (in Asia)



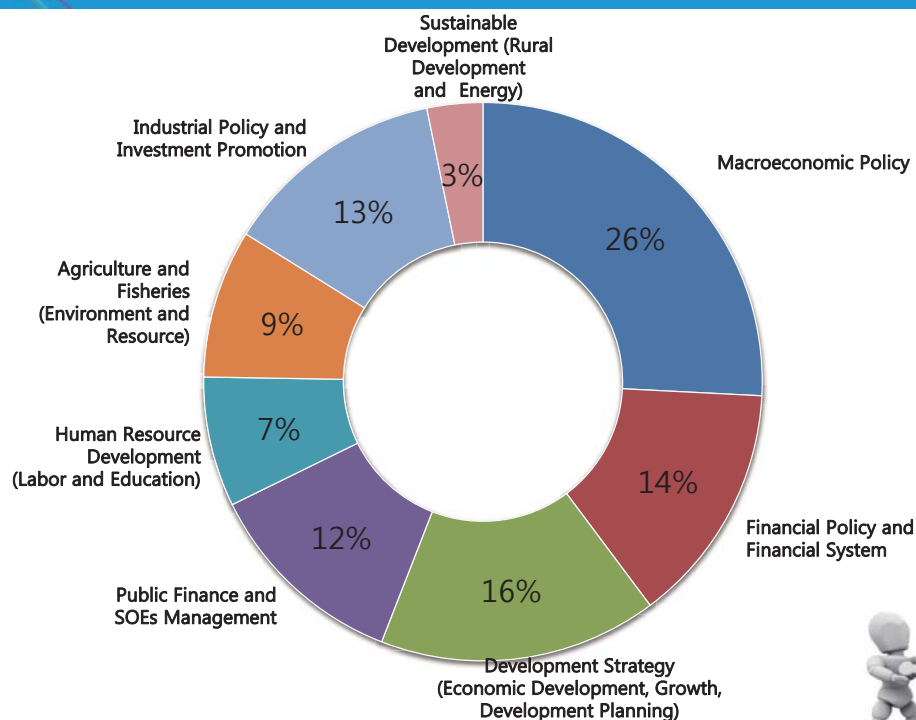
1.8. KSP Consultation Area



1.8. KSP Consultation Area (2004-2013)

Consultation Areas	No. of Consultation	Percentage	No. of Countries
Industrial Policy and Investment Promotion	88	14.5 %	30
STI and ICT Policy	86	14.2 %	25
Macroeconomic Policy and Development Strategy	83	13.7 %	28
Financial Policy and Financial System	63	10.4 %	13
Trade and Export Promotion	58	9.6 %	14
Sustainable Development (Incl. Rural Development and Energy)	56	9.2 %	19
Public Finance and SOEs Management	54	8.9 %	18
Human Resource Development	46	7.6 %	20
SMEs Development	33	5.4 %	15
Agriculture and Fisheries	25	4.1 %	11
Laws, Regulations, Tourism, etc.	14	2.3 %	9
TOTAL	606 Topics	-	46 Countries

1.8. KSP Consultation Area (of Asia Countries)



2. KLP and the KSP

- 2.1. Cooperative Project
- 2.2. Experts DB (Pool)
- 2.3. Information Sharing
- 2.4. Network Building
- 2.5. Dissemination

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2.1. Cooperative Project (KLP-KSP Model)



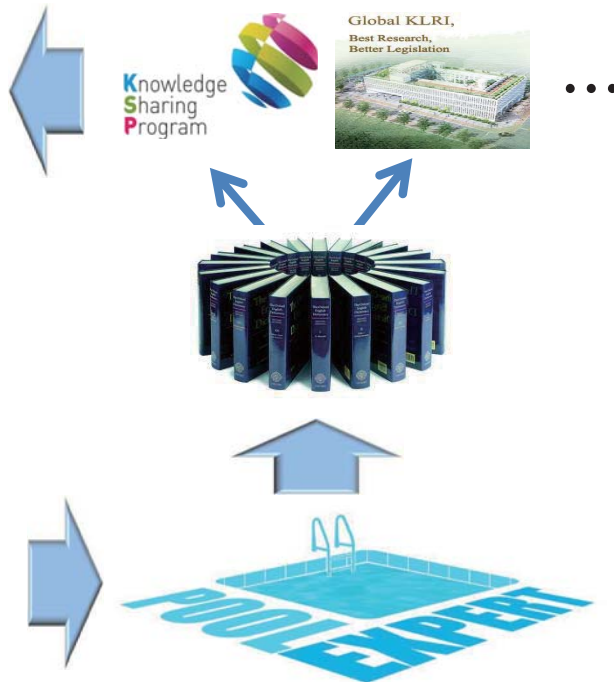
Other Types of Cooperation as Follow-Up of the KSP

Country	Policy Consultation	Following KSP project (KSP Spin-Off)	Other Types of Cooperation
Vietnam	Export Credit Policy and Establishment of Vietnam Development Bank (2004)	Establishment and Operation of Export Credit Institute (2006) Operation of Vietnam Development Bank and Establishment of Credit Guarantee System (2007-2008)	MOU between Korea EXIMBank and Vietnam Development Bank on the Increase of Vietnamese financial support for Korean enterprises expanding to Cofinance, funds agreement
	2011-2020 Socio-Economic development Strategy of Vietnam and Korean experience (2009)	2011-2020 Socio-Economic development Strategy of Vietnam and Korean experience (2010~2012)	
Cambodia	Policy Research for the development of Cambodian Industry and Export sector (2011)	Policy Research for the Industrial Development (2013)	
Myanmar	Establishment of Myanmar Development Institute (2013)		Establishment of Myanmar Development Institute in cooperation with KOICA

2.1. Cooperative Project (KLP-KOICA)



2.2. Expert DB (Pool)



2.3. Information Sharing (On-line, etc.)

The collage displays four web portals related to the Knowledge Sharing Program and KDI. The top-left portal is the KSP Knowledge Sharing Program, featuring a 'SUB-SAHARAN AFRICA' project section. The top-right portal is the KDI website, with a header '우리법을 세계로!' (Korean Law to the World!). The bottom-left portal is K-Developedia, showing a 'Building Infrastructure' section. The bottom-right portal is the Ministry of Strategy and Finance website, displaying a '세계경제정보센터' (World Economic Information Center) with a world map and various data tables.

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2.4. Network Building

The collage illustrates network building through several images. At the top left is a network diagram with colorful nodes. In the center is a photo of a 'KOREA-MONGOLIA OFFICIAL MEETING'. To the right is another network diagram with people icons. Below the meeting photo is an 'Official Thank you Letter from the Minister of Planning and Investment (2011)'. To the left of the letter is a photo of a 'Final Reporting Workshop & Senior Policy Dialogue "Policy Agenda for Cambodia in SME, Industry and Trade"' with a quote: *"Without KSP, Cambodia would be without economic industrialization"*. Below the quote is a photo of Hang Chun Naron, Viceminister of Economy & Strategy (current Minister of Education of Cambodia). To the right of the workshop photo is a photo of two men shaking hands over a framed certificate. At the bottom right is a network diagram with blue nodes.

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2.5. Dissemination (Seminar, etc.)

제2회 아시아 법제교류 전문가 회의
Asian Legislative Experts Symposium (ALES)
2014. 10. 29. (수)
그랜드힐튼호텔 컨벤션(서울 흥문동)

개회 목적

- 법제 연구(연구) 체계 및 산업계 간 법제교류 범위가 전담(전) 공유
- 법제교류 교류-협력(협력) 구체화 및 지속(지속) 논의(논의) 장 마련

기본 개요

행사명 제 2회 아시아 법제교류 전문가 회의 (Asian Legislative Experts Symposium)
일시 2014. 10. 29. (수)
장소 그랜드힐튼호텔 컨벤션(서울 흥문동)
주최 대한민국의 유라시아 IT 법제의 현황과 발전 방향
주요내용 **주요주제**: 전담(전) 제도의 확립과 확산을 위한 법제 **장르(장르)**: 전담(전) 제도의 현황과 시사(시사) 소개(소개) 관련(관련) 법제
참석대상 법제교류 관련 전문가(전문가) 연구자(연구자) 실무자(실무자) 및 참관인
문의처 02-2100-2714 / 2737

구분	시간	내용
개회식	14:00~14:20	20
기조연설	14:20~14:50	30
휴식	14:50~15:00	10
제14년	15:00~16:20	80
휴식	16:20~16:30	10
제24년	16:30~17:50	80

프로그램

- 개회식 14:00~14:20 20
 - 법제교류 개회식
 - 한국법제연구원 소개
 - 중환(중환) 주(주)제(제) 소개
- 기조연설 14:20~14:50 30
 - 한국법제연구원 소개
 - 중환(중환) 주(주)제(제) 소개
 - 기조연설 14:50~15:00 10
- 제14년 15:00~16:20 80
 - 중환(중환) 주(주)제(제) 소개
 - 한국법제연구원 소개
 - 중환(중환) 주(주)제(제) 소개
 - 중환(중환) 주(주)제(제) 소개
 - 중환(중환) 주(주)제(제) 소개
- 휴식 16:20~16:30 10
- 제24년 16:30~17:50 80
 - 중환(중환) 주(주)제(제) 소개
 - 한국법제연구원 소개
 - 중환(중환) 주(주)제(제) 소개
 - 중환(중환) 주(주)제(제) 소개
 - 중환(중환) 주(주)제(제) 소개

2011 Knowledge Sharing Program(KSP) Dissemination Seminar
2011 경제발전경험 공유사업(KSP) 전파세미나

기적의 시크릿: 대한민국 KSP
SBS와 공동 제작 다큐멘터리

2.5. Dissemination (Legal Export)

한국 사법제도 수출현황

헝가리
민사소송

아제르바이잔
법관교육제도

아프가니스탄
법관교육제도

이집트
민사소송, 법관교육제도

나이지리아
민사소송

우즈베키스탄
민사소송, 법관교육제도

키르기스스탄
법관교육제도

네팔
민사소송, 법관교육제도

방글라데시
법관교육제도

중국
법관교육제도

캄보디아
민사소송, 법관교육제도

베트남
민사소송, 법관교육제도

몽골
민사소송, 법관교육제도

필리핀
민사소송, 법관교육제도

인도네시아
민사소송, 법관교육제도

파라과이
법관교육제도

온두라스
법관교육제도

페루
민사소송, 법관교육제도

민사 사법제도 한국 평가 순위
조사대상 189개국

- ▶ 2014년 2위
- ▶ 2013년 2위
- ▶ 2012년 2위
- ▶ 2011년 5위
- ▶ 2010년 5위
- ▶ 2009년 8위
- ▶ 2008년 10위
- ▶ 2007년 17위

(자료: 세계은행법률(보고서))



THANK YOU

If you have any further question, please contact:

Daeyong Kim
dykim@kdi.re.kr

Center for International Development
Korea Development Institute

Knowledge
Sharing
Program





Jong Koo Park
(Legislative Officer or Director, Ministry of Government Legislation)

Education

- School of Law, UC Berkeley, Master of Law, 2012
- Graduate School of Public Administration, SNU, Coursework completed, 2003
- Konkuk University, Bachelor of Public Administration, 1998

Area of Scholarly Interests

- Intellectual Property Law(Patent Law, Copyright Law, Trademark Law, etc.)
- Tax Law

Professional Experience

- Central Officials Training Institute (1999)
- Ministry of Unification (1998 - 2002)
- Ministry of Government Legislation (2002 -)

Award/Honor

- Minister of Finance and Economy Prize (2007)
- Minister of Government Legislation Prize (2005)
- Minister of Korea Reunification Prize (2001)
- Graduated as a Salutatorian from the Central Officials Training Institute (1999)
- Passed the Senior Entrance Examination for Administrative Service (1998)

KLP(Korea Law Project) 발전을 위한 제언: 법제처 사례에 비춘 논의

박종구 법제관 (법제처 경제법제국)

1. 법제처의 법제교류사업 소개

법제처가 외국 기관과의 협력관계 구축에 관심을 갖기 시작한 것은 불과 10여 년 전의 일이다. 2002년도에 중국 총무원 법제판공실(우리나라의 '법제처'에 해당한다)에 대한민국 「행정심판법」을 전수한 것이 계기가 되었다. 이후 일본의 내각법제국과의 협력관계가 형성되면서 지금까지 3국 법제기관 간 교류관계를 유지하여 오고 있다. 최근 들어서는 2011년부터 큰 국제행사를 정례적으로 개최하면서 참가국들로부터 법제처와 우리나라 법제에 대한 관심이 계속 증가하고 있는 추세에 있다. 이와 같이 법제처의 경우 법제교류에 대한 경험과 역사가 매우 짧은 하지만, 몇 가지 나름대로의 방향성과 분명한 특색을 가지고 진행되고 있다. 간단히 소개해 드리면, '선제적인 알림과 연구의 장 마련', '네트워크 구축 및 확대' 및 '개별 콘텐츠의 정비와 지원' 등이 그것이다.

첫째, 국제행사 등을 통한 우리 법제에 대한 알림과 연구의 장을 지속적으로 마련하고 있다. 이를 위해 2011년·2012년 아시아법제포럼(AFOLIA: the Asian Forum of Legislative Information Affairs)과 2013년·2014년 아시아 법제교류전문가회의(ALES: the Asian Legislative Experts Symposium) 등 국제회의가 매년 개최되고 있다. 이를 계기로 참가국(20여개국)들은 우리의 '농촌근대화', '식량자급 달성', '말산업' 및 '주민등록제도' 등 특색 있는 우리나라의 법제에 대한 관심을 보이기 시작했고, 이들 법제에 대한 정보제공 요청도 증가하고 있다. 만일 이러한 선제적인 알림의 장이 없었다면, 매년 수십 건에 이르는 외국 기관들로부터의 방문과 정보제공 또는 연수 요청 등은 상상하기 어려웠을지 모른다.

둘째, 아시아 주요 국가 법제기관과의 교류협력 양해각서(MOU)를 체결하는 방법을 통해 교류의 폭을 넓히고 그 내용을 제도화시켜 가고 있다. 법제처는 현재 총 12개 국가와 17건(정부기관: 13, 대학 등: 4)의 교류협력 양해각서를 체결하고 있다. 아직 충분치는 않지만, 고무적인 사실은 캄보디아, 미얀마, 벨라루스, 우크라이나 및 몽골 등 종전에는 교류가 전혀 없거나 관심 밖에 있었던 국가들로부터 적극적인 교류 요청이 오고 있다는 점이다. 이에 더하여, 최근 사우디아라비아나 파키스탄 등과 같은 아랍권 및 서남아시아권 국가들로부터도 본격적인 교류요청이 들어오고 있는 상황이다.

※ **MOU체결 주요 국가(기관):** 중국(법제판공실, 정법대학, 인민대학), 우즈베키스탄(법무부), 말레이시아(법무처), 싱가포르(상공회의소), 몽골(국회 법사위, 법무부), 캄보디아(법무부), 미얀마(법무부), 우크라이나(법무부), 베트남(법무부), 카자흐스탄(법무부, 법률대학), 벨라루스(국립법령정보센터) 등

셋째, 베트남, 필리핀, 몽골 등의 국가들이 우리나라 개별 법제나 법령입안 경험에 대한 구체적인 관심을 표명해 옴에 따라, 이들 수요에 적극적으로 부응할 필요가 생겼다. 이에 따라 법제처는 몇 년 전 분야별로 정리된 ‘대한민국 법제 60년사’(5부작)를 집대성하였다. 우리 법제의 태동기부터 성장 및 변천사를 분야별로 체계화해서 정리한 자료이다. 이에 더하여 최근에는 ‘대한민국 고도성장기 법제’만을 따로 정리하여 ‘새마을운동’ 등 과거 고도성장을 뒷받침했던 각종 법제에 대한 정리 작업도 마무리 하였다. 이들 자료는 자료 그 자체로서도 가치가 매우 크다고 생각하지만, 아시아 국가 등과의 교류협력을 할 테마와 콘텐츠를 분명히 하였다는 점에서 더욱 의미가 크다. 앞으로 법제처는 이들 자료를 토대로 분야별로 세분화된 주제를 나누고, 또 외국어로 번역하여 필요한 국가들에게 필요한 방식으로 제공되도록 할 예정이다.

※ **‘대한민국 법제 60년사(5부작)’의 주요 내용**

- 「대한민국 경제법제 60년사」 : 금융, 재정, 산업, 국토, 해양, 교통 및 물류 관련 법제
- 「노동, 환경, 복지 분야 법제 60년사」
- 「농촌근대화법제 60년사」 : 농민의식 근대화(새마을 운동), 농업관련 교육 및 기술의 개발·보급, 토지개량 및 지력 증진 사업, 농촌환경 개선사업, 농산물 유통 구조 근대화 등 관련 법제
- 「중소기업법제 60년사」 : 중소기업진흥 및 중소기업제품 구매촉진, 대·중소기업 상생 협력, 중소기업 창업·기술·인력 지원, 벤처기업 육성 등 관련 법제
- 「대한민국 행정법제 60년사」 : 행정절차, 정보공개, 부패방지 및 정부구조 등에 관한 사항

이와 더불어, 내년부터 KOICA ODA 사업으로 추진되는 ‘미얀마 법령정보시스템 구축’ 지원 사업[2015~2017년(총3년), 총 365만불]이 잘 마무리되면, 우리법령정보시스템을 외국에 소개하고 개발도상국 등에 지원할 기회도 더 많아질 것으로 예상하고 있다.

2. Korea Law Project(KLP)에 대한 제언

이상과 같이, 법제처의 교류 역사는 매우 짧지만 나름대로 체계와 방향성을 잘 잡아 가고 있다고 생각한다. 또 그 가운데 분명한 성과도 있었고 시행착오도 있었다. 이를 바탕으로 Korea Law Project의 발전을 위한 몇 가지 제언을 드리고자 한다.

먼저, '특정 상대국'에 대한 체계적이고 깊이 있는 이해의 필요성이다. 우리 법제를 효과적으로 알리고 전파기 위해서는 상대국의 필요(Needs)에 대한 깊이 있는 이해와 분석이 반드시 필요하다. 현재 법제처와 교류를 하고 있거나 장차 교류를 희망하는 대표적인 나라로, 베트남, 캄보디아, 몽골, 우즈베키스탄, 인도네시아, 벨라루스 등이다. 우리는 아직 이들 나라의 법과 제도에 대하여 종합적, 체계적인 지식은 물론이고 충분한 정보조차도 확보하고 있지 못한 경우도 있다. 상대국에 대한 이해가 선행되지 못할 때, 교류의 내용과 방식 및 시기에 대한 심각한 오판의 가능성도 안고 있다. 법제처가 최근 2년 동안 아시아 법제교류 전문가 회의를 개최하게 된 배경도 이러한 인식과 맞닿아 있다. 불특정 다수의 국가들에게 일방향적인 정보제공이나 홍보보다는 '특정된' 상대국에 대한 이해와 입법수요 예측, 해당 국가의 법령과 제도에 대한 분석을 우선적으로 해보자는 취지에서였다.

이와 관련하여 우리나라의 '부패방지 법제' 등에 대해서 지속적인 관심을 보이고 있는 우즈베키스탄의 사례를 하나 소개하고자 한다. 처음 법제처가 정보제공 요청을 받을 당시에는 우리나라의 해당 법제를 꼼꼼하게 번역하여 제공하는 정도로 충분할 것으로 생각하였다. 그러나 사실 그것만으로 충분한 것은 아니었다. 현행 「부패방지 및 국민권익위원회의 설치와 운영에 관한 법률」은 부정부패의 발생을 예방하고 부패행위를 규제할 수 있는 제도적 장치를 마련하기 위한 것인데, 우리나라의 경우에도 2002년도에야 입법화 되었다. 정치·경제·사회·문화적으로 그 입법 의도를 충분히 받아들일 만큼 성숙할 시간이 필요했기 때문으로 판단된다. 우즈베키스탄의 경우 정부 차원에서 '부패방지법'의 입안을 위해 법제처 법제관과 실무자를 초청하여 강의나 토론회를 개최하고 입안 자문을 요청하는 등 상당한 의지를 보여 왔으나, 실제 입법화까지는 갈 길이 아직 먼 것으로 판단된다. 경제적으로 아직 개발단계에 있고, 규율대상인 정부기관이나 관료들의 권한이 막강한데다가 사회·경제적 민주화가 진전될 여지가 상당히 남아있기 때문이다. 지금으로서는 '입법과정에서 시민들의 참여'와 '국민들의 준법의식 제고 및 법문화 향상' 등에 관한 정보의 지속적인 제공을 통해 여건이 성숙할 때까지 기다리는 것이 필요한 것으로 판단하고 있다. 이와 같은 인식을 4~5년 전에만 했더라도, 초기 단계의 의사소통이나 협력의 방향이 많이 달랐

을 것이라는 생각을 하게 된다. Korea Law Project의 경우도 다르지 않을 것이라 본다. 우선적으로 대상(target)을 한정하고, 해당 국가에 대한 깊이 있는 분석과 검토를 통해 방법과 시기를 전략적으로 수립할 것을 권하고 싶다.

다음으로, '우리 법제'에 대한 체계적이고 깊이 있는 이해의 필요성이다. 이 분야에 대한 한국법제연구원의 축적된 연구 역량과 경험이 적지 않기 때문에 크게 문제될 것은 없다고 본다. 다만, 여기서는 단순한 이해나 연구의 차원에서 한 반짝 더 나아가 그 연구결과에 대한 분석과 분류의 필요성을 좀 더 얘기하고자 한다. 우리 법제에 대하여 아시아 국가들이 관심을 보이게 된 것은, 단순히 대한민국이 정치적으로 민주주의주의가 성숙해 있고, 경제적으로 성공한 나라라는 부러움 때문만은 아니라고 본다. 우리의 정치와 경제를 이끌어온 견인차로서 우리 법제가 가진 '보편적 설득력'이 더 큰 이유가 아닌가 생각한다. 예컨대, 드라마 '대장금'의 경우 가장 한국적인 정서를 반영하여 요리, 남녀 간의 사랑, 권선징악 등을 토대로 한 드라마이지만, 세계 어디에서든 공감할 수 있는 설득력과 감동을 선사한다. 이와 같이 우리 법제에 있어서도 세계인들이 공유·공감할 수 있는 테마를 적극적으로 발굴해 내는 작업이 필요하다고 생각한다. 법제처의 경우 우선적으로 '농촌근대화', '식량자급 달성', '금융위기 극복' 등과 같이 상대국이 관심을 보이는 부분에 대한 테마별 정리작업을 하여 왔고, '재난방지' 등과 같은 범세계적인 이슈와 관련된 부분에도 관심을 가지고 있다. 또 현재 KDI가 진행하고 있는 KSP사업의 법령·제도 관련 결과물들을 분석하고 활용하는 방안도 고려할 필요가 있다고 본다. 그 내용이 어떠하든지, 우리의 법과 제도에 관심을 가지는 '외국인의 입장'에 서서 공감할 수 있는 대상과 콘텐츠를 발굴하여 전달하려는 자세가 중요하지 않을까 생각한다.

마지막으로, Korea Law Project를 비롯한 교류사업의 추진에서 법제처와 한국법제연구원과의 긴밀한 협력이 이루어지길 희망한다. 현재 법제교류와 관련된 사업을 추진하고 있는 국가기관들이 매우 다양하기 때문에, 기관 간의 중복투자나 경쟁을 통한 국가적 낭비의 문제가 지적되기도 한다. 그러나 이 문제는 정부기관과 연구기관간의 관계에서는 다른 차원으로 이해될 여지가 있다고 본다. 연구기관의 연구역량 및 인적자원과 국가기관의 교섭력이 결합될 때, 개별적으로 추진되는 교류사업보다는 훨씬 큰 시너지효과를 가져올 수 있을 것이라 생각한다. 한국법제연구원의 경우도 우선은 기존의 관심분야나 인적 자원 등의 형편에 따라 개별적으로 사업을 추진해 나가더라도 그 활동 상황에 대한 정보교환이나 협력의 창구로서 법제처와의 실무협의체 구성 등은 고려해 볼 수 있지 않을까 생각한다.



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- (저서) 한국민주주의 위기와 전망 (공저)(인간사랑, 2013)
- (저서) 한국 민주주의 도전과 극복(공저) (인간사랑, 2013)
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- (논문) 한국 공적개발원조정책에 대한 실증분석(세계지역연구논총)
- (논문) 미국 자유민주주의 확산정책에 대한 실증분석(한국국제정치논총) 외 다수



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- Contemporary Theories of Contract Law in the U.S. - focusing on "The Death of Contract" by the Grant Gilmore-, *The Journal of Comparative Private Law*, vol. 21, no. 2, May, 2014.
- Punitive Damages in the United States: The Nineteenth-Century War on Punitive Damages and Limitations on Punitive Damages in Individual States, *The Journal of Property Law*, vol. 29, no. 2, 2012.
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- Idea Protection under Contract Theory, *Hanyang Law Review*, vol. 28, no. 2, June 2011.



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Publication

- "Considering the Scope or Definition of Child or Juvenile Pornography," *Kangwon Law Review*, Vol. 43 (Fall 2014).
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Publication

- Analysis on Trade Dispute Settlement under FTAs : Legal Issues and Case Studies(2012)
- A Comparative Analysis and Evaluation of the Main Provisions under the China Free Trade Agreements :-concerning the Provisions on Trade in Goods under the FTAs(2012)
- Recent Trends in International Investment Law : Focused on 2012 U.S. Model Bilateral Investment Treaty(BIT) and UNCITRAL rules on transparency(2013)
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