Jurisprudence and Legal Academism in Korea

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Foreword

This article aims to survey past research on jurisprudence in Korea from 1945. Considering that Korea has been an active member state of the Executive Committee of the World Association of Legal Philosophy and Social Philosophy (IVR; Internationales Verein Rechts- und Sozialphilosophie) since 1987, I believe that it is time for Korean jurisprudence and legal academism to be introduced, as a national report, to the world academism of jurisprudence. Though Korean studies have yet to focus great attention on the area of jurisprudence or legal philosophy, this field is crucially important for understanding contemporary Korea, which aims to establish a democracy based on the 'rule of law.'

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I. Korean Jurisprudence in the 1940s

The starting point of jurisprudential research might be variously viewed according to the understanding of the jurisprudence concept. Traditional jurisprudence was explored by the Confucian jurisprudents; for example, those of Jeong Do-jeon (1342-1398) and Jeong Yak-yong (1762-1836). To expose such traditional jurisprudence is another topic of "History of Korean Jurisprudence" which consists of a part from my soon to be published book *History of East Asian Jurisprudence*.

It has been acknowledged that there was no word for philosophy in the East Asian tradition. Nevertheless, rich philosophical efforts and achievements are evident in Chinese, Korean and Japanese practices. Arthur Kaufmann of Munich University evaluated the high potentiality of ancient Chinese jurisprudence in comparison with Greek-Roman jurisprudence. The East Asian word for philosophy uses the same Chinese characters, but is pronounced differently as cheolhak in Korean, or tetsugaku in Japanese. Nishi Amane (1829-1897) of Meiji Japan translated the term from the Western word *philosophy* in the mid-19th century. The word for jurisprudence pronounced as Beoprihak in Korean, and Horigaku in Japanese, is commonly used in East Asia. Korea

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received this concept probably from Japan during the 1910s.

Evidence for this is found in the article “Views on Jurisprudence” [Beoprigwan] written by Kim Byeong-ro (1886-1964) in 1915. Kim Byeong-ro was a law professor at Gyeongseong Law College and later the Chief Justice of the Republic of Korea in 1948. Notwithstanding of this fact, there was still no offering of courses either in the name of jurisprudence or of legal philosophy. This was inevitable considering the scarcity of jurisprudential researchers.

The first course in teaching jurisprudence was offered at the Keio Imperial University (the predecessor of Seoul National University) in 1926. Odaka Tomoo (1899-1956) was the professor for that course. His textbook Lectures on Jurisprudence (1938) is composed of the following chapters: 1) historical development of jurisprudence, 2) metaphysics of law, 3) basic theories of positive law, 4) contemporary jurisprudence, 5) concept of law, 6) features of the positive law, 7) law and state, 8) structure of legal order, and 9) legal science. It is interesting that Odaka was using the words “legal philosophy” simultaneously, perhaps influenced by the German Rechtsphilosophie, even though the title of his book and course was called “Jurisprudence.” Actually, Odaka stayed in Germany and Austria for three years and made frequent contact with Edmund Husserl and Hans Kelsen. He tried to invite Kelsen to his

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4 This rare book has been preserved by Kim Jeung-han (1920-1988) who attended Odaka’s class in 1941. Kim became a professor of civil law at Seoul National University. This book is preserved at the “Treasure Room” of Law College of the same University. Many Japanese scholars pay interest on this original material.

Keijo Imperial University as a *gastprofessor*, but due to the Korean liberation from Japan in 1945, his efforts were in vain. Moreover, it is significant that the first Korean jurisprudents like Yi Hang-nyeong and Hwang San-deok were educated under Odaka. In 1950, after Odaka returned to Tokyo University, Odaka’s book *Legal Principles of Democracy* was translated into Korean by Hwang Sung-hee and was published by the Susonsa Publishing Company in Seoul.

1. Scholars

Choi Tae-yoeng (1900- ) is the first jurisprudent in contemporary Korea. He studied law at Meiji University in Tokyo and graduated in 1924. Returning to Korea, he became a professor at the Boseong Law College. In 1947 he moved to Seoul National University and became the Dean of the College of Law. As a member of the National Academy since 1954, Choi became the President of the Korean Law Professors Association in 1967. His first article in the jurisprudential research was “The Highest Goal of Law and the Unjust Law” published in the journal *Boseong* Vol. 1, No. 1, 1925. In 1934-36, Choi published a long thesis on “A Study of Hebrew Law: Torah” in the journal *Boseong hakhoe nonjip* Vols 1, 2, 3. It is important to note that this thesis was written in Korean language on a “universal” topic under the pressure of the Japanese imperialism. Choi continuously developed his concerns for jurisprudence. He published his research as a monograph entitled *Historical Background of Western Jursprudence* in 1977. After the 1980s, Choi’s academic concern was turned to the study of ancient Korean

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6 Hwang San-deok has left some interesting memories on his teacher Odaka in his memoir, *Law, Society and State* (Seoul, 1991, pp 152-167)

Yu Jin-o (1906-1987) studied law at Keijo Imperial University and became a professor at Boseong Law College in Seoul. As this College later became Korea University, Yu continued his professorship, acting as the Dean and later the President of the University. When the Republic of Korea was founded in 1958, he drafted the Constitution and became the first Minister of the Legislation Office. He became a member of National Academy in 1954. As a jurisprudent, he published his first essay on "Justice in the Middle Age" in the *Journal of Boseong College*, Vol. 1 in 1934. Being highly talented in literature, Yu also wrote several novels and artful essays. In 1957, he became the first president of the Korean Association of Legal Philosophy (KALP). At his later age, however, he could not devote himself to jurisprudence due to his busy activities concerning university business and politics.

Bak Deok-bae (1908-1984) studied at Yeonhui College in Seoul and Tohoku University in Sendai. He taught at the College of Pedagogy in Seoul National University from 1953 till 1974. He published *Introduction to Legal Philosophy* in 1964. He confessed that he was much inspired by Gustave Radbruch and J. W. von Goethe. He was also interested in labor law.

Go Byeong-guk (1909-1976) studied law at Tokyo University in

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1930-34 He became a professor at Gyungseong Law College and later came to Seoul National University. He became the Dean of the University’s Law College in 1946-59. Contributing to the development of legal academism as an educational administrator, Go published some jurisprudential works as well. He introduced American pragmatism and legal realism to Korean scholars and students. In addition, he translated Roscoe Pound’s *Interpretations of Legal History* in 1953 and *New Paths of Law* in 1961.

Yi Hang-nyeong (1915- ) is a leading and probably the most significant jurisprudent in Korea. He learned law at Keijo Imperial University and was one of the favorite students of Odaka Tomoo. After graduating in 1940, he became an officer till Korea’s liberation from Japan in 1945. Being a professor at Dong-A University in 1949, he moved to Korea University in 1954 and taught civil law and legal philosophy until 1971. Then he served as the president of Hong-ik University in Seoul till 1980. He has long been a member of the National Academy. He published his famous textbook *Elements of Legal Philosophy* in 1955. This book has been revised many times and recognized as standard reading material for Korean law students. Because he emphasizes the importance of *Pungto* [in Japanese, *Fudo*, the climate] for the understanding of law, it is often pointed out that he was influenced by the Japanese philosopher Wastuji Tetsuro (1889-1960). Furthermore, Yi published a book *Jurisprudential Anthropology* in 1978.

Hwang San-deok (1917-1989) graduated from Keijo Imperial University in 1941. After serving as an officer, he became a professor at

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Korea University in 1948. He moved to Seoul National University in 1952. He became the first doctor of law from this University with a dissertation on "Influences of The Recent Development of Natural Sciences upon Jurisprudence" (1960). In 1963, due to a charge of being a "political professor," Hwang was released from his position as a professor. He became the president of Sungkyunkwan University and the Minister of Justice in 1974. In 1976, he became the Minister of Education. As a jurisprudent, Hwang was the second president of the KALP since 1965. He has published several monographs in jurisprudence and criminal law and translated number of foreign books, as pointed out below. In 1979 a Festschrift called *Legal Philosophy and Criminal law* was dedicated for his 60th birthday, and a memorial collection called *Problems in Legal Philosophy and Criminal Law* was published after his death in 1989. His posthumous book *Law, Society and State* was published in 1991.

Go Gwang-rim (1920-1989) was the first Korean scholar who taught the history of legal thought. After studying law at Keijo Imperial University in 1954, he became an assistant professor at Seoul National University in the following year. He taught international law and the history of legal thought. He went to America and received an LLM from Harvard Law School. Returning to Korea, he was nominated as an officer in the Ministry of Foreign Affairs. From 1960, he was acting as an Ambassador Potentiary in UN and then in the U.S. After resigning from his post, he became a professor at Central Connecticut State University. He published many books on American law and politics. He maintained a good friendship with Lon Fuller at Harvard. Go was a visiting professor at Yale Law School in 1963-1966. After his death in 1989, a posthumous collection entitled *Legal Cultures in East and West*
was edited by Choi Chong-ko and published in Seoul, in 1990.

One thing might be mentioned here. In this enlightening period of Korean jurisprudence, professors of Commercial Law showed an active interest in jurisprudence. Even though they themselves did not author jurisprudential works, they translated some Western books on jurisprudence into the Korean language. These professors include Choi Tae-yeong, Cha Rak-hun, Seo Don-gak, Jeong Hui-cheol, Son Ju-chan, and later Bak Gil-jun.

2. Publications

The first author of a jurisprudential textbook was Hwang San-deok. He had his book *Jurisprudence* published in 1949 by the Jomunsa Publishing Company. This book was revised and published later by Bobmunsa in 1954, followed by the third edition in 1961.

Due to the scarcity of the books authored by Korean scholars, the need for the translation of foreign books was inevitably significant. With the liberation from Japanese colonialism, the intellectual desire of young Korean academicians for open knowledge toward the Western world was limitless. The intellectual atmosphere of the time might be called "comparative jurisprudence," which meant the liberation from the one-sided German-Japanese legal dogmatism and the absorption of U.S.-oriented democratic legal sciences.

Harm's book *Grundzüge der Rechtspolitik* was translated into Korean by Jo Jeong-hak and published in 1948 at Sinhaksa in Seoul. In the following year, Hans Kelsen's *Reine Rechtslehre* was translated by Hwang San-deok and published by Joseon Gong-hop Munhwasa in Seoul. This book had a great impact on the Korean law students who
were beginning to study law for the reconstruction of democratic society in the new Republic of Korea. Kelsen's pure theory sounded like a gospel for the building of a new Korea. Some young scholars went to Berkeley to attend Kelsen's classes. One of them, Choy Bong-yun, witnessed Kelsen having great concerns for the divided Korea and promised to draft a Constitution for a re-unified Korea in the future.\textsuperscript{10}

Rudolf Stammler's \textit{Wesen des Rechts und der Philosophie} was translated by Han Tae-yun and published in the same year of 1949.

It is interesting that Max Barzisson's \textit{History of Russian Legal Philosophy} was translated by a leftist scholar Ju Yu-sun and published by Bakmunsa Publishing Company in Seoul. This was a turbulent time between the rightists and the leftists in Korean universities. Ju went to North Korea during the Korean War in 1950-1953. It still remains a task for the future scholars to research the leftists jurisprudence in the divided Korea.

\section*{II. Korean Jurisprudence in 1950s}

The most remarkable moment in the 1950's was the establishment of the Korean Association of Legal Philosophy (cited as KALP in below) in 1957. Its founding has a double meaning. Recovering the ruins of Korean War (1950-1953), the Korean legal scholars pursued the stability in the jurisprudential researches. Secondly, the KALP was established as a branch of the Korean Legal Center which had been

\textsuperscript{10} Choy told this story to me personally when I visited him in Berkeley in 1987. He was the first chair professor of politics at the Seoul National university in 1946-49. He is the author of \textit{Koreans in America} (Nelson-Hall, 1979), and \textit{A History of Korean Reunification Movement} (Illinois, 1984)
newly founded through the financial and spiritual support of the American Bar Association. Robert G. Storey (1893-1981), the president of the ABA at that time and later the Dean of Vanderbilt University Law School, is to be remembered at this juncture.\textsuperscript{11} The first President of KALP was Yu Jin-o, and the executive members included Yi Hang-nyeong, Hwang San-deok, and Yi Tae-jae. The activity of the KALP was nonetheless passive; it had no capacity to publish a professional journal for jurisprudence. This situation would continue even after the succession of presidency to Hwang San-deok in 1965.

The second event in the circle of jurisprudence was the offering of a doctoral degree to Hwang San-deok. Hwang submitted a dissertation on “Influences of the Recent Development of Natural Sciences upon Jurisprudence” in 1958, but it caused a controversy among the scholars and the Ministry of Education.\textsuperscript{12} He would get the doctoral degree belatedly in 1960.

The most salient feature for such inactivity was the scarcity of researchers. There were merely a few numbers of courses for jurisprudence at universities like Seoul National University, Korea University and Yonsei University.

1. Scholars

The most active scholar during this period was Paul Kicheon Ryu (1915-1998). He studied law at Tokyo Imperial University and became a


\textsuperscript{12} Hwang wrote his memories about this complicated process in his book, Law, Society and State (Seoul, pp 156-167)
professor at Gyeongseong Law College in 1943. With the founding of the Seoul National University Law College, Ryu became a professor and later the Dean of the College. After researching at Harvard Law School, he received a JSD degree from Yale Law School with a dissertation on *Korean Culture and Criminal Responsibility* in 1958. He was influenced by the cultural anthropological approaches of Filmer Northrop and R. McDougal as well as the psychological approaches of Helen Silving (1910-1993),\(^{13}\) who would later become his wife. He argued for a “symbolic” approach to criminal law and jurisprudence. After serving as the President of Seoul National University in 1965-66, he came into conflict with Bak Jeong-hui’s dictatorship. He managed to escape to the United States and lived in San Diego for over 25 years until his death in 1998. As a jurisprudent, Ryu published significant articles in English and German. His “Field Theory in the Study of Culture” was a presentation at the 3rd East-West Philosophers Conference in Honolulu in 1959. The other article “Was bedeutet die sogenannte Relativität der Rechtsbegriffe?” was published in *Archiv für Rechts- und Sozialphilosophie* (Bd. 59, SS. 57-96) in 1973. Furthermore, Ryu must be remembered as a legal comparativist who translated Korean Criminal Code into English (1960) and German (1968).\(^{14}\)

Yi Tac-yeong (1914-1998) is well known as a Korean women’s rights activist. After studying at Ewha Womans University and Seoul National University, she passed the National Bar Examination. As an attorney she founded the Women’s Legal Aid Center for Family Relations. Yi

\(^{13}\) On her and her contribution to Korean legal academism, see her autobiography, *Helen Silving Memoir* (New York, 1988)

\(^{14}\) A Memorial Committee was constituted in 2000. At the request of this Committee, I am writing Ryu’s biography
was also the Dean of Ewha’s College of Law from 1963 to 1971. Writing on A Study of Divorces in Korea, she paid keen interest in legal sociology and jurisprudence. Based on her Christian convictions, Yi’s feminist jurisprudence developed differently from the Western feminism.15

Kim Hong-seop (1915-1965) was a judge whose decisions reflected his jurisprudential orientation. After studying at Nihon University, he passed the Bar Examination and served as an attorney, a prosecutor and as a judge. In his book of essays Beyond the Transiency (1957), he revealed his deep concern for a natural law based on his Catholic faith. On the other hand, he was interested in the East Asian legal thoughts including those of Jeong Yak-yong, Tanaka Kotaro (1890-1974) and Wu Chingshiung (John C. H. Wu, 1899-1986).16


16. For details, see Chong-ko Choi, Sado Bongsuan [Apostle Judge] Kim Hong-seop (Seoul, 1975)
Fragrance] is one such example. His method is the integration of jurisprudence with legal sociology.

Bak Gwang-seo (1916-2001) studied at Keijo Imperial University and received his doctorate from Chung-Ang University in 1969. Teaching at Chung-Ang University from 1952 to 1982, Bak was a leading scholar in jurisprudence and legal history. He published several books, including *Jurisprudence and Outline of Legal History*. Seo Don-gak (1920- ) studied law at Kyoto University and Seoul National University. He received LL.M from the Southern Methodist University in USA. Teaching commercial law at Seoul National University from 1949 till 1972, he became the president of the National Academy of Korea. He was also the president of Korean Section of the IVR and a member of the Executive Committee of the IVR from 1987 to 1995. Seo translated G. Radbruch's *Vorschule der Rechtsphilosophie* in 1958, E. Patterson's *Jurisprudence* in 1963, P. Vinogradoff's *Common Sense in Law* in 1954, and John C. H. Wu's *The Foundation of Justice* in 1958. An international Festschrift named *Legal Philosophy and Social Philosophy East and West* was dedicated for his 70th birthday in 1990.


Yi Tae-jae (1921-2003) studied law at Jenshu University in Tokyo and

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received a doctorate from Louvain University in 1957. Being a professor at Kyungpook University, he taught civil law and jurisprudence. As a devout Catholic scholar, he published two books on natural law: *Elements of Natural Law* (1962) and *History of Legal Philosophy and Natural Law Theory* (1984).

Gal Bong-geun (1922-2002) studied law at Seoul National University. He further studied in legal philosophy under Karl Larenz at Kiel University in 1955 and under Erich Kaufmann at Bonn University. He received a doctorate from Ulrich Scheuner at Bonn University in 1958. 1958-1960, Gal was a lecturer of comparative law at Marburg University. Returning to Korea, he has taught at Chung-Ang University in Seoul from 1961 to 1973. As a constitutional lawyer, he was engaged in drafting the Yusan Constitution in 1972. After retiring from Chung-Ang, Gal taught at Doshisha University in Kyoto from 1989 to 2002. He published nine books on constitutional law and wrote number of articles on legal philosophy.19

Jeon Won-bae (1924-1974) studied law at Tokyo University from 1950 to 1953. He taught jurisprudence at Sinheung University from 1964 to 1967 and at Seoul National University from 1967 to 1974. From his familiarity with legal positivism, he moved gradually to the natural law theory, particularly influenced by Arthur Kaufmann. Regrettably, he passed away at the age of fifty.20

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Ham Byeong-chun (1932-1982) studied at Northwestern University and Harvard Law School. After receiving a J. D. from Harvard, he became a professor at Yonsei University in Seoul. In 1967 he published his well-known English book *The Korean Political Tradition and Law*, which is frequently cited by foreign scholars. In 1970 he was nominated as a consultant to President Bak Jeong-hui. After Bak's assassination in 1979, Ham came back to Yeonsei University in 1980. Soon he was nominated as the General Secretary of President Jeon Du-hwan. While accompanying President Jeon, he was a victim of the North Korean terrorists plot in Langoon, Burma in 1982. Two posthumous works were published, *Korean Jurisprudence, Politics and Culture* (1986) in English and *Cultural Tradition and Law in Korea* (1993) in Korean. The Ham-Thesis that Koreans are Confucianism-oriented, alegal, and peace-loving people is often discussed with criticism among young scholars.21

2. Publications

The most remarkable book published during this period was Yi Hang-nyeong's *Elements of Legal Philosophy* [Beopcheolhak gaeran]. This book was first published in 1955 by the Sudo Publishing Company, and a revised edition was later published by the Korea University Press in 1965. It shows how much Yi was influenced by the Japanese philosopher Watsuji Tetsuro's philosophy of *Fudo* [the climate]. This book was translated into the Japanese by Suzuki Keifu and published in

two volumes in 1999 by Seibundo Publishing Company.

Hwang San-deok also published a small booklet titled *Introduction to Legal Philosophy* in 1955.


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III. Korean Jurisprudence in the 1960s

Korean legal academism would undergo great progress in the 1960s. Notwithstanding the Student Revolution in 1960 and the military coup d'État in the following year, Korean universities produced quite a number of young scholars. They went on to study further, particularly in Germany.

An interesting and significant event in Germany at that time was that three Korean young jurisprudents accomplished their doctoral works nearly at the same time, with their research conducted under Gustav Radbruch. In 1964, at Saarbrucken University, Gwon Yeong-baek (1934-1981) got a doctoral degree under Arthur Kaufmann with his dissertation on Entwicklung und Bedeutung der Lehre von der Natur der Sache in der Rechtsphilosophie bei Gustav Radbruch. Gwon was actively engaged in journalism and employed by the intelligence agency, but died at an early age. In 1966, Kim Ji-su (1937- ) got his Doktor Juris under Erik Wolf at the University of Freiburg with his dissertation on Methodentialismus und Natur der Sache im Denken Gustav Radbruchs. Kim became a leading scholar of jurisprudence, teaching at Korea University of Foreign Languages in Seoul. He was the president of the KALP from 1992 to 1994. In 1967 at Bonn University, Tjong Zong-uk (1933-1982) wrote his dissertation under Hans Welzel on Der Weg des rechtsphilosophischen Relativismus bei Gustav Radbruch. Tjong was a research staff at Max-Planck Institut fur Auslandisches und Internationales Strafrecht in Freiburg. Arthur Kaufmann wrote a review article on these three dissertations in ARSP (Bd. 56, 1970). He expressed his impressions again in the Gedachtnisschrift fur Zong Uk Tjong (1985) as following:
Dass Gustav Radbruch auf die ostasiatische—besonders die japanische und koreanische—Rechtskultur eine so grosse Wirkung ausgeübt hat und noch unvermindert ausüb —z.B. das Problem der "Natur der Sache,"—Radbruch geht die Dinge in einer anderen Weise an, die ihrer eigenen Denkungsgestalt entgegenkommt—und vor allem, die bewundern, ja lieben seine Sprache, anhand Radbruchscher Schriften lernt man im Fernen Osten Deutsch\textsuperscript{23}

So much of Korean jurisprudence owed to Gustav Radbruch's legal philosophy.\textsuperscript{24}

1. Scholars

We can enumerate some other leading jurisprudents during this period as following

Kim Cheol-su (1933- ) studied law at Seoul National University and went to Germany in 1958. After doing research in Munich from 1956 to 1961, he came back to Korea and became a professor at his alma mater in 1962. Teaching in Constitutional Law and History of Legal Thought he served as a leading jurisprudent. He was a charter member of the Korean Section of IVR and later became a member of the Executive

\textsuperscript{23} Arthur Kaufmann "Gustav Radbruch und die Koreanische Rechtswissenschaft" Gedachtnisschrift fur Zong Uk Tjong Tokyo, 1985, S.112

\textsuperscript{24} For details, see Chong-ko Cho, "Gustav Radbruch und Ostasien" (Verfassung-Philosophie-Kirche: FS f Alexander Hollerbach zum 70 Geburtstag, Berlin, 2001, S.485-500)

Sim Jae-u (1933- ) studied law at Korea University and earned his doctorate from Bielefeld University under Werner Maihofer. Teaching Criminal Law and Legal Philosophy at Korea University, he became the president of the KALP in 1990-92. He has published *Widerstandsrecht* in 1999 and translated W. Maihofer's *Rechtsstaat und Menschenwurde* (1994) and *Recht und Sein* (1996).

Yang Seung-du (1934- ) studied law at Yonsei University and did further research at Harvard and Manchester Universities. He later became the President of the Korean Section of IVR. He followed jurisprudential and sociological approaches in his research on Koreans' legal consciousness. He translated Taylor's book *Theories of Justice* and von Hayek's *Law, Liberty and Constitution* into Korean.

2. Publications

Hwang San-deok published *Introduction to Contemporary Jurisprudence* in 1961. In the following year, Yi Tae-jae of Kyungpook University in Daegu published the *Elements of Natural Law*. Bak Gwang-seo of Chung-Ang University also published *Legal Philosophy* in 1964. Bak Deok-bae of Seoul National University published *Introduction to Legal Philosophy for Teachers and Students* in the same year. Hwang San-deok also published *Introduction to Legal Philosophy* in the same year.

As time passed, law students’ interest in reading the translated books seemed to have waned. This undesirable phenomenon was mainly due to the National Bar Examination system. The course of jurisprudence or legal philosophy had become merely a selective subject, and few students had interest in choosing that “risky” subject. For this reason, we would see just a handful of translations during this period. Seo Don-gak translated Roscoe Pound’s *Justice According to Law* in 1960. Hwang San-deok and An Hae-gyun translated Carl Friedrich’s *Philosophy of Law in Historical Perspectives* in 1960. Yi Hang-nyeong and Kim Yeo-su translated Roscoe Pound’s *Introduction to Legal Philosophy* in 1960. Go Byeong-guk of Seoul National University translated Roscoe Pound’s *New Paths to Law* in 1961. Jang Gyeong-hak translated Oliver W. Holmes’ *Common Law* in 1962. Eom Min-yeong and Seo Don-gak translated Edwin Patterson’s *Jurisprudence: Men and Ideas of Law* in 1963.

IV. Korean Jurisprudence in the 1970s

The 1960s was a period of “developmental dictatorship” under President Bak Jeong-hui after the coup d’État in 1961. The 1970s was
harsher, so that intellectuals were full of desire to cease the military regime and restore a civilian government.

1. Scholars

Kim Il-su (1945- ) studied law at Korea University and got his doctorate from Munich University under Klaus Roxin. Teaching criminal law and legal philosophy at Korea University, Kim has published several books on legal philosophy including *Law, Man and Human Rights* (1990). He translated Briskorn’s *Rechtsphilosophie* in 1999. As a Christian scholar of law, he is also known for work in legal theology.

Jeong Hae-chang (1946- ) studied law at Sungkyunkwan University and did his doctoral work at New Mexico University in America. Researching and teaching at the Academy of Korean Studies, Jeong has published several books and articles on legal philosophy and philosophy in general. Additionally, he introduced Filmer Northrop’s jurisprudence.


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Der Innere Weg in 1985, Karkaturen der Justiz in 1995. He translated a number of articles by A. Hollerbach and co-edited with Bak Un-jong a book called Legal Philosophy and Legal History in 1984. Furthermore, Choi translated Manfred Rehbinder’s Rechtssoziologie in 1981 and Helmut Coing’s Epochen der Deutschen Rechtsgeschichte in 1982. Since the IVR-Kobe Conference in 1987, he has attended the IVR conferences regularly and read a plenary speech at the Bologna Conference in 1995. He has been acting as a member of the IVR Executive Committee since 2003. He is attempting to establish an East Asian Jurisprudence on the reevaluation of the cultural tradition in the East Asian history.


Bak Un-jong (1952- ) studied law at Ewha Womans University and received her doctoral degree under Alexander Hollerbach at the Freiburg University in 1978 with a dissertation on Ueber Rechtsontologie. Teaching at her alma mater, Bak was the President of KALP from 1998 to 2002. In 2004, she moved to Seoul National University. She has published several books such as Natural Law Thoughts (1987), Social


2. Publications


V. Korean Jurisprudence in the 1980s

1. Scholars

In 1983 the Korean Section of IVR was established through the initiatives of some leading Korean jurisprudents who had attended the IVR conferences. Seo Don-gak became the first president, and the
charter members included Yi Hang-nyeong, Kim Cheol-su, Yang Seng-du, Sim Jae-u, Han Sang-beom, and Choi Chong-ko. Due to the active participation of Korean jurisprudents and the kind assistance of the President Aulus Aarnio, Korea became a member of the executive committee of IVR at the Kobe Conference in 1987. Seo was elected as a member of the Executive Committee. This position was succeeded to Kim Cheol-su in 1995.


In March 1984, Arthur Kaufmann, the former president of IVR, visited Korea and delivered a speech on Recht und Sprache.\(^28\)

In 1984, at the Centennial Anniversary of Korean-German Diplomatic Relationship, seven German scholars of law were invited for a symposium sponsored by the *Koreanisch-Deutsche Gesellschaft für Rechtswissenschaft*. Alexander Hollerbach of Freiburg University read a paper on *Was is von der Deutschen Naturrechtsdiscusion geworden?*\(^29\)

In August, 1987, on the way to IVR-Kobe Congress, Aulus Aarnio, the president of IVR, visited Korea and joined a jurisprudential seminar. In Kobe, he supported Korea to be chosen as a member of Executive Committee of IVR.

2. Publications


\(^29\) A Hollerbach, Chong-ko Choi trans, in Recht in Deutschland und Korea Zeitschrift der Koreanisch-Deutschen Gesellschaft für Rechtswissenschaft Bd 5 (1985, pp 5-21)

VI. Korean Jurisprudence in the 1990s

1. Scholars

At this time one can see a generational change in the circle of Korean jurisprudence. As senior scholars retired, new young scholars emerged to take over.

Kim Yeong-hwan (1953- ) studied law at Korea University and got a doctoral degree from Arthur Kaufmann at Munich University. As a professor teaching criminal law and legal philosophy at Hanyang University, he has been acting as the president of KALP since 2002.

Jang Yeong-min (1953- ) studied law at Seoul National University and got a LL.D. degree under Sim Hun-seop at the same University. He has published numerous articles on legal philosophy and criminal law, and translated Martin Golding’s *Legal Philosophy* in 1982.

Kim Jeong-o (1956- ) studied law at Yonsei University and got a doctoral degree from Wisconsin University. He translated Roberto Unger’s *Law in Modern Society* in 1999.

The KALP gradually became proactive under the leadership of such young scholars. It began to hold monthly meetings and seminars every spring and autumn. The Spring Seminar of 1997 was held on May 31, 1997 at Sogang University with the general theme of “Responsibility in the Risk Society.” The presenters were Kim Yeong-hwan and Kang Hui-won. The Autumn Seminar was held on Oct. 2, 1997 at Sogang University with the theme of “Tasks of Contemporary Legal Philosophy.” At this seminar, Kurt Seelmann of Basel University presented his “Reciprokele Anerkennung und Unrecht: Straffe als Forderung der Gerechtigkeit,” and Neil MacCormick read his “My Philosophy on
In February of 1997, Jose Llompart of Sophia University in Tokyo presented his "Destruction of Contemporary Jurisprudence: Do we teach only that we don't know?"

In February of 1998, the first issue of the biannual *Korean Journal of Legal Philosophy* was published.

The spring seminar of 1998 was held on April 25, 1998 at Yonsei University with the theme, "Celebrational Review of Sim Jae-u's Legal Philosophy." Kim Yeong-hwan, Yi Jae-ryong and Sim Hun-seop were the speakers, and Sim Jae-u himself spoke on "My Philosophy of Law." The Autumn seminar of that year was held on Nov. 28, 1998 at Ewha Womans University with the general topic of "Law and Society from the Jurisprudential Perspective." Kim Byeong-gyu, Yi Jun-il, Jeong Tae-uk and Yi Sang-don were the presenters. The KALP sponsored monthly round-reading meetings for a year with the support of the Daewoo Foundation.

The spring seminar of 1999 was held on May 28-29, 1999 at Kangnung University with the theme of "Nature, Man and Law in the Age of Biotechnology." Sim Jae-u, Kim Il-su, Choi Chong-ko, Jang Yeong-min and Im Jong-sik were the presenters. The Autumn seminar was held on Nov. 27, 1999 at Yonsei University on the theme of "Jurisprudential Understanding of Ownership." Oh Byeong-seon, Kim Hyeong-seong, and Kang Hui-won read their papers on this topic.

In March, 2000, Ulfried Neumann of Frankfurt University visited Korea and read a paper on "Wandlung der Schuldstruktur unter der Bedingung der technologischen Entwicklung." This article was translated by Kim Hak-tae into Korean and published in the *Korean Journal of Legal Philosophy* (Vol. 3. No.1, 2000). The Spring seminar was held on June 17, 2000 at Sungkyunkwan University and centered on the theme of
“Citizen and Political Rights.” Sim Jae-u, Jo Cheon-su, Choi Bong-cheol and Seo Gyu-hwan presented their papers. The autumn seminar was held on Nov. 24, 2000 at Dong-A University in Busan on the topic of “Education of Legal Philosophy” Kim Ji-su, Heo Il-tae, Kang Hui-won and Kim Jeong-o were the speakers.

The spring seminar of 2001 was held on June 9, 2001 at Korea University on the topic of “Legal Philosophy and Legal Ethics” Ga Jae-hwan, Kim Il-su, Jeong Bo-jun and Cha Byeong-jik were the speakers. The Autumn seminar was held on Nov. 30 at Kyunghee University on “Crucial Issues in Contemporary Jurisprudence.” Kim Do-gyun, Kim Hyeon-cheol, Choi Chong-ko, Min Gyeong-bae and Im Mi-won were the presenters.

The spring seminar of 2002 was held on May 25, 2002 at Ewha Womans University on “Law and Sex from Jurisprudential Perspectives,” and Jeong Dae-hyeon, Oh Jeong-jin, Kim Do-gyun, Kang Hui-won and Jo Guk read their papers.

Quite a number of young scholars came to teach on jurisprudence at the law colleges. The following are some of the professors: Kim Chang-rok at Busan University, Kang Gyeong-seon at Korean Broadcasting University, Heo Il-tae at Dong-A University, Kang Hui-won at Kyunghee University, Yi Sang-don at Korea University, Choi Bong-cheol at Sungkyunkwan University, Jeong Tae-uk at Yeungnam University, Yi Jae-seung at Kookmin University, Kim Hak-tae at Dong-eui University in Busan, Bak Jeong-hun and Kim Do-gyun at Seoul National University, Yi Jun-il at Korea University, Jo Cheon-su at Mokpo University, Im Mi-won at Kyungpook University, Kim Hyeon-cheol at Kangwon University, and Ji Seung-won at Handong University. There are some judges and attorneys who have paid special attention to legal
philosophy such as Kim Dae-hwi, Yi Myeong-ung, Jo Byeong-hun, and Kang Geum-sil.

2. Publications


**Conclusion**

In reviewing the development of contemporary Korean jurisprudence, it is apparent that there has been a dearth of researchers in jurisprudence until recently. Due to limited space, it was not possible to mention all the publications of the articles in the academic journals.\(^{30}\)

Even though the situation has improved significantly, the atmosphere for encouraging jurisprudential research seems to remain the same. As previously mentioned, this is mainly due to the system of the National Bar Examination. The qualification of applying for this Examination is not limited to law students, but open to all who have an interest in law. Therefore, reading and studying jurisprudence does not appear to be a necessity at all. The subject of jurisprudence remains as an elective and many examinees select not to choose it. In that sense, the course of jurisprudence seems to be just a decorative part of the legal education.

\(^{30}\) For the bibliography, see Seoul National University Library ed, *Beopryul munheon saekon* [Index of Legal Bibliography], Vol. LV (1975-2002). Chung-koo Choi, *Beopcheguk* [Jurisprudence], Revised ed Seoul, 2002; the bibliographies attached to each chapter.
Professors of jurisprudence have been seriously discussing ways to overcome this problem.

Notwithstanding this shortcoming, we should appreciate the pioneering academic efforts of jurisprudential scholars. Without their intellectual adventurism, Korean legal academism and the rule of law would have been seriously underrepresented in the area of world jurisprudence.

The atmosphere of Korean jurisprudential academism is basically open and liberal without any restrictions from the inside or the outside. Jurisprudents enjoy academic freedom to explore their interests, and among these interests is the introduction of Western jurisprudence. So, it seems somewhat like a laboratory of Western jurisprudence. Almost all of the Western legal theories are introduced and discussed with great enthusiasm and sometimes Western jurisprudents are invited. As stated above, Korean jurisprudents are eager to join the IVR conferences and other international meetings. Nevertheless, the time does not appear to be ripe enough for many Korean jurisprudents to publish their research freely in Western languages.

As we move into a century of the reception of Western law, Korea is beginning to think about the fundamentals of how the rule of law fits into Korean society. Some jurisprudents argue that Korean legal academism should be less imitative of Western theories and be more indigenous in developing Korean philosophy and theory. Within this framework of thought, scholars are beginning to assert the importance of reevaluating the long tradition of East Asian civilization, namely “East Asian Jurisprudence.”31 Of course, Korea, as an active member of the Association of Asian Jurisprudence, recognizes the inclusion of

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31 For detail, Chong-ko Choi, History of East Asian Jurisprudence in forthcoming
Japan and China as integral parts of East Asian jurisprudence.

Korea is placed politically and ideologically in a very unique situation. As the last legacy of the Cold War system from the 20th century, Korea is still suffering from national division. North Korea is a closed dictatorial society, with a meager and rather stereotyped jurisprudence. There is still no contact between South and North Korean legal scholars. The reunification of Korea is an urgent task that must be realized by the active participation of the jurisprudents from both sides. Thus, it is of vital importance to improve communications between jurisprudents of both North and South Korea as part of any reunification process.