

The Nature of Korean Legal Culture and Challenges of Law Related Education in Civic Education*

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Abstract

Generally speaking, the legal culture influences validity and appropriateness of learning contents in law-related education. The purpose of this study is to comprehend marked characteristics of Korean legal culture and to seek implication for developing appropriate learning contents of law-related education in civic education. Because of the impact of Confucian ideas on Korean legal culture after Choson Dynasty, there is a little tendency to perceive that law is not a facilitative tool for protecting individual rights but simply a punitive tool for compelling ritual norms. Also Confucian ideas have an impact on Korean legal culture which regards private connection as important since private ritual norms are considered much more important than law. These characteristics of Korean legal culture remained up to now, because of unhappy historical experiences, for example, The Japanese colonial days, ideological conflict and social disorder after Liberation and Korean War. But these days, much changes are occurring in the cultural context of Korean society such as improvement of social structure, facing a multicultural society, emphasis on trust, emphasis on citizenship internalization, preparation the unification and globalization, and many others.

According to these changes in the cultural context, for developing

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Korean civil society, law-related education in civic education should focus on reinforcement of learning legal cultural in formal curriculum, cultivation of positive legal consciousness, strengthening a participatory attitude, training a legal consideration, institutionalization of conflict resolve, and development of a legal consciousness in everyday life.

Key words : Korean legal culture, law-related education, civic education

I . Introduction

Law is the basic principle in modern society. The bigger and more complex the society's structure, the stronger and more important the law becomes. Especially, in a democratic society, law is characterized as an autonomous rule which citizen regulate their lives by themselves. In other words, law is a tool that organizes and maintains orders not by forces or punishment but by needs and wills. Thus, civic education should contribute in making people aware of the importance of law and have the ability to make judgments and act in accordance with the law. In this point of view, LRE(Law-Related Education) could be the core part of civic education.

Until recently, learning content of LRE mainly has been included in political education in Korea after Liberation from the Japanese colonial rule in 1945. But It became an independent discipline, 'Law and Society', after the 7th National Curriculum Reform in 1997. Although the number of academic researches and program developments are increasing, there are some problems in several areas. Theses problems mainly came from the unclear setting of the nature and purpose of LRE, which were not constructed on the firm ground of the understanding with its own legal culture.

A society or community has its specific cultural context related to law. It affects legal consciousness of society members, and becomes a base to form a legal culture. Modern Korean legal system has been influenced by the German law, which

Japan adapted. However, because of the political and social circumstances in late 19th century, which was an anti-Japanese sentiment against Japanese Colonial Rule, traditional legal culture in Korea was not modernized, rather was distorted by aversion to modern legal systems. They are still an obstruction to establish a sound legal culture, as well as a barrier to LRE as a core of civic education. Accordingly, this study is to review marked characteristics of Korean legal culture and to seek implication for developing appropriate learning contents of law-related education in civic education.

II. Significance of law-related education in civic education

In cultivating a democratic citizen, civic education takes an integrated view concerned with politics, economics, law, and ethics. Therefore, learning contents must be organized according to an integrative perspective based on individual domains. Political education, economic education, and ethics education are all essential parts of civic education. However, considering that the concept of 'citizen' and 'citizenship' have been developed in a historical and legal aspect, the core of civic education may be LRE.

If the citizens' role is only to abide the law passively, LRE focuses on making justification of existing social norms, especially legal norms. In this case, unless citizens have a legal conviction. LRE is not a part of education but a simple indoctrination. Also, it is hard to be abided with the law and it is not effective in everyday life. When we broaden the citizens' role from passive law-abiding to positive responsibilities for developing a legal culture, to put on emphasis only on the law-abiding is not the purpose of LRE. If we want the democratic society to exist continually, people play a role not as the object but the subject of legal system.

If the role of citizen is not only to contribute passively to legal stability(Rechtssicherheit) and social harmony but also

actively in developing a legal culture, it is possible when it is based on the citizen's sound legal consciousness. Legal consciousness means self-conviction which comes from questing critically social functions and influences of law. It is formed out of deliberation and discussion about validity and relevance of legal system. To make a judgement or present one's own opinion, a clear distinction about an object and standard of assessment are necessary. To assess the law, we need the standard for assessment, which is basic premises of legal norms. Likewise, we need to approach the law critically. LRE needs to explain that the existing legal norms is decided by historical factors and has changeability. By this, it must enable students to think about the existing legal norms system critically and explore alternatives to foster civic competency and ability.

LRE regards the role of the citizens as crucial in the realization of law. Thus, it can not limit a task of LRE only to legal knowledge. Students should not learn law as a 'political slogan' but have competence in and willingness to apply it in real life. It is not enough to know how to file for a lawsuit. We as citizens must know how to practice law in reality when we want to file for a lawsuit. We must relate the fact with the law, as well as persuade others. In other words, LRE must contribute to make people have an ability, will, and attitude to practice.

One problematic part of LRE is the extent and the level of the legal content as learning experience. Jurisprudence which consist of background knowledge of LRE is one of the oldest disciplines. It causes difficulties to limit the boundary of content range and depth. Also, since it is highly related with real life, it is important to have accurate and concrete knowledge. For example, there are too many areas in law, such as constitution, the criminal law, the civil law, the commercial law, the administrative law, and the law of legal procedure to make a criterion to choose which area and which contents that we cover. However, we need to cover from abstract principles to actual cases in depth so as to relate the law with real life.

Biggest challenge is that LRE as civic education should make

a criterion for sealing quantity of contents for success. Discussion about LRE itself may bring about a solution, but it is not enough. We must examine the close relationship between the law and a real life experience. The challenges mentioned above, such as how to understand LRE, what intend LRE seeks to, and which extent to contents we will teach, is eventually consistent in the legal culture, which means how we recognize and accept the law and what is insufficient or necessary.

III. The nature of Korean legal culture and challenges

There are four characteristics in the nature of Korean legal culture: effects of Confucianism, tender-heartedness, group consciousness, and discontinuity and distortion of legal culture.

A. Effects of Confucianism

The main stream of Korean culture was rooted in the Confucianism since 15th century, and it still remains in contemporary cultural features in Korea. To comprehend characteristics of Korean legal culture, we need to appreciate Confucianism. In traditional Confucian society, 'Ye(禮, courtesy)' was the most important social ideal, and the law was considered as a tool for realize Ye. In other words, law was considered that it is a subsidiary means to impose the duty of Ye on people, and punish when people violate it. Therefore, in traditional Korean society, jurisprudence could not be established as an independent discipline, rather be understood only as a technological knowledge. In this sense, Koreans take law mainly as a compulsory punishment, not as a self-regulative agreement to protect their own rights.

B. Tender-heartedness

Traditionally Koreans think much of accordance and harmony of community than private interests and have a tendency to avoid resolving conflicts by the law. It was

reinforced by modern legal consciousness and clan villages which descendants of the same ancestor live together in a village. Koreans tend to avoid using the law for resolving conflicts instead of concession and mutual understanding, and socio-psychologists conceptualized this characteristic of Korean as 'tender-heartedness'. It means the tendency of mind to help others without any reward. It mainly came from Confucianism, because the ideal of social relationship is found in family relationship. Since it is believed that human relations in family is the best relation model in Confucian point of view, it is right to extend it to human relation in social life. That is the reason why there is a tendency to avoid resolving conflicts using law or prioritizing private interests. As Kohlberg(1981) noted, western people seem to weigh more value on 'justice' than 'tender-heartedness'. Therefore, we need to be aware of the nature of Korean legal culture, and provide educational opportunities to reflect based on real life.

C. Group consciousness

We can say 'tender-heartedness' as an individual characteristic of Korean, whereas 'group consciousness' is a characteristic of social cultural level. Eastern culture rooted in agriculture which give much count on cooperative labor. Especially rice-planning needs water and control by banks and irrigations, so that eastern developed well-developed political communities based on agriculture.

Easterners are shown to put emphasis on the relationship-orientation rather than personal rights as westerner do. Under the group consciousness, society is considered as an organization so that the in-group people united easily together and take care of each other. This could be a huge potential for group development, but group consciousness is somewhat like double-sided blade. That is to say, they discriminate against the out-group people.

In a closed society like a traditional society, it would not take as a matter but in a global society it could be a barrier to the progress of society. In Korea, where is becoming a

multicultural society, it is one of the main challenges to overcome the negative side of group consciousness.

D. Discontinuity and distortion of legal culture

Above all, the factors which affected Korean legal culture, the most influential factor is the colonization by Japan in modernization age. It caused cultural discontinuity and distortion in Korea because we could not take over and develop autonomously. As mentioned above, in Chosun Dynasty jurisprudence was considered as a technique. Since it was disregarded, it could not be institutionalized as an independent filed and legal judgement mainly made by confusion scholars.

Modern legal system was introduced by foreign legal advisers in the 1880s. At that time, the first royal legal adviser was M?llendorff from Germany. The foreign legal advisers tried to modernize Korean traditional law, but it did not succeed because of the political, social circumstances. The intellectual class in Chosun Dynasty was aware of the importance of legal education as a matter of self-reinforcement. They eagerly educated people for modern legal knowledge in emerging new schools. However, they thought traditional legal knowledge and culture as insufficient to modernize Chosun Dynasty, so they neglected them. As a result, it caused a huge distortion in Korean legal culture.

During the Japanese colonization period-from 1910 to 1945-Japanese tried to make Korean legal culture to Japanese-western legal culture to rule and plunder effectively. Because the westernized modern legal culture was introduced by 'Bully messenger of western legal system' as Japan, Koreans have negative feelings toward the modern legal system. Furthermore, because of the tragedy of national division, war, and dictatorship, the negative feelings still exist today . Since democracy in Korea was established in 1990s, there is a possibility to change legal culture in order.

On legal culture of Korea, this historical discontinuity and distortion create negative effects. It leads to 'legal alienation', which people think law is something they must keep away from.

Democracy should be established on the ground of civic participation, communication, and agreement. In this sense, LRE in Korea has a crucial task to build a sound legal culture,

IV. Contextual change in law related education of Korea

Up to now, we have examined the nature of Korean legal culture and legal consciousness so as to search direction that civic education in Korea must go toward. On this basis, we examine new environment and challenges in LRE.

A. Improvement of social structure

Recently, Korea is rapidly changing, especially the social structure is getting bigger and more complex in general. In terms of industry, its central part moves from agriculture to commercial and industrial, to information technology industry. As society changes, civic education need to construct educational experiences to overcome conflicts between the existing point of view and new one, or among citizen's interests, and identification confusion.

B. Facing a multicultural society

Korea is becoming a multi-cultural society rapidly because of an influx of migration workers and marriage immigrants since 1990's. 13.6 percent of marriage was international marriage in 2005, and especially in farming and fishing villages it was up to 35%. By 2020, it is estimated that one third of the school-age children will come from multicultural families. In a multicultural society, it is important for people to enjoy their own rights, and freedom within the legal framework, which must be based on universal and objective agreement to protect a diversity. To do this, it is important to overcome the negative consciousness of law, and make people appreciate law as part of their lives which is a basic way to promote a convenient life among people.

C. Emphasis on trust

Trust is the core part of social capital. In Korea, level of social capital is very low, especially about public authority, such as government, and public agencies. A study showed that Koreans distrust the government and assembly more than strangers. Also, 70 percent of the respondents said that they think public officials do not abide the law, and are corrupted. Therefore, LRE as the core of civic education need to make a way to build on trust in law enforcement agencies and society.

D. Emphasis on citizenship internalization

There is a series of reform of systems to extend citizen participation in legal process, which is designed to promote trust in legal system in Korea. The Korean Jury system enforced in 2008 is a good example. If citizen's democratic quality and awareness are not enough, making an excellent legal system based on a reform is ineffective. In this sense, civic education provide students with opportunities to get a basic understand of changing legal system, and learn how to participate.

E. Preparation the unification and globalization

Similar to the former Germany in 1989, Korea suffers the division of the Korean peninsula form 1945 to now. As a period of division gets longer, values and institutions between south and north are becoming different. If we do not consider this problem enough, unification in the future may bring to possibility of another conflict rather than a national festival. Civic education in Korea needs to educate to prepare unification for coexistence cosmopolitanism with nationalism in a global age. Especially, we need to promote constitutional patriotism as a principle of community based on consensus and agreement.

V. The Direction of learning contents in law-related education

A. Reinforcement of learning legal culture in formal curriculum

Considering that the essential aim for LRE is to cultivate citizens as a subject in a democratic society, who can lead an honest life and contribute to their communities, it is a crucial starting point that understand legal culture and tradition of a community where they involve. However, it seems that this consideration and educational efforts are insufficient in formal educational system. Based on 'law and society' textbook in 7th national curriculum, we can point out that description about legal culture or legal tradition is meager, and the level of accuracy is not enough. We need to figure out the context and history that our legal system has, and problems that it faces, and whether we are handling legal problems in a real life. To do this, It must be accompanied with comparison between legal systems, and assessment of our legal system.

Our national curriculum do not take this point into account. Description in existing textbooks is insufficient for legal culture. moreover, there are many unrelated or inaccurate contents concerning legal culture. Therefore it is expected that there are a lot of barriers to understand our legal culture. We need to consider to pave the way for appreciating legal culture and tradition from curriculum and textbooks, as well as develop programs regarding legal culture education.

B. Cultivation of positive legal consciousness

There are two ways to foster positive legal consciousness. One is to promote understanding of the law itself, and the other is to improve perception of law and legal authority. When they have less legal knowledge, a trend of mutual distrust is prevalent, legal flexibility is increasing, by which they think they can violate the law on the occasion, and law-abiding consciousness is reduced because of relative deprivation. Therefore fostering positive legal consciousness is not different from having legal knowledge.

We can examine several strategies, such as developing a legal statement, making a field trip, using resource person, and

mock trial. It is more effective way to mobilize resource person to improve perception of legal authority. 'outside resource person' means anyone who help classroom activities, such as celebrities, specialists. LRE require expertise of content, so that it is hard to understand fully only by teachers. Also, it is more effective to enhance students' trust in the law. Concerning one of the main aim of LRE is to make people have a trust in specialists who work for public institutions, and feel friendly towards them, using outside resource person is an integral education strategy.

Also, mock trial, which is used widely in LRE, enable students to enhance understanding of legal process and offer an opportunity to judge based on legal ground so as to force positive legal consciousness. Mock trial is a way to make legal claims, and practice legal discussion, hearing, and sentence like as a real trial. Although it helps to enhance understanding of legal press as experience a real legal process, teachers need more time and efforts to prepare class relatively.

C. strengthening a participatory attitude

It is one of the serious problem that LRE or civic education does not provide students with an opportunity and experience to participate actually. There is a discrepancy between school settings where students are too passive, and civic education that give emphasis to an positive and active participation. and ownership. It is a factor that disturb students' real changes. In this sense, we can examine 'Teen Court, Youth Court, Peer Court' positively as one of LRE programs. In USA, teen court, a diversion program, began as an alternative for a juvenile justice system. At that time, heavy work load of juvenile court because of a rapid increase of juvenile delinquency and the recidivism of a offenders were a problem. Teen court valued its high applicability and effects so that is in operation in a wide range.

D. Training a legal consideration

Teaching-learning methods to train a rational and logical consideration by legal grounds and procedures are a case study

approach traditionally reserved for legal education, and a writing class approach to practice a legal writing. Both are suitable in class and available for an assessment, so it can be used variously. First, there is a case study method. It enables students to participate in a discussion or process of problem solve actively, so as to cultivate critical thinking skills. Also, students are expected to understand the basic knowledge better and develop a positive legal attitude. It is effective to use a writing class. Legal judgement goes through four components, which is to 'identify a fact-arrange an issue-examine a logic of legal reasoning-decide a legal value'. It is a writing class that make students experience a legal judgement process. Methods for a writing class contains essay, legal writing, and correspondence.

E. institutionalization of conflict resolve

Conflict is a core part of life of human beings, transcending time and space. Conflict can serve as a stepping stone for a unity if it is resolved peacefully. To establish a democratic conflict-resolution culture, a role of education is crucial. That is, we need to help young children to settle a conflict that they face by offering various programs to promote an ability to resolve conflict, as well as to make a base that they can settle conflicts effectively when they grow up. It is 'Peer Mediation model' to suit this educational purpose. Originally, Mediation is institutionalized as a means of Alternative Dispute Resolution. In 'Peer Mediation model' students manage a mediation process autonomously without intervention of adults or teachers.

F. Development a legal consciousness in a real life

There are two educational methods to make students develop a legal consciousness in their life. One way is to learn legal contents related life in existing school settings. Another way is to mobilize community into schools, which connects schools with community problems. The former example is 'Street Law', and the latter example is 'Teens, Crime and the Community(TCC)' program to reduce juvenile delinquency in communities. Street Law began In 1972 when researchers in

Georgetown University studied better ways to provide legal knowledge need in daily life, and it covers every parts of a life, such as the Criminal Law, juvenile justice, the Family Law, the Tort Law, and fundamental rights. TCC program is designed to bond young people to their communities, prevent teen victimization of crime, and reduce juvenile delinquency. It is different from other law related education programs because it focuses on the prevention of teen victimization via a law related education about a life environment. In Korea, although the concept of a community has diminished because of the rapid industrialization, 'region' as a social environment where students live is crucial as a basis of social identity. Therefore, it is essential in civic education to make teens develop a conception of community, participate in it, and make a room for communities to intervene in students and educational problem actively through LRE. Through this process, students are expected that internalize law as a basic norm, which is directly related to their lives .

V. Conclusion

This study was intended to understand marked characteristics of Korean legal culture and to seek new challenges of civic education, implication for developing appropriate learning contents of law-related education in civic education. Before 19th century, jurisprudence could not be established as an academic field in Korea because of effects of Confucianism. And law has recognized a punishment to practice 'Ye(禮, courtesy)' by force. Since it emphasized a forcible and punishing aspects of law, it caused a negative understanding of law. In addition to that, discontinuity of legal culture during the age of enlightenment in late 19th century, the Japanese colonial period, the American military government, and condensing modernization caused a negative view of the law. Tender-heartedness and collectivism also had a negative effect such as favoritism, patronage, and lack of law-abiding

consciousness. Besides these Korean legal culture, new challenge is generated by current social change. Especially, considering an advanced industrial and multicultural society, the increase of importance of social capital, and needs for unification and globalization, the improvement in the legal culture via LRE becomes a crucial challenge of civic education. For effective coping with challenge, law-related education should direct to reinforce learning content about legal culture in formal curriculum, to cultivate positive legal consciousness, to strengthen a participatory attitude, to train a legal consideration, to institutionalize alternative dispute resolution, and to develop a legal consciousness in a real life.

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