BOOK REVIEW


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Jim West would have been immensely pleased with virtually all major aspects of Recent Transformations in Korean Law and Society save one; namely, the volume’s dedication to him. The late Dr. West was an extraordinary, brilliant and deeply caring human being, blending together seemingly disparate interests and attributes in a truly sui generis manner in this all too homogenized world of ours. Consider how this high school footballer wrote his doctoral dissertation at the Harvard Law School on Habermas and Luhmann. Or how this ardent champion of human rights excelled in corporate legal practice. Or how this bear of a man looking like something out of Dostoevsky combined a near congenital shyness with abiding passions and a ferocious intellectual intensity that made him a stunning teacher. But throughout it all, Jim was, if anything, as genuinely humble a person as one might hope to meet, modest about all except the search for justice and the importance of integrity, particularly in intellectual endeavor.

Recent Transformations in Korean Law and Society would have appealed to Jim for many reasons. Most notably, he would have derived considerable satisfaction from the accomplishments of Korean society that it reflects, even as he would have agreed with the areas that the book identifies need to be addressed if Korea is to achieve full democracy and equality for all its citizens. For, it is no exaggeration to say that Jim West loved Korea dearly—so dearly, in fact, that he refused to be complacent when he sensed that his adopted country was not living up to the best in its history or was not striving sufficiently to attain its potential. But Jim would have found even

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more to have liked about Recent Transformations. He would, for example, have been delighted to have seen the polished essays produced by a new generation of highly sophisticated, internationally oriented Korean scholars many of whom had worked with him, been his friends, and found inspiration in his example. And, no doubt, he would have enjoyed the effort of the book’s fine editor, Professor Dae-Kyu Yoon of Kyungnam University who will teach at Jim’s alma mater Harvard Law School in 2001, to bring together incisive papers on public law with others concerning the interplay between law and the economy and society more broadly. This is because, blending such interests himself, Jim understood how intimately intertwined these concerns are and must be.

Recent Transformations in Korean Law and Society is divided into three principal sections. The first, entitled Law and Public Administration in Transition, is an ambitious effort to capture the role of legal institutions and law in consolidating the epochal changes in Korean politics and public affairs of the past decade and a half. It commences with an incisive essay by Professor Jong-Sup Chong of Seoul National University. It admirably sets the stage for the remainder of the section (if not the book as a whole) by quickly reviewing the political changes of the last fifteen years and then briefly describing the present constitutional structure, before sketching what he argues are the ways in which politics continues to prevail over law. The changes of the past decade, emphasizes Chong, have, indeed, “brought about a sense of pride and safety to the Korean people” (p. 26). And yet, vigilance and a great deal more hard work seem needed, for “mere legal or institutional changes do not guarantee changes in practice” (p. 27) in view of the Korean past and the temptations confronting political leaders, if not human nature more broadly.

The Korean Constitutional Court, which is the subject of the second essay, by Professor Kun Yang (who serves as Dean of the College of Law at Hanyang University), would seem one of the most important bulwarks against any such possible backsliding. Established in the wake of the constitutional reforms of 1987 (and the subject of a noteworthy essay by Jim West, as, indeed, are many of the topics covered in this volume), the Constitutional Court, which builds on European examples, represents a major landmark not only for Korea but in the history of East Asia more generally. Notwithstanding the Council of Grand Justices in Taiwan and supreme courts in Japan, the Philippines and elsewhere in the region, the Korean Constitutional Court has taken constitutional jurisprudence to unprecedented heights for East and Southeast Asia. Over its first decade alone, the Court entertained some 4,437 cases, including 4,069 petitions from citizens, 359 requests from ordinary courts for the review of the constitutionality of statutes and nine cases involving questions of jurisdictional disputes between state organs leading to decisions in 676 cases, in 96 of which laws were held to be unconstitutional. While Professor Yang takes apt note of the difficulty that the Court has had with the National Security Act and a few other particularly sensitive matters, the fact remains that the Court has played a vital role, both directly and through the healthy competition which its presence has engendered with the regular court system, in solidifying the rule of law and the impressive democratization that Korea has undergone. Americans eager to push the People’s Republic of China and other nations to emulate our mode of judicial review, in which hundreds of federal judges spread throughout the land have the authority to hold national statutes unconstitutional, would do well to expand their intellectual horizons and study foreign examples and particularly that of the Korean Constitutional Court which would seem to provide a far more palatable and achievable alternative.

Of course, in considering the rise of constitutionalism, we need to remain mindful that Korea and other civil law nations are administrative states to a far greater extent than is the case with common law jurisdictions and that this has considerable consequence for thinking about administrative law. The third and fourth chapters of Recent Transformations in Korean Law and Society explore the ways in which administrative law has developed in what its author of the third chapter, Professor Joon-Hyung Hong of Seoul National University, calls an increasingly institutionalized administrative state. Professor Hong’s chapter nicely illustrates the ways in which Korean administrative law has grown over the fifteen years since the October Protest of 1986 to meet what he describes as the increasing public demand for a renovated, rational system of governance (p. 47), linking these changes to broader political and social trends in a manner that has not always been the case in Korean scholarly writing on law. That chapter is, in turn, well complemented by the fourth chapter, written by Jun-Gen Oh, a Research Fellow of the Korea Legislation Research Institute, which in a similar vein examines how Korean administrative regulation has, over the same period, responded to such changes. While carefully noting how these reforms have fostered such core principles as regulation by law, transparency, and proportionality, Professor Oh underscores that more work remains to be done, particularly in continuing the advances of recent years designed to enable government to take account of the
The concluding chapters of the first part of Recent Transformations are, in effect, applications of the broader arguments of the first four chapters to the specific situations of mass media and criminal procedure. In the former chapter, Professor Kyu Ho Youm of the Walter Cronkite School of Journalism and Telecommunications at Arizona State University, manages in a mere 30 pages to provide a good introduction to issues of press freedom, privacy, and citizen access to governmental information, throughout evidencing a keen appreciation of just how crucial such concerns have proven to be elsewhere in sustaining democratic development. No less vital, the chapter, by Professor Kuk Cho of Dongkuk University, on criminal procedure is, unfortunately, a good deal more compact. As such, it tantalizingly suggests the beginnings of what he terms a criminal procedure revolution that has emerged in conjunction with and in support of the democratic changes of recent years, though it also left this reader longing for a more extended treatment of what are, in any society, difficult issues regarding the interplay of individual rights and collective interests.

The second part of Recent Transformations turns attention to the area of economic policy which, in its own way, has undergone no less substantial a transformation, particularly since the financial crisis of the late 1990s. The first four essays in this part concern various dimensions of corporate activity. The first chapter, entitled Controlling the Controlling Shareholders: Conduct, Structure and Market, reflects the sophisticated thinking of Seoul National University Professor Kon Sik Kim (formerly a very successful visiting professor at Harvard Law School) who has co-authored it with Dr. Seung Woek Jeong of the Korea Deposit Insurance Corporation. Although brief, the chapter delves into the complex challenges posed by the high concentration of ownership that marks the Korean economy to this day, examining the efficacy of amendments made in 1998 to those sections of the Korean Commercial Code concerned with controlling shareholders before suggesting improvements that might be made structurally or through the financial markets. The Kim-Jeong chapter is followed and is an impressive attempt to use Mark Galanter’s famed work on comparative litigation rates as a departure point for characterizing changes in citizen participation in civil litigation during the period of reform. The essay is, at least among literature in English on Korea, original and revealing as it discusses what appears to have been a massive surge in civil litigation and tries to suggest why this may have been so much more pronounced in Korea than has been the case in Japan, looking toward cultural differences and the rapid pace of democratization as key explanatory factors.

In its remaining half, Part II of Recent Transformations turns its attention to three other important areas of economic affairs—intellectual property, foreign trade and investment, and real estate. The essay by Professor Son-Guk Kim of Kyungnam University entitled Recent Trends in Korean Intellectual Property System manages in little more than 20 pages to provide an overview of the doctrinal structure that Korea has elaborated to address the various forms of intellectual property, though it would have been even more useful had he followed the lead of other authors and set this regime in its political context while also conveying some sense of the difficulties that continue to plague enforcement of it. In his essay on Current Legislative Changes in Korea’s Foreign Trade and Investment Sector, Professor Hun-Je Suh of Chung-Ang University does what Kim’s chapter may lack, artfully depicting the pertinent legal and administrative regimes in light of larger political, diplomatic, and economic considerations. The final paper in this part, by Professor Sang Yong Kim of Yonsei University, dissects recent developments in land law. His piece is interesting for the ways in which it illustrates the competition between the principle of freehold borrowed, via Japan, from Western (and particularly Roman) precedents (p. 292) and concerns about what he terms the strong social and public nature (p. 292) of land ownership in what remains one of the world’s more densely populated nations with great demands for space for industrial development and public enjoyment both.

The final Part of Recent Transformations considers what Professor Yoon labels the evolving relationship between law and social issues. The Part, to be sure, is less of a coherent whole than its two predecessors, including, as it does, essays on topics ranging from litigation rates to labor law to legal profession to abortion, but, by virtue of its very richness, it is one, I suspect, that Jim West would have found especially intriguing, given his breadth of interests and his firm conviction, notwithstanding his commitment to jurisprudence, that law needs to be understood in its social context. The Part’s first essay, by Jeong-Oh Kim of Yonsei University, sets the stage for what follows and is an impressive attempt to use Mark Galanter’s famous work on comparative litigation rates as a departure point for characterizing changes in citizen participation in civil litigation during the period of reform. The essay is, at least among literature in English on Korea, original and revealing as it discusses what appears to have been a massive surge in civil litigation and tries to suggest why this may have been so much more pronounced in Korea than has been the case in Japan, looking toward cultural differences and the rapid pace of democratization as key explanatory factors.
Korean political, social and economic life. when formal legal institutions are coming to play an ever more prominent role in sector) generally have played in broadening citizen access to the legal system at a time work (whether done individually or through Korea's emerging non-governmental nicely, as it considers the part that legal aid, public interest lawyering and pro bono Education of the Legal Profession in Korea. global in the course of which he draws on Jim West's still vibrant 1991 book training of law students for a world that, at least for Korea, promises to be increasingly Korean firms engaged in international practice, and questions of the education and associated pressures to expand the size of the profession as factors having the potential to mitigate such difficulties. The final two essays concerned with legal profession are something of a companion piece, depicting the ways in which some legal professionals have contributed to problems of the type discussed by Professor Han through, inter alia, the bribery of public officials, preferential treatment of former prosecutors and judges, and the use of brokers. Yoon sees growing democratization and associated pressures to expand the size of the profession as factors having the potential to mitigate such difficulties. The final two essays concerned with legal profession are something of a matched sociologically oriented pair, with Professor Jae-won Kim of Dong-A University exploring elite transnational legal practice and Dae-Kyu Yoon concentrating on legal aid and public interest lawyering. Professor Kim's piece ranges far, considering the behavior and impact on Korea of foreign lawyers, Korean firms engaged in international practice, and questions of the education and training of law students for a world that, at least for Korea, promises to be increasingly global in the course of which he draws on Jim West's still vibrant 1991 book Education of the Legal Profession in Korea. Professor Yoon's essay complements it nicely, as it considers the part that legal aid, public interest lawyering and pro bono work (whether done individually or through Korea's emerging non-governmental sector) generally have played in broadening citizen access to the legal system at a time when formal legal institutions are coming to play an ever more prominent role in Korean political, social and economic life.

The two remaining papers in Part III concern labor and abortion. The former essay, by the Minbyun affiliated labor lawyer Seon-soo Kim, provides an articulate survey of labor law and associated developments issues concerning labor, including trade union pluralism, unionization of the public workplace, unemployment, and dispute resolution. The latter, by Professor Yoon, like all his work, is intelligently and insightfully presented, although one also wishes that he had allowed himself more space to probe what he rightly notes at the outset is a complex and controversial topic from the perspective of law and society, and comparative law since it touches on many issues ranging from the human conscience to public policy, and from cultural heritage to the conflict of law and reality (p. 432).

As observed at the outset of this review, Jim West would have been greatly pleased by the many accomplishments that Recent Transformations in Korean Law and Society represents. At the same time, however, given how broad ranging Jim's learning was and how fierce his commitment to social justice, one suspects that he might also have had a few constructive criticisms to make of this landmark volume. Most significantly, I am fairly confident that Jim would have affectionately but firmly chided the volume's authors for their near total obliviousness to issues of particular salience to Korean women. To be sure, it could be argued that the general issues upon which Recent Transformations does focus have considerable consequence for women as well as for men and that the book, through its attention to abortion (and, much more fleetingly, same name marriage) even speaks of concerns particularly germane to women. Nonetheless, in the end, the book (whose 19 contributors include no women) offers precious little on the great challenges (such as gender-based discrimination) that the fuller participation of women in Korean life poses about the capacity of law to shape society, perhaps unwittingly reflecting just how hard it is to remodel the very type of old-style thinking that the book so often skewers. Beyond gender, Jim, one also imagines, might also have longed to have seen its many fine essays set in even deeper historical (i.e., pre 1980s) and broader comparative frameworks, convinced, as he was both that Korea's long, rich history had left a telling mark on contemporary approaches toward law and that a prime virtue of thoroughly going comparative work was the way in which it enables us better to discern ourselves. Finally, without trivializing either Jim or the hard working people who put this fine volume together, it is likely that Jim would have put it through a more careful proof-read, catching mis-spellings of the names of such well-known figures as Bruce Cumings and John Langbein.
In the end, though, *Recent Transformations in Korean Law and Society* is a fitting tribute to Jim West in its keen and probing analysis that both takes full account of Korea’s impressive legal accomplishments of the past decade and a half, while also pointing toward areas in which yet more might be done. It is a pity, indeed, that Jim did not live to see this splendid book and do a far more worthy review of it than I, someone very interested in but far from expert regarding Korea.