

Finally, Chapter 7 deals with cases surrounding the national defence framework of Korea. The court has largely abstained from decision-making in this area, whether in cases challenging the dispatch of troops to Iraq, relocation of a US base, or joint military exercise with the US, though the rationale for doing so has varied. Cases challenging the compulsory conscription system have also been unsuccessful. For example, the court has upheld the punishment of conscientious objectors, such as Jehovah's Witnesses. Even the majority opinion noted that this potentially imposed a sacrifice of freedom of conscience and demanded that the legislature consider the issue, to no avail.

The image of constitutional courts, at least from a Western perspective, is that of a rights-protective institution that serves as a check against abuses of power by the majority. This role has been considered to be coextensive with the idea of *constitutionalism* itself, in which Constitutions are made to define and limit government power and to protect the rights of the people. This study meticulously puts forth a different image of constitutional courts—one in which constitutionalism and the effort of the court to defend it could paradoxically result in “illiberal outcomes,” depending on the nature of the Constitution itself. It shows that the role of constitutional courts are confined by a nation's political history, and that its jurisprudence is governed by strategic and institutional concerns in this political context.

This reviewer notices an overlap between the Korean Constitutional Court's jurisprudence and the Japanese Supreme Court's jurisprudence in the area of national security. Both countries have a national defence framework that has its origins in the Cold War and their alliances with the US, and have been faced with constitutional challenges regarding the extent of military co-operation with the US. Courts in both countries have found reasons *not* to rule on those challenges, despite occasional dissent. How the courts in both countries have acted in such politically sensitive cases, and the factors that differentiate them, would provide the subject for an interesting comparative study in judicial politics.

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Marie Seong-Hak Kim, ed., *The Spirit of Korean Law: Korean Legal History in Context* (Leiden: Brill, 2015) pp 272. Hardcover: \$173.00.

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The book includes the work of a selective group of scholars and illuminates the origins of Korean law, from the Chosŏn Dynasty through Japanese occupation up to the modern periods of the Republic of Korea. The book encompasses a wide range of historical developments of Korean law, not only seeking the spirit and legacies of Korean law derived from China, but also finding the uniqueness of Korean law in practice.

The book impressively reflects academic values by examining extensive volumes of literature in Korean, Chinese, Japanese, and Western languages. It covers such themes as the impacts of Confucianism as rule, as well as colonial laws and customs codified in civil/penal codes and/or legal theories, practices, and jurisprudence.

This book is reminiscent of the themes developed in the 2002 book, *Internationalization of the Palace Wars* (Y. Dezalay & B.G. Garth, University of Chicago Press, 2002), which concerned the contests for epistemic and economic power in Latin America. These two books deal with the processes of the modernization of laws and the rule of law, the establishment of legal institutions in the Asian and Latin American continental countries, which share colonial domination and independence, capitalistic economic growth followed by dictatorship and democratization experiences in common.

The book encompasses a clearly external point of view on law in Korea, as captured by the use of ‘spirit’ in the title, comprehensively covered the relationship among neighbouring countries, which are China, Japan, and Taiwan.

Law in Korea is obviously conceived of as purely colonial in origin, while the authors discern clear differences in the Korean legal spirit, leaning on legal-historical methodologies even as colonial rules have affected the modern Korean legal system. The book ascertains in detail historical evidence with reference to the *Kyōngguk Taejōn* as the primal law code of Chosŏn that replaced Chinese Ming code with its own regulations.

The book is fully devoted to focusing on the importance of colonial legacies in Korea, the deployment of family capital across generations, and the state as a site of contestation among professionalism fields. It explains how Confucianism, colonialism, and constitutionalism have penetrated Korean legal histories by tracing the ‘influence of Confucianism as a global ideology in East Asia on Chosŏn law, the replacement of traditional codes on Confucian ideology by modern laws and rules imposed by colonialism plus the rise and inculcation of the notion of national law in reaction to colonial law, and the growing prevalence of transnational and transcultural constitutionalism in modern years’ (p. 3).

The story highlights the roles and relationships of particular agencies—individual/family, legal profession, administration—in seeking to advance law as a legitimating device, succeeding to various degrees in between inter-colonial and post-colonial contexts as well.

Chapters on the formation of the Constitution and the Civil Code in post-liberation Korea (pp. 177–201) and the new establishment of the Constitutional Court distinctively from the Supreme Court (pp. 202–32) highlight the role of the Constitutional Court, analyzing several leading cases that differentiate Korea from other Asian countries in particular. It attempts to grapple with indigenous traditions of law and politics through Constitutional Court case selection. Indeed, the authors refer to the colonial encounter as the ‘geneses of law’ in Asia (p. 2), implicitly decentring the legacies of robust pre-colonial Chinese and Japanese legal traditions.

As noted, however, ‘the birth of the Constitution does not mean the establishment of a political leadership with sufficient moral and practical capacity to deal with the intense conflicts in postliberation politics’ (p. 199). And Korea is still in the process of modern legalization, fighting for democracy. The book never forgets to cover the most recent trajectories of legal reform in Korea, leaving tiny room for some landmark cases on the judicialization of politics and the legal reform agenda for the next trajectories. It implicates a dynamic momentum of fighting for democracy in Korean society as shown by the

unprecedented and peaceful 'Candlelight Civil Movement,' followed by the Presidential Impeachment case of the Constitutional Court.

The book's contribution is interpretive, allowing us to understand law in Asia as part of global processes. It provides an important lens that helps make sense of distinct developments in particular times and places. Law, in Asia and elsewhere, is part of the contested construction of state power.

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