The Final Research Results Supported by the KFAS
International Scholar Exchange Fellowship Program, 2002 – 2003

ROLE OF THE CONSTITUTION AND THE LAW IN KOREA'S ECONOMIC DEVELOPMENT

(VAI TRO CUA LUAT VA HIEN PHAP
TRONG PHAT TRIEN KINH TE HAN QUOC)

Laureate Prof. **Nguyen Dang Dung** Ph.D.
Home Institution Vietnam National University

Host scholar Prof. **Lyou , Byung –Hwa** Ph.D.
Host Institution TLBU Transnational Law &Business University

August 20, 2003

CONTENTS

LIST OF TABLES

INTRODUCTION

Korea was one of the poorest countries in the world immediately after the Korean War. In just a period of two decades, it developed into the level of a "newly industrializing country" (NIC) in 1970. The Korean economy appeared to have reached the stage of self-sustaining growth in 1986. In that year, its annual inflation rate as measured by consumer price index stabilized at the 2-3 per cent level and its economic growth rate exceeded 12 per cent in 1986, 1987, 1988, recording the highest rate in the world. In 1995, Korea's per capita GDP is expected to exceed US$ 10,000. For more than 30 years, Korea enjoyed stunning economic growth. But when the economic crisis hit Korea at the end of 1997, the distorted structure of the Korean economy has been exposed.

For Asian countries, not respecting the principle of the rule of law is one reason of the economic crisis in 1997. This was one of the findings of institutional studies in Asian Economic Development (1960-95) sponsored by the Asian Development Bank. The study included six Asian countries: People's Republic of China (PRC), India, Japan, Republic of Korea, Malaysia, and Taiwan, China. The Oxford University Press published this comparative report. The following analysis on "The Role of Law and Legal Institutions in Asian Economic Development: The Case of Korea; Patterns of Change in the Legal System and Socio-Economy" is part of a collaborative research project entitled "The Role of Law and Legal Institutions in Asian Economic Development (1960-95)" that was sponsored by the Asian Development Bank.

But these studies were undertaken before the 1997 economic crisis. The objective of this research is to describe the legal and economic system including the constitution of South Korea and how these are implemented in the country. The methodology of this study relies on the documentary analysis of pertinent legal and economic policy-related materials including the constitution of South Korea and how these are implemented in Korean society.

This report has three chapters: Chapter I describes the relation the economy with the laws containing two topics: 1. The responsibility of the State in maintaining economic development based on the constitution and the laws; 2. The Law as important instruments for stable economic development.

Markets rest on a foundation of institutions. Like the air we breathe, some of the public goods these institutions provide are so basic to daily economic life as to go unnoticed. Only when these goods are absent, as in many developing countries today, do we see their importance for development. Without the rudiments of social order, underpinning these institutions, markets cannot function.

Chapter II is about the role of the constitution and the laws in economic development of South Korea containing two topics: the role of the law before and after the 1997 economic crisis in South Korea, and arguing the assertion that the lack of the rule of

law is one reason for the economic crisis in South Korea. "Even 50 years after democracy was first introduced in Korea, there is a lack of a law-abiding spirit and a persistent avoidance of legal procedures. The contradiction between our wish for democratic governance and our daily practices is a tremendous obstacle to our quest to become a modern democratic society " *(You, Joong- keun, 2001).*

The lack of the rule of law is a consequence of "crony capitalism", ridiculing this as an inevitable by-product of Asian values. Within the family, it is even acceptable to bend the rules and twist or obscure the facts. Koreans may have in principle accepted the tenets of accountability, fair competition, and transparency, but their overriding concern for "family members" has eclipsed their concern for their principles. Koreans have regarded it a blessing to have a large family and many sons. This may explain why the chaebols have been obsessed with expanding their empires, regardless of profitability, and why their subsidiaries support each other with cross-debt guarantees and unlawful intra-group transactions.

Chapter III deals with lesson for developing countries – the rule of law is the first lesson for Asian countries. The rule of law is the foundation of a market economy. Whether competition improves or destroys welfare depends on whether the means of competition is the improvement of one's own performance or of sabotaging and cheating one's competitors. The rule of law enables efficient market competition by prohibiting the latter. No matter how fierce competition may be, a market economy must be a place where the rule of law reins, not the law of the jungle.

A rule-based government is not enough. State capability will also be improved by institutional arrangements that foster partnerships with and provide competitive pressures from, actors both outside and within the state. Partnerships with and participation in state activities by external stakeholders – businesses and civil society – can build credibility and consensus and supplement low state capability. Partnerships within the state can build commitment and loyalty on the part of government workers and reduce the costs of achieving shared goals.

Enabling the state and law to do more good for the economy and society means building confidence; people must have trust in the basic rules governing society and in the public authority that underpins them. Introducing new laws and institutions alone is not enough. Reforms can succeed only when institutional changes are accompanied by changes in people's attitudes. This is the real challenge.

CHAPTER I
Law in relation to Economic Development

1. State responsibility for economic development

Markets and government are complementary: the state is essential for putting in place the appropriate institutional foundations for markets. And government's credibility-predictability of its rules and policies and the consistency with which they are applied – can be as important for attracting private investments as contained in those rules and policies.

Economics and law as social phenomena are related in content and form; but both are subject to change – the one continuously, the other and from time to time. In reality law and economics are everywhere complementary and mutually determinative… Economics comprises both institutions and intellectual movements. It is somewhat surprising that, so conspicuous a truth, the interaction of economics and law waited for so long to be recognized – recognition, which is by no means universal. Some of those who question it maintain the independence and self-sufficiency of law, while others maintain the predominance of economics (*Berolzheimer Fritz, 1912).*

Throughout history, notions of the law's role have shifted dramatically. For must of this century people expected the law to do more – in some cases a great deal more. But during the past fifteen years the pendulum has been swinging again, forcing the world to look at law from a range of conflicting perspectives. The end of the Cold War and the collapse of command-and-control economies, the **economic crisis**, the dramatic success of some East Asian countries in accelerating economic growth and reducing poverty, and the crisis of failed law's in parts of Africa and Asia – all of these have challenged existing conceptions of the law's place in the world and its potential contribution to human welfare.

Governments also have to respond to the rapid diffusion of technology, growing demographic pressures, increased environmental concerns, greater global integration of markets, and a shift to more democratic forms of government. And amid all these pressures remain the formidable – and persistent – challenges of reducing poverty and fostering sustainable development.

Five fundamental tasks lie at the core of every government's mission, without which sustainable, shared, poverty-reducing development is impossible:

- *Establishing a foundation of law*
- Maintaining a nondistortionary policy environment including macroeconomic stability
- Investing in basic social services and infrastructure
- Protecting the vulnerable
- Protecting the environment *(World Bank, 1997: 4)*

The economic rationale for state intervention is that market failure and the concern for equity provide the economic rationale for government intervention. But there is no guarantee that any such intervention will benefit society. Government failure may be as common as market failure. The challenge is to see that the political process and institutional structures get the incentives right so that their interventions actually improve social welfare.

Market failure refers to the set of conditions under which a market economy fails to allocate resources efficiently. There are many sources of market failure and many degrees of failure. The implications for the role of the laws and the form of public intervention can be quite different in each case.

The importance of these fundamentals for development has long been widely accepted. New insights are emerging on the appropriate mix of market and government activities for achieving them. It is now much clearer that markets and governments are complementary, that government action can be vital in laying the institutional foundations for markets. Also much clearer is that faith in governments' ability to sustain good policies can be as important for attracting private investment as the policies themselves.

Establishing a foundation of law

Markets rest on a foundation of institutions. Like the air we breathe, some of the public goods these institutions provide are so basic to daily economic life as to go unnoticed. Only when these goods are absent, as in many developing countries today, do we see their importance for development. Without the rudiments of social order, underpinned by institutions, markets cannot function *(World Bank, 1997: 41).*

Markets cannot develop without effective property rights. And property rights are only effective when three conditions are fulfilled. The first is protection from theft, violence, and other acts of predation. The second is protection from arbitrary government actions – ranging from unpredictable, ad hoc regulations and taxes to outright corruption – that disrupt business activity. These two are the most important. The third condition is a reasonably fair and predictable judiciary. This is a tall order indeed for countries in the earliest stages of development, yet firms in countries surveyed considered it a major problem.

Many developing countries lack the basic institutional foundations for market development. High levels of crime and personal violence and unpredictable judiciary combine to produce, what is known as the "**lawlessness syndrome**". Weak and arbitrary state institutions often compound with unpredictable, inconsistent behavior. Far from assisting the growth of markets, such actions squander the state's credibility and hurt market development.

To make development stable and sustainable, the state has to keep its eye on the social fundamentals. **Lawlessness** is often related to a sense of marginalization: indeed, breaking the law can seem the only way for the marginalized to get their voices heard. Public policies can ensure that growth is shared and that it contributes to reducing poverty

and inequality, but only if governments put the social fundamentals high on their list of priorities. This is subject to this triple curse on markets: corruption, crime, and an unpredictable judiciary. The high ranking accorded by CIS firms of the two other elements of the **lawlessness syndrome** – crime, and judicial unpredictability – partly reflects the unique institutional vacuum created by the rejection of central planning in the transition economies. A community's descent into lawlessness can evoke a sense of helplessness among the law-abiding *(World Bank, 1997: 42).*

Containing **lawlessness** is necessary to secure property rights, but it may not be sufficient. Information and coordination problems can also impede development by undermining markets and property rights, a problem often found in low-income countries.

Information problems occur because people and firms inevitably have limited information and understanding, or because the rules of the game are unclear. The scope of property rights – including the right to use an asset, to permit or exclude its use from others, to collect the income generated by the asset, and to sell or otherwise dispose of it – may not be well defined. People and firms may lack knowledge of profit opportunities or of the probity of potential business partners. The costs of seeking out such information decline as markets thicken and their supporting institutions develop, making economies more information intensive.

A well-functioning judiciary is an important asset, which developing countries would do well to build up. Even less-than-perfect judicial systems that are cumbersome and costly can help sustain credibility. What matters are not so much that judicial decision making be fast but that it be fair and predictable. And for that to happen, judges must be reasonably competent, the judicial system must keep judges from behaving arbitrarily, and legislatures and executives need to respect the independence and enforcement capability of judiciaries. Without a well-developed judicial system, firms and citizens tend to find other ways of monitoring contracts and enforcing disputes.

Taken together, the evidence presented here offers reasons for hope – and a major challenge. The hope comes from the fact that simple institutions can do much to facilitate market- based economic development. The challenge comes from the recognition that so many countries presently lack even the most basic underpinnings of markets. The first priority in such economies must be to lay the initial building blocks of lawfulness: protection of life and property from criminal acts, restraints on arbitrary action by government officials, and a judicial system that is fair and predictable.

Once a foundation of **lawfulness** is in sight, the focus can turn to the ways in which specific parts of the legal system can buttress property rights. The legal terrain is vast, ranging from land titling and the collateralization of movable property to laws governing securities markets, the protection of intellectual property, and competition law.

Skillful regulation can help societies influence market outcomes to achieve public purposes. It can also protect consumers and workers from the effects of information asymmetries: the fact that banks, for example, know much more about the quality of their portfolios than depositors, or the fact that business mangers may know more about health

and safety risks in production or consumption than do workers or consumers. Regulation can do also make markets work more efficiently by fostering competition and innovation and preventing the abuse of monopoly power. And more broadly, it can help win public acceptance of the fairness and legitimacy of market outcomes.

With economic liberalization, many areas of regulation have been recognized as counterproductive, and wisely abandoned. Yet in some areas the traditional rationales for regulation remain, and market liberalization have themselves brought new regulatory issues to the fore. The challenge, illustrated here with reference to three important regulatory domains – financial, environment, and the utilities.

Financial regulation

Our understanding of financial sector development has changed dramatically over the past decade. We now know that the depth of a country's financial sector is a powerful predictor and driver of development. Just as important, we know that the control-oriented regulation widely adopted in the early postwar years – directing subsidized credit to favored activities at very negative real interest rates, limiting the sectoral and geographic diversification of financial intermediaries – may often work against financial deepening. The near-universal response has been to move away from controls over the structure for financial markets and their allocation of finance, and embark on a process of liberalization.

Yet liberalization in the financial sector is not the same as deregulation. The case for regulating banking is as compelling as ever. Only the purpose has changed, from channeling credit in preferred directions to safeguarding the health of the financial system.

The banking system needs effective prudential controls, because banks are different. Without appropriate regulation, outsiders will be less able to judge for themselves a bank's financial health than that of a non-financial company. First, because outstanding loans are banks' primary assets. So long as banks receive interest on their loans, outside observers may well judge their portfolios to be healthy, even if (unknown to the observers) the borrowers lack the resources to repay the principal or, worse, are effectively bankrupt and are only keeping up the interest payments by taking out new loans. Second, because unlike many companies, banks can be hopelessly insolvent without running into a liquidity crisis. So long as insolvent bankers can disguise their condition to outsiders, they can continue to attract deposits – and even aggressively pursue them by offering favorable interest rates. Failing banks often engage in ever-more-reckless gambles to salvage their position, throwing good deposits after bad, and driving up their losses before the inevitable crash. And third, especially because a rising share of their portfolios may now be taken up with derivatives and other new financial instruments that are hard to monitor.

This information asymmetry can be destabilizing. Depositors, fearing for the safety of their funds, might rush to withdraw them when they begin to hear stories about troubled banks. Bank failures tend to be contagious. When one insolvent bank goes under, nervous depositors may start runs on others. As liquidity drains out of the system, even solvent banks may be forced to close. And a system-wide run can have severe macroeconomic consequences. For all these reasons – the difficulties in assessing a banks financial health,

the adverse spill-over and distributional effects of bank failures – banks' behavior needs to be tempered by regulatory and other public actions.

Regulation of Environment

In this new environment, the degree of natural monopoly has been drastically reduced (although perhaps not eliminated entirely). But regulation is still crucial, for two reasons. First, it can facilitate competition. Consider the problem of interconnection. Second reason for improved regulation is that competition may not suffice to insure private investors against "regulatory risk": the danger that decisions by regulator or other public agencies will impose new and costly demands some time down the line. A utility's assets are unique to its business, and non-redeployable in other uses. This means that utilities will be wiling to operate as long as they can recover their working costs. That, in turn, makes them peculiarly venerable to administrative expropriation – as when, for example, regulators set prices below long-run average cost. Consequently, countries without a track record of respecting property rights may fail to attract private investors into utilities.

Economists have long recognized pollution to be a negative externality. Without some form of regulatory protection, the environment can become an innocent victim of bad business practices. Buyers seek goods that are attractively priced, and producers seek ways of providing these goods at lower cost to them than their competitors can provide them.

Table 1: The variety of regulatory experience

	Utilities regulation	**Environment regulation**	**Financial regulation**
Institution-intensive options	Price-cap regulation, with the regulator setting the price adjustment factor Regulation by independent commission, with public hearings	Precise rules (command - and-control or, preferably, incentive based) established by the regulatory agency or legislature	Detailed regulation monitored by competent, impartial supervisory authorities (possibly including some deposit insurance)
Institution-light options	Regulation based on simple rules, embodied in transaction-specific legal agreements and enforceable domestically or though an international mechanism	Bottom-up regulatory approaches: public information, local initiatives to strengthens citizens' voice, and initiatives by local authorities	Incentives structured so that bankers and depositors have a substantial stake in maintaining bank solvency

Source: World Bank, 1997: 67

Utilities Regulation

For utilities regulation has taken on renewed prominence. Here, however, the reason is revolutionary technological and organizational change, not just conscious shifts in policy. The argument for utility regulation used to be straightforward. Utilities were

natural monopolies. Consequently, unless they were regulated, private utility operators would act as monopolies, restricting output and raising prices, with harmful consequences for economy-wide efficiency and income distribution. Today, changes in technology have created new scope for competition, but would-be competitors may need special reassurance from regulators before entering.

2. Laws are important instruments for stable economic development

Economic development is very difficult, but stable economic development is even more than difficult. Restraining the potential use and abuse of state power is a challenge for any country. Harder still is doing it without depriving state agencies of the flexibility they need to do their job. The misuse of state power creates serious problems of credibility, whose effects linger long after the event. But arbitrary and capricious state action undermines credibility more. It undermines the rule of law itself, by weakening the fosters conditions that encourage state has set in place. And it fosters conditions that encourage state officials to place themselves above the law and tempt the rest of society to do the same.

Sustainable development generally calls for formal mechanisms of restraint that hold the state and its officials accountable for their actions. To be enduring and credible, these mechanisms must be anchored in core state institutions; if these are too weak, external mechanisms such as international adjudication may be substituted temporarily. The two principal formal mechanisms of restraint are a strong, separation of power and the independent judiciary.

Separation of power

In framing a good government to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself *(James Madison, 1788)***.**

Power can be allocated horizontally among the judiciary, the legislature, and the executive, and vertically between central and local authorities. The patterns of a country's political party organization – which can range from a small number of highly disciplined parties to a large number of parties whose members loosely abide to a party line, and that can govern only by forming multiparty coalitions – also influence the extent to which political power is concentrated or diffused.

The broader the separation of power, the greater will be the number of veto points to be navigated to change any rule-based commitments. Thus the separation of powers increases confidence in the stability of rules. Multiple veto points can be a double-edged sword, however: they make it just as hard to change harmful rules as to change the beneficial ones.

Many developing countries, including some with formal separation of powers, have few effective checks and balances on the actions of political leaders. In some countries legislative oversight is weak because of poor capacity and inadequate information. In

others, the executive dominates a compliant legislature. But like development of a well-functioning judicial system, the formal elaboration of constitutional checks and balances or their more effective institutionalization is a gradual process.

Judicial independence

To prosper, economies need institutional arrangements to resolve, disputes among firms, citizens, and governments; to clarify ambiguities in law and regulations; and to enforce compliance. Societies have devised a broad array of formal and informal mechanisms to do this, but none more important than the formal judiciary. It alone has access to the coercive authority of the state to enforce judgments. And it alone has formal authority to rule on the legality of actions by the legislative and the executive branches. This special relation to the rest of the state puts the judiciary in a unique position to support sustainable development, by holding the other two branches accountable for the overall business and political environment. Yet judiciaries can play this role only when three core conditions are met: independence, the power to enforce rulings, and efficient organization.

Independence from the government is the most important of these. Whatever the precise character of judicial relations with the legislature and the executive, all industrial countries – and many developing countries – rely on the judiciary to hold the executive accountable under the law and to interpret and enforce the terms of the constitution.

Judicial independence has been repeatedly compromised in some countries, and in no country has the judiciary been immune from political efforts to override its decisions. Legislatures and executives have used a variety of gambits to rein in their judiciaries.

The effectiveness of the judiciary also depends on its decisions being enforced. In practice that means that other branches of the government must consent to provide the resources needed for enforcement, including personnel authorized by law to serve court documents, to seize and dispose of property, and to turn the proceeds over to the winning party.

In countries where judicial institutions are weak, it may be at least important to demonstrate to citizens and firms the potential benefits of a well-functioning judiciary, and to win support for good laws impartial enforcement, as it is to proceed with wholly technocratic programs of judicial reform.

The third component of judicial effectiveness is organizational efficiency, which is needed to avoid long delays in clearing cases. Judicial systems can strengthen credibility in countries as long as their decisions are perceived to be fair. Any state beginning from a weak institutional base should consider building this aspect of judicial performance its first priority.

Pressures for reform are on the rise everywhere. Private entrepreneurs and firms want the credibility of state actions anchored by a well-functioning system of property rights. Citizens are demanding more responsive and effective delivery of public services and greater probity in the use of public resources. At the same time, globalization is

increasing demands for a more agile state, one that can respond quickly to changing circumstances. These pressures have magnified the state's dilemma: how to check arbitrary decision-making without building rigidities that inhibit innovation and change. The fundamental challenge is to devise institutional arrangements that sustain a workable balance between flexibility and restraint. Countries with strong institutions or track records of following through on commitments may have room to respond flexibly (even at the cost of some corruption), but countries with dysfunctional and arbitrary governments may not.

States in many developing countries have demonstrated a clear imbalance between flexibility and restraint. They have generally not been credible, accountable, responsive, or agile. In several countries, the capricious exercise of state power coupled with rampant and unpredictable corruption has undermined development. States with too much flexibility and not enough restraint will find that their actions are not viewed as credible, and investment and growth will suffer. These countries need to strengthen the formal instruments of restraint – judicial independence, effective separation of powers – to enhance the credibility and accountability of the state.

Instruments of restraint are a vital foundation for sustainable development. But excessive restraint can lead to paralysis. Instruments for restraining government need to be complemented by institutional arrangements that build in flexibility for the executive branch in formulating and implementing policies and adapting to new information's and changing circumstances.

Over the long term, sustainable institutions have been build on formal checks and balances, anchored around core state institutions such as an independent judiciary and the separation of power. There are essential for ensuring that neither state officials nor anyone in society is above the law.

The flip side of partnership is competitive pressure – from markets and civil society and within the state itself. Such pressure can improve incentives for performance and check the abuse of the state's monopoly in policymaking and service delivery. Similarly, competitive or merit-based recruitment and promotion are crucial for building a capable bureaucracy.

3. Law is the primary instrument in attacking corruption

Corruption is harmful to economic development. Attacking corruption is, therefore, very important for developing countries.

Yet these actions will not be enough to stop the rot in countries where endemic and entrenched corruption has undermined key functions of the state. Strengthening formal instruments is only one element of a multi-pronged effort at controlling corruption. Reforming the service (for instance, by raising pay and restraining political patronage in recruitment and promotion), reducing opportunities for officials to act corruptly (for instance, by increasing competition and reducing officials' discretionary authority). Strengthening mechanisms for monitoring and punishment – for the people who pay bribes as those who accept them – will require vigorous enforcement of criminal law. But it will

also require oversight by formal institutions such as statutory boards and by ordinary citizens (through voice and participation). These efforts can help not only in controlling corruption but also in improving many other functions of the state, such as policymaking and service delivery.

Corruption cannot be effectively attacked in isolation from other problems. It is a symptom of problems at the intersection of the public and the private sectors and needs to be combated through a multi-pronged strategy. There are laws providing for a rule-based bureaucracy with a pay structure that rewards civil servants for honest efforts, a merit-based recruitment and promotion system to shield the civil service from political patronage, and credible financial controls to prevent the arbitrary use of public resources. Here we focus on the remaining two parts of the strategy. The first is to reduce the opportunities for officials to act corruptly by cutting back on their discretionary authority. The second aims at enhancing accountability by strengthening mechanisms of monitoring and punishment – using not only criminal law but also oversight by formal institutions and ordinary citizens.

Incentives for corrupt behavior arise whenever public officials have discretion and little accountability. Politicians, bureaucrats, and judges control access to valuable benefits and can impose costs on private citizens and businesses. Public officials may be tempted to use their positions for private gain by accepting bribes; since private individuals may be willing to make illegal payments to get what they want from government. Thus, a necessary condition is that public officials should have rewards and penalties disposed by norms of laws.

Some corruptions stem from opportunities generated by the policy environment, at the bottom or the top of the hierarchy. Payoffs are frequent to lower-level officials charged with collecting tariffs, providing police protection, issuing permits, and the like. When corruption is endemic, these officials may create additional red tape and delays to induce even higher payments. Of course, corruption also occurs at the highest levels of government, in the awarding of major contracts, privatization, the allocation of import quotas, and the regulation of natural monopolies.

The probability of being caught and punished (for the person paying the bribe and for the official receiving it) also affects the level of corruption. Economic analysis of the law suggests that individuals weigh the expected benefits of breaking the law against the expected costs (the probability of being caught and punished multiplied by level of punishment). Corruption may be high in a country where the government system does little to deter bribes. Lawbreakers may believe that there is little chance of being caught or, if caught, of having to pay the penalty, since they believe that the system of justice itself can be corrupted. Corruption can even persist in countries with substantial press freedom and public resentment against it, if there is little hope of independent judicial resolution of important cases.

Corruption may thrive if the consequences of being caught and disciplined are low relative to the benefits. Officials frequently control the allocation of benefits and costs whose value far exceeds their own salaries. Corruption becomes especially likely if the wages of public service do not reflect the comparable private wage. Where civil service

wages are very low, officials may try to eke out a middle-class standard of living by supplementing their pay with illegal payoffs.

Particularly useful toward that end are instilling a rule-based culture in public institutions, and curbing patronage in the civil service. The formal checks and balances that need to be built into the structure of government, include judicial independence and the separation of power. These promote credibility and accountability. But formal instruments of restraint are seldom enough, particularly in countries where corruption has become well-entrenched. These states are seeking to make a dent in fighting corruption, by examining its root causes. One important lesson is that anti-corruption efforts must proceed along many fronts, to reduce the opportunities for and the payoffs from corruption while raising the price and the probability of being caught.

Corruption cannot be effectively attacked in isolation from other problems. One part of the strategy focuses on a major theme of that, creating a rule-based bureaucracy with a pay structure that rewards civil servants for honest efforts, a merit-based recruitment and promotion system to shield the civil service from political patronage, and credible financial controls to prevent the arbitrary use of public resources. Here we focus on the remaining two parts of the strategy. The first is to reduce the opportunities for officials to act corruptly, by cutting back on their discretionary authority. The second aims at enhancing accountability by strengthening mechanisms of monitoring and punishment – using not only criminal law but also oversight by formal institutions and ordinary citizens.

In general, any reform that increases the competitiveness of the economy will reduce incentives for corrupt behavior. Thus policies that lower controls on foreign trade, remove entry barriers to private industry, and privatize state firms in a way that ensures competition will all support the first. If the state has no authority to restrict exports or to license businesses, there will be no opportunities to pay bribes in those areas. If a subsidy program is eliminated, any bribes that accompanied it will disappear as well. If price controls are lifted, market prices will reflect scarcity values, not the payment of bribes.

Needless to say, reducing official discretion does not mean eliminating regulatory and spending programs with strong justifications. Such programs must be reformed, not eliminated. Abolishing taxes is not a sensible way to root out corruption among tax collectors; a corrupt police force cannot simply be closed down. Several measures have proved effective in reducing official discretion in ongoing program:

- Clarify and streamline laws in ways that reduce official discretion
- Contract for services with a private company, possibly a foreign firms with no close ties to the country
- Make rules more transparent
- Introduce market-based schemes that limit the discretion of regulators
- Adopt administrative reforms that introduce competitive pressures into government

Independent watchdog institutions that are part of the government structure can also curb corruption. Watchdog organizations should focus not only on those who receive bribes, but also on those who pay them. It takes two to tango, and penalties should be

equally severe on both sides – usually a multiple of the bribes received or paid. Penalties for bribe payers should also include the prospect of being barred from contracting with the government for a period of year.

Citizens' groups can also be an important check on the arbitrary abuse of government power – if people can organize, and if they can find out what is happening. Governments should publish budgets, revenue collection data, statutes and rules, and the proceedings of legislative bodies. Such laws enable citizens to obtain government information without having to show how their lives are affected by it.

Information is of little value, however, without mechanisms for using the knowledge gained to influence government behavior:

- In democracies, citizens can vote officials out of office if they believe them to be corrupt. This gives politicians and incentive to stay honest and work for the interests of their constituents.
- If courts are independent and citizens can sue to force the government to comply with the law, this opens another route to control government malfeasance.
- Public exposure of corruption through the media is another option. Even undemocratic rulers are likely to be sensitive to public options, if only because they wish to avoid being overthrown. A press can be vital checks on abuses of power, especially in countries that lack other means of constraining politicians and bureaucrats *(World Bank, 1997: 100).*

An effective state can contribute powerfully to sustainable development and the reduction of poverty. But there is no guarantee that state intervention will benefit society. The state's monopoly on coercion, which gives it the power to intervene effectively in economic activity, also gives it the power to intervene arbitrarily. This power, coupled with access to information not available to the general public, creates opportunities for public officials to promote their own interest. The possibilities for rent seeking and corruption are considerable. Countries by law must therefore work to establish and nurture mechanisms that give state agencies and government's officials the flexibility and the incentive to act for the common good, while at the same time restraining arbitrary and corrupt behavior in dealings with businesses and citizens.

In summary, economics and the law are related in content and form; but both are subject to change – the one continuously, the other and from time to time. The State is responsible for maintaining stability and economic development by the constitution and the laws of the land. Law is an important instrument for stability and economic development.

CHAPTER II
Role of the Constitution and the Law in Korea's Economic Development

1. Role of the Law before the 1997 economic crisis

After the Korean War came to an end in 1953, Korea was left with a void in terms of capital necessary for the achievement of economic recovery and development. Accordingly, legislation was enacted in an effort to acquire these badly needed financial resources from international sources, in order to build and develop basic and strategic industrial sectors. These financial resources took the form of equity investments, public and commercial loans, and technology licensing, and were kept under strict governmental management. Strict implementation of the laws with respect to foreign investment over the past three decades has been viewed as one of the factors contributing to the economic success of Korea.

The role of the law before the 1997 **economic crisis** may be distinguished into two periods: Korea's Legal System in the early 1960s and the period covering 1960 – 1997. The first period was the enactment of fundamental formal laws, and the second period was when these laws gradually increased.

1.1. Korea's Legal System in the Early 1960s

The Constitution of 1948 had certain implications regarding the new republic's economic system: first, it should fundamentally be a free and democratic system; second, social welfare should be maximized and the state can intervene, if necessary; third, agricultural land should in principle be owned by farmers and the agricultural land reform is called for; fourth, state ownership or public management of enterprises is to be expanded; fifth, labor rights are to be protected and workers should be allowed their share of profits. In addition to these constitutional principles, many laws were enacted to lay down the institutional groundwork of a market economy; they included laws to establish the central bank and state-run enterprises, tax laws, capital market laws, etc. Most of these laws were in general either modeled closely after their Japanese counterparts or copied from modern US laws that were not in harmony with the Korean legal, economic and cultural systems. Even if the laws did exist, law enforcement agencies did not apply the laws effectively.

The l950s did not witness rapid economic growth. Nor are there well-established legal and institutional arrangements necessary for the government to pursue active development strategy. The legal infrastructure was not yet systemized. To be sure, Korea had its Constitutional laws and individual laws, such as the basic intellectual property laws and labor laws that were in existence in the 1950s, but these laws were ineffective and virtually meaningless. Even the legal institutions necessary to enforce the laws were not formally set up at that time. Under these circumstances, it was inconceivable to derive an industrial policy that would prepare for the future restructuring of industries. In that sense,

the law was virtually irrelevant to the economy, and vice versa. Moreover, it seems difficult to relate legal change to economic change, either positively or negatively, as there was no significant and distinguishable move for legal change during this period.

While the government tried to foster the development of business firms and industries, efforts were rather indirect and government intervention in the economy was kept at a minimum level. The basic policy stance was to minimize the intervention of the government and pursue a laissez-faire type of free market economy. But the Korean economy in the 1950s was far from being a market economy. After the devastating war, there were neither consumers, producers, nor any markets. The ability to manage the economy and to run the industries and business firms was badly needed, and the government was considered the most appropriate means for meeting these demands. But the government failed to provide legal apparatus to aggressively correct market failures.

There is little doubt that both the distribution of land via the land reform program in 1947 and the reform of the educational system enabled more rapid growth than would otherwise have been possible, but it took other policy changes to seize the potential offered by these reforms. The disposal of reverted properties combined with land reform resulted in the collapse of the landlord class and the emergence of new commercial or industrial capital. The establishment of a new government following the military coup in 1960 was accompanied by a shift in policy with the government placing top priority on achieving economic growth and establishing a leading governmental role in economic activity. The strong commitment of the government to economic development, the nationalization of several industries, the control of all the financial and fiscal policy tools, and short and long-term plans all helped the government direct economic activities.

The modern Korea legal system was established on the basis of the German and Japanese models by virtue of the initial imposition of Japanese colonial power at the turn of the century. Even after liberation from Japanese rule, this Civil Law system continued to apply, and by the early 1960s, the six major fundamental codes of Korea were all in existence: the Constitution (1948), the Criminal Code (1953), the Code of Civil Procedure, and Code of Criminal Procedure (1954), the Civil Code (1958), the Commercial Code (1960. Other forms of written law included the statutes of the National Assembly, Presidential Decrees, Ministerial Ordinances and regulations issued by government ministries, certain rules made by the National Assembly and the Supreme Court, and treaties. Like other East-Asian countries, however, the Korean legal system in 1960 was not free from **Confucian** influence. This could be seen in the laws governing domestic relations and inheritance, which reflected **Confucian** values in many respects.

While it was generally assumed that the code was the exclusive basis for judicial decisions, the Civil Code provided that in the absence of written laws concerning civil matters, a judge was to decide the issue in accordance with customary law; in the absence of customary law, the matter was to be decided taking into account Jori *(Civil Code of Korea, Article 1).*

First period was fundamental formal laws. Economy in has not growth and law was virtually irrelevant to the economy. The above review of the Korean laws and legal system

as they stood in the early 1960s leads one to the conclusion that although a set of fundamental formal laws were in place at that time, the lack of enforcement institutions and coherent government policies with respect to the use of these rules means that it is difficult to classify the nature of the laws. Thus, it appears that despite the purported efforts of the government to democratize the Korean society of the early 1960s, many rights that were guaranteed in principle were not given effect in practice, and in general the government instead used law as a tool to implement its own political agenda.

1.2. Korea's Legal System in the period 1960 – 1997

Since the inauguration of President Park Chung Hee, intense legislative activities took place together with the making of new and ambitious government-driven economic plans. In the early 1960s, basic substantive laws were enacted or rewritten in the form of amendments to old laws. The Civil Code-including the laws of contract, property, securities, tort and domestic relations-was enacted in 1961. Until then, Korea had borrowed the Japanese Civil Code. A number of major **economic laws** were enacted or substantially amended so as to enable effective enforcement and to reflect the Korea-specific legal and economic environment. Major labor laws were substantially amended between 1961 and 1963, and the law to induce foreign investment was first enacted in 1960.

In the early 1960s, the government of former President Park initiated the five-year Economic Development Plan. In addition to enacting the Foreign Capital Inducement Act in order to import capital goads from abroad, the same government in the mid-1960s enacted several laws to promote specific key industries, most of which were export-oriented heavy or chemical industries. The government itself selected such industries, which included, but were not limited to, mechanical engineering, shipbuilding, electronic engineering, steel, and oil and chemical industries. Subsequently, in the late 1960s, several laws were consecutively enacted in an effort to promote specific industries.

The main objectives of Korea’s FFYP (1962-6) were to break the vicious circle of poverty and to build a foundation for self-sustaining growth. These were closely related to the first of the above functions of government, namely the establishment of an economic and legal framework.

The function of establishing an economic and legal framework transcends economics and may be the most important task for poorest countries just starting their economic development. The legal framework determines the scope of property rights, regulations governing business activities, and the nature of contracts. These define the nature and scope of the economic system and the economic environment in general.

The laws and legal institutions established by the 1960s were instrumental in achieving economic success. In the early half of the 1960s, many state-allocative and fairly discretionary laws were enacted which brought about fundamental policy changes, geared largely to supporting the outer-oriented growth strategy. These laws were applied in a non-discriminating manner without bias towards any specific group of industries or firms. Significant reforms in trade and exchange policy led to rapid growth, which continued uninterrupted until the early 1970s, particularly in the area of labor-intensive exports.

Many laws were enacted to institutionalize and implement industrial policies to achieve rapid growth of exports and industries. It may therefore be said that legal changes induced economic growth during the 1960s and beyond, in light of the role the outer-oriented trade strategy played in facilitating economic growth.

The relationship between the state and the market saw a new swing in the 1960s. As liberalism and inactivity of the government in the 1950s proved to be ineffective, the new administration first tried to establish a leading role of the government in the economy, which signaled the beginning of a "government-the leader, business-the follower" relationship in Korea.

As the situation persisted for two decades, the dominant position of the government as the problem-solver became even stronger. State-owned and managed enterprises are an extreme form of government regulation. The rapid expansion of public enterprises in Korea in the 1960s and 1970s could be understood in the context of prevailing belief of an omnipotent government in those years.

Nationalization of banks was carried to control the supply of credit, since it was essential to the government's management of the economy. Once most industries including banks were nationalized, they contributed to consolidating the economic power of the government through the direct ownership and control of the industries. In addition to the banking sector, such social infrastructure as electricity, telecommunication, roads, railways, port facilities and such key industries as fertilizers, oil refineries, and steel were all owned and controlled by the government, which consolidated the economic power of the government vis-à-vis the private sector in the 1960s and 1970s.

Before 1960 Korea was civil law country. Recently, there has also been evidence of the impact of the laws of non-civil law countries. Even in the areas of private civil law, such as product liability, Korean laws and judicial decisions have started to adopt American legal theories or principles. Indeed, the Korean government has enacted several special laws modeled after their counterparts in common law countries. The strong influence of common law can also be found in legislative activities in the area of economic regulation. The corporate law in general also reflects the impact of American law in many aspects, particularly in respect of corporate governance. Korean competition law also had its origins in the American model of antitrust law. Several Common Law types of legislative models, such as the concepts of class actions and strict liability rules.

Korea is a member of the World Trade Organization (WTO). The WTO Agreement requires member countries to design and enforce many types of trade-related economic laws and regulations so as to comply with obligations under the Agreement. Accordingly, substantial economic laws and regulations of Korea were revised or enacted for that purpose. In this sense, the question of whether the Korean legal system is based on the Civil Law or Common Law structure becomes somewhat meaningless, as far as trade-related economic laws are concerned.

During the past several decades, many substantive economic laws have developed along with dynamic changes in the Korean economy. Certain economic laws were closely

related to economic development; other laws have remained intact or changed independently of economic development. Considering the purpose of this project, it would seem appropriate to analyze the major changes in substantive economic laws, which were closely related with economic development over the last several decades. In some cases, the enactment of these economic laws has resulted in the acceleration of the speed of economic development. In other cases, changes in the economic conditions of Korea has resulted in a series of legislative activities. The following seven economic laws which fall under this category have been selected in order to analyze the relationship between their changes over the last several decades vis-a-vis the economic development of Korea. These seven laws are:

(i) intellectual property law (laws governing property rights)
(ii) competition law (laws governing private economic activity)
(iii) administrative law (laws to control the government)
(iv) law relating to foreign investment (laws governing access to markets)
(v) laws relating to industrial development (sectoral laws)
(vi) corporate law (laws concerning the organization of firms).
(vii) labor law (laws governing the factors of production)

In general, changes in the major economic laws have been closely related to changes in the economy of Korea *(Shin Kwang Shik and Chang Seung Wha, 1997:12).* The past decade has seen much progress in the area of Intellectual Property Rights. In addition to US pressure, this is due in part to the changing global economic environment which has urged Korea to provide real protection for IPR in order to maintain its competitiveness in inducing high-technology to its shores.

In 1960, no competition law was in existence in Korea, which was designed to promote free competition in marketplace. The first legislative proposal for competition law was made by the government in 1963, although persistent resistance from the business community eventually prevented it from reaching the floor of the legislature. Also at that time, economic growth was given priority above all national economic policies, and the enactment of a competition law regulating business entities was perceived as a potential hindrance to national economic growth.

Corporate Law Prior to 1962, regulation of corporations took place within the framework of Japanese commercial law. However, 1962 heralded the enactment of an indigenous Korean commercial Code, which implemented important changes particularly in the area of Company Law. The revisions included the introduction of the concept of authorized capital within the context of stock firms; the establishment of a council system and the concurrent decrease in the powers of the shareholders' general meeting and auditors; and an increase in the overall power of the council.

The 1970s witnessed a significant shift in policy, with the implementation of laws designed to promote specific industries, particularly Heavy and Chemical Industries (HCI). This governmental policy decision in relation to the HCI drive was first implemented in the form of legislative activity.

The government enacted several laws to promote key export-targeted industries, thereby providing the cornerstone for a subsequent governmental push towards an export-oriented economic policy. These laws were highly discretionary and in many cases the subject of arbitrary implementation. In many cases, government officials could arbitrarily select specific sectors of industries or firms to be given government-conferred advantages or privileges. However, in the later 1970s, these laws were amended, which transformed their nature from discretionary law to rule-based law, albeit the law tended to remain highly state-allocative.

Nevertheless, although these laws enabled the government to strongly pursue an export-oriented strategic economic policy, due to their originally political bureaucratic nature, these laws produced several adverse side-effects on the Korean economy. There were distortions caused by the concentration of investments in HCIs: the neglect of light industries sacrificed their growth potential; some of the government-led investments in HCIs turned out to be inefficient, leading to the subsequent realignment of investments and rationalization measures in the 1980s; the industrial organization dominated by the chaebol was also consolidated due to the HCI drive.

During the 1970s, the government also tightened control over economic activities at the private level by means of the law. Laws regarding price stabilization and labor were enacted to facilitate extensive governmental intervention many areas of private business to suppress any private activities, which might hinder the export-oriented policy. While legislation with respect to price control and labor produced negative side-effects in these two fields, laws regarding such areas as capital inducement resulted in positive effects on economic growth.

From 1975 to 1979 in the aftermath of the oil crisis, the government further tightened its grip on the economy by adopting widespread price controls. Hit by the first oil crisis, the country suffered heavily from a sharp increase in the price of imported raw materials, experiencing high rate of inflation and demand-supply imbalance in a large number of already distorted markets. As an effort to cope with this problem, the "Act Concerning Price Stabilization and Fair Trade" was passed in 1975, and the government monitored and intervened in individual product markets under the Act.

Direct price control on a wide range of commodities, however, went beyond the limit of administrative capacity and entailed a series of problems and negative side effects. Long lasting price controls severely hampered the price mechanism and gave rise to phenomena such as dual pricing and deterioration of the product quality as well as chronic excess demand. This direct governmental intervention in private business activities can also be found in the area of labor law. During the 1970s, the government endeavored to suppress any private activities, which might hinder the export-oriented economic policy. Accordingly, in carrying out this objective, the government suppressed the labor movement. Again, law made this possible.

In contrast to this, other cases reflect the positive effects that legal change had on Korean economic growth, without expensive opportunity costs to labor groups or others. This enabled Korean firms to implement large-scale investment in key industries, and consequently contributed to the economic growth of Korea. Subsequently, new laws and

policies were formulated and implemented in the 1980s in an effort to strengthen the functions of the market mechanism and to cure the imperfections found in the government's management of the economy. These included, among others, trade liberalization, competition law and policy, deregulation, and privatization, thus indicating a more outer oriented trade strategy with uniform incentives.

Although the government-driven development strategy often produced the desired outcome, it invariably was accompanied by adverse side effects and market distortions, which grew more serious as the economy expanded and became increasingly complex. Due to industrial and banking policies that favorably treated large firms to realize scale economies, activities of small-and medium-sized firms were stunted and economic power became concentrated. With conglomerates expanding and diversifying their business activities, the monopolistic structure of the market deepened and restrictive business practices became more common and widespread. The growth-first policy also widened the imbalance among industries, regions, and income classes. By the end of the l970s, it was apparent that growth was slowing down and that the economy was beginning to encounter significant bottlenecks and obstacles to sustaining growth.

The 1980s witnessed increasingly heavy pressure from the United States, Canada and other trading partners for the opening of Korean markets for goods and services. It is partly as a result of this pressure that the Korean government has implemented a variety of market opening measures *(Kim Doo Hwan, Vol. 15: 228).*

Accordingly, in 1983 the FCIA was completely rewritten, and several new laws concerning foreign direct investment and foreign loans were also incorporated, comprehensively covering such matters as FDI, foreign public and commercial loans, and technology inducement.

The 1980s witnessed a series of new laws and policies to strengthen the functions of the market mechanism and to cure the imperfections found in the government's management of the economy. These include trade liberalization, competition law and policy, deregulation and privatization of public enterprises. Major laws relating to industrial policy promoting key industries were amended so as to lessen the degree of government intervention. The labor laws were also amended to increase the level of protection of workers' rights. This was mandated by the new Constitution of 1980. Thus, many restrictions on workers' rights and the labor movement were legally lifted, although the labor movement itself was politically suppressed.

It is possible to think of the new government policies adopted in the early 1980s as pursuing distributional justice, stabilization, liberalization and deregulation, as countervailing measures to mitigate the side-effects resulting from the previous export/growth-oriented economic policy prevailing throughout the 1960s and 1970s. In this sense, in the 1960s law led economic policy. This was continued during the 1970s, when the law was strengthened to further support and implement the export-oriented economic policy. Meanwhile, the Korean economy encountered serious side-effects as a result of this export/growth-oriented economic policy. Accordingly, the law again took charge in the 1980s to cure this economic disease.

It would be fair to say that these changes in legal and policy regimes were brought about by economic changes up to 1980. The rapid growth of firms and industries both in number and size was what broadened the industrial base. While broadening their base, industries in Korea experienced a very rapid restructuring. The industrial base expansion and the rapid industrial restructuring were accompanied by structural changes in the market. On average, each market became populated with a greater number of competitors, leading to a more competitive market structure and to an increased amount of actual or potential competition. The fact that the industrial development in the 1960s and 1970s witnessed the rapid growth of firms and industries, the emergence of many new markets, the expansion of entrepreneurship and increasing pressures of competition, implies that certain fundamental driving forces of the market mechanism began to foster in the Korean economy.

Although the economy was still under strong government control, these forces began forming a main trend in substituting the role of the law. By the 1990s, Korea achieved a certain degree of economic stabilization, and it was at this time that attempts were made to modernize the entire Korean legal and economic system in an effort to reach the level of advanced countries. In respect of the legal arena, it is possible to identify many legislative activities, which were undertaken in the endeavor to upgrade the quality of the laws. In terms of economic activity, the government further deregulated and liberalized the economy, and opened domestic markets to foreign firms. As the economy grew more complicated, the once significant role of the government began to decline and a market mechanism began to replace the state. This gradual process of the market substituting for the state has taken place. It is fair to say that the 1980s and 1990s have been a period during which the traditional predominance of the state over the market, represented by regulations, protections and supports, was actively interacting with new forces of the market, represented by trade liberalization, competition, deregulation and privatization.

Since the mid-1980s, liberalization was on the agenda in trade talks with Korea's major trade partners, especially the U.S. Demands of trade partners for further liberalization of imports and investment began to affect Korea's trade and investment policies and accelerated market opening. It is also significant that, during this period, Korea became exposed to pressure from abroad to initiate changes in her legal system in order to conform with international agreements, such as the WTO Agreement. In light of the fact that Korea became a member of the OECD in summer, 1996, Korea is required to change the major economic laws to bring them in line with those of the other OECD countries.

One of the clearest examples of this trend may be found in the field of intellectual property (IP) law. Until 1986, when Korea virtually rewrote the entire system of IP laws in response to pressure from the US, the Korean authorities did little to enforce laws relating to intellectual property. However, both the Korean domestic industries as well as foreign countries, demanded greater protection of IPR in Korea. This is due to the fact that domestic industries themselves recognized the need for effective IP laws in order to protect their own IPRs, and further acknowledged the fact that, without adequate protection of IPRs, Korea would not be able to induce high-technology industries from abroad, which

had become essential to the process of reviving the Korean economy. In this respect, it is possible to say that the changing economic environment spurred legal change in the area of intellectual property rights.

In the late 1980s, all of the major labor laws were also significantly amended to enhance the level of protection of workers' rights. Although the subject of criticism from employers and employees, the government nevertheless attempted to be neutral as between the two sides. In respect of labor law, it can be observed that the previous government policies of a growth-oriented economy and the suppression of workers' rights triggered a political turning point, represented by the 1987 June 29 Declaration of Democratic Reform. In this case, therefore, this political change resulted in the successful legal reform of labor laws. In 1986, the Engineering Industry Promotion Act was passed, superseding the seven previous individual laws relating to the promotion of specific export-target industries. This law was recently further amended to conform with Korea's obligations under the WTO Agreement on Subsidies and Countervailing Measures. The law relating to foreign investment is not an exception to this process of legal reform.

In summary, the period 1960 – 1997 saw the gradual improvement in the legal system in support of the requirements for economic development.

Popular Attitudes toward the Legal System

Several studies have been undertaken over the past few decades to investigate the legal consciousness of the Korean people. A comparison of the results of these surveys, conducted in 1965, by Professor Hahm Pyong-Choon (1972), by Professor Lim Hy-Sup (1981), by Professor Lee Keun-Shik and by the Korean Legal Research Institute (KLRI) respectively, reveal a change in attitudes and interpretation, and a certain degree transformation of the contemporary legal consciousness of the people. A comparative analysis of these surveys in tabular form is presented the table 2.

In response to the question: "If you were involved in a dispute, and the other party suggested solving it by legal methods, what would your reaction be?" the results of the 1965 survey indicated that 32.6 % would feel "good" or neutral about the issue. By 1981, the responses to a similar question had increased to 45.3 % feeling good/neutral, and in 1991, 49.1% replied that such means were "desirable" or "reasonable". It would appear, therefore, that the resolution of disputes through formal legal mechanisms is more acceptable than it was in previous years. In other words, negative attitudes towards resolving disputes by legal means have gradually been replaced by positive ones.

In addition, the majority of respondents of the 1991 survey believed that it was helpful to know a lawyer when it came to solving legal problems, thereby indicating an advancement in the area of dispute resolution toward a more legal realm. Moreover, the results of the survey infer that Korean people possess an increased competency in dealing with the law, and while they believe that legal proceedings are unpleasant, they would solve a dispute through the legal system when necessary. Such developments may be advantageous for realizing the rule of law in Korea. When faced with the question: "Do you think that those who live successfully even though they violate the law are men of

Table 2: Surveys of Legal Consciousness

Question	Prof. Hahm (1965)	Prof. Lim (1972)	Prof. Lee (1981)	K.L.R.I. (1991)
If you are involved in a dispute, what would your reaction be to the suggestion to solve the dispute by legal means?	32.6%-good or neutral		45.3% good	49.1% desirable or reasonable 50.8%- unpleasant
Do you agree that someone who lives successfully, but violates the law, is a man of ability?		52.9%-It would be stupid to live by the law	43.3% - yes	31.9% agreed
Do you think law is well observed in Korean society?				82.4% - no 17.6% - yes
If a law suppresses people unjustly, what would you do?	11.5%-be satisfied with what is provided for		74.9%- no other choice but to abide by the law	49.6%-demand its amendment
Do you consider legislation passed by the National Assembly as law made by the people?		74.4%- agree 14.4%- disagree		46% - yes
Do you think power and wealth affect the outcome of court judgments?	Approximately 33.3% - yes		55.8% - yes	94% - yes
Have you ever experienced difficulties because legal terms were difficult or unfamiliar to you?			66.7% - yes	79.5% - yes

Source: Choi Chongko, "Traditional Legal Culture and Contemporary Legal Consciousness in Korea," Justice (Korean Legal Center), vol. 27, no. 2, 1995:135-37

ability?" 31.9% of the respondents in 1991 agreed, while 68.1% reacted negatively to the concept of violating the law. This may contrasted with the 1972 survey results, wherein 52.9 % of respondents answered that "It would be stupid to live in accordance

with the law," and the affirmative response of 43.3% of the respondents to a similar question in the 1981 survey. Thus, it appears that the number of those who agreed with violating the law has decreased over time, and thus Koreans may now be inferred to be more critical of law breaking.

Negative Evaluation of Observation of the Law in Reality In spite of the increasing "anti-illegality" sentiment, 82.4% of Korean respondents in 1991 felt that law was not effectively abided by in the reality of Korean society. When asked to identify the cause of this failure to observe the law, 33.2% thought that it was because legal procedures were complicated and subject to sudden change; 24.1% answered that it was due to the fact that the law was not strictly enforced. Thus, over half of the people surveyed were critical of the legislative and executive organs. Of the remainder, 19.9% claimed that it because law was unfair; 12.6% felt that it was due to the fact that it was more disadvantageous to those who did abide by the law; 10.4% thought it was because other methods available that were more convenient. Thus, it is possible to see a contradiction between the belief that violation of the law is wrong and the practice in fact of poor observation of the law.

The source of the problem is the traditional disregard for the rule of law in Korea. For example, how legal discipline in finance gradually disintegrated in Korea. After nationalization on 1971, Korea's banks mismanaged their lending practices and accumulated an unhealthy sum of high-risk and ultimately non-performing loans. However, it was when the government engaged in privatizing and liberalizing the banking sector in the early 1980s that the problems began to systematically proliferate. Although ownership of the commercial banks was handed over to the private sector, the government continued to intervene in their management. In theory, liberalization should have accompanied privatization; in practice, Korea's politicians and bureaucrats had no intention of actually relinquishing their power. They continued to exercise control over the banks, resulting in a growing divergence between what was on the books and what was happening in reality.
The rule of law was undermined.

Moral hazards in finance proliferated and discipline in the financial institutions evaporated, not for want of prudential regulations but because of the government's inability to enforce them. This in turn led to the widespread problem of bad lending by the financial market. In an economy where bank loans can be easily arranged using political influence, the worse the financial situation of a firm is, the harder it will try to secure finance through lobbying bureaucrats and politicians. A firm that is technically bankrupt and without any hope for a real turnaround will frequently seek to survive by obtaining additional credits. In Korea, the case of Hanbo Steel is a good example. By offering substantiation contribubutions to the nation's most powerful politicians, Hanbo's founder-chairman Chung Tae-Soo managed to secure a total of 5.7 trillion won (about US$ 7 billion) in bank loans before his empire finally crumbled under the weight of snowballing debts. Nor was Hanbo an exceptional case: almost every major Korean **Chaebol** accumulated an unmanageable amount of debts in the same manner *(You, Jong-keun, 2001:171).*

Democracy promotes the rule of law through checks and balances on the exercise of power. The democratization process in Korea sine 1987 was so limited and distorted,

however, that it contributed little to the promotion of the rule of law. Until the presidential election of 1977, the opposition had virtually no chance of winning power: the most basic mechanism of checks and balances therefore remained absent. Pre-1977, the ruling party never expected any change of government and the president while elected by popular vote, behaved little differently from military dictators in his exercise of power above the law. It seems fair to conclude that success of the Korean reform drive hinges on establishing **the rule of law.**

The preceding analysis of the development of the Korean law and legal system suggests that the question of classification of the nature of the law governing the public sector is an extremely complicated one in terms of its application to the Korean situation. However, the tentative conclusion may be drawn that in terms of substantive economic laws, it would appear that there has been a high degree of interaction between the law and economic development. The Korean government intentionally utilized legislation in achieving its goals of economic development. Nevertheless, the question of whether or not these legislative activities have had a positive impact on economic development seems to depend on the subject of the law and the particular time period of Korea's development process during the past several decades. In some instances, it appears that the law had a positive impact on economic development, while in others, the law produced mere side-effects. Thus, although it seems evident that there has been a considerably high level of interaction between substantive economic laws and economic development as a whole, the Korean team would hesitate in drawing any dry and universal conclusion as to the direction and nature of the influence of legislative activity on the economy.

We are then faced with the question of whether it is possible to demonstrate a positive relationship between economic development and the increase in the significance of the role of the legal and dispute settlement systems over the past few decades. Indeed, it is possible to see from the above examination that the modernization and development of legal institutions and dispute settlement systems went hand in hand with economic development. Despite this parallel development, when compared with substantive economic laws, it is not certain that the modernization of legal institutions and the legal system in any respect had a direct impact on economic development. It is not possible to boldly conclude, simply on the basis of data demonstrating the transformation from a humble legal system in the 1960s to the functional and effective legal system of the 1990s, that this development have directly contributed to economic development. This does not imply, however, that we must necessarily conclude that the two are distinct and unrelated to each other. The legal system did not play a leading role in enhancing and directing economic development *(Shin, Kwang Shik and Chang Seung Wha, 1997).*

One of the most important characteristics of role of law is the maintenance of judicial independence, even though the degree of independence may vary according to the different departments. The independence of the courts in particular is concerned principally with the separation of powers between the legislature and the executive. In Korea, the major challenge of the courts has been the maintenance of its proper political authority in the conduct of trials, against encroachment by the executive branch.

The fundamental democratic principle of the separation of powers is enshrined in the present Constitution, as too is the principle of judicial independence. Thus, judges are Constitutionally assured independence from interference by any state institution, whether it be legislative, executive or judicial. Although in the past the Korean judiciary was criticized for not employing its full autonomous power as guaranteed by the Constitution, and as being susceptible to political pressure from the executive branch of the government, these accusations have ceased to be valid, particularly in light of recent practice. The court has, over the past few decades, surprised the executive by handing down bold decisions from time to time as an assertion of judicial independence. The executive naturally took note. One effect of court actions was to indirectly illuminate the nature and behavior of the authoritarian regimes of the past *(Yoon Dae-Kyu, 1990:111).*

With the inauguration of the then government under Kim Young Sam, true independence on the part of the judiciary seems to have been realized. Personal accounts from judges reveal that they do not feel constrained by pressure from the executive, thus indicating positive movement away from extensive state power towards an independent judiciary, which can objectively evaluate the rights of citizens vis-à-vis the state.

This brief examination of economic and legal developments in Korea during the past three decades demonstrates that the question of whether or not legislative activities had a positive impact on economic development depends on whether the focus is on the subject-matter of the law or the particular time period. In some instances, it appears that the law had a positive impact on economic development, while in others; the laws merely produced negative side-effects in the economy. Thus, while the high level of interaction between substantive **economic laws** and economic development in general is indisputable, it is difficult to come to an all-encompassing conclusion with respect to the positive or otherwise influence of legislative activity on economic development.

In the area of legal institutions and the dispute settlement system, it does not appear clear that there has been an obviously positive relationship between economic development and the increase in the significance of the role of the legal and dispute settlement systems over the past few decades.

In summary, the comparison of the studies suggests that: Firstly, positive attitudes towards the resolution of disputes by legal means have gradually increased. Secondly, although violation of the law is increasingly regarded as unacceptable, Koreans generally do not consider law to be effectively observed in modern society. Thirdly, negative attitudes toward the legislative and executive organs of the Korean legal system have gradually intensified over the past three decades *(Shin, Kwang Shik and Chang Seung Wha, 1997).*

2. Role of the law after the 1997 economic crisis

For more than 30 years, Korea enjoyed stunning economic growth. But when the economic crisis hit at the end of 1997, the distorted structure of the Korean economy was exposed. The most serious of the problems lay in its failure to pursue democratic development of genuine market economy under fair and transparent rules of competition.

Economic growth achieved under conditions of political repression and market distortion is neither sound nor sustainable. Democracy and market economy are like two wheels of a cart: both must move together, and each depends on the other for forward motion (Kim Dae-jung, 2001).

Korea is now applying the important lessons from its past mistakes. Korea has been carrying out fundament reforms in four major areas: the financial, corporate, and pubic sectors, and the labor market.

Reforms in the financial sector

The reforms in the financial sector are designed to put an end to the previous system of governmental control and to guarantee the greatest possible degree of autonomy for the management of financial institutions. The government has limited its role in the area to prudential regulation. A group of lawmakers are moving to give the central bank more independence from the government, but the Ministry of Finance and Economy (MOFE) is uneasy about the initiative, citing the possibility of unchecked monetary policy. Since the economic crisis began in December 1977, the Korean government has undertaken various reform measures to address problems in both the financial and private sectors. The Bank of Korea attained autonomy of money supply and became independent from its feudal rival, the Ministry of Finance and Economy. The laws to regulate the financial industry have been revised and a new financial supervisory agency established – the Financial Supervisory Committee, which has independent supervisory power over banks, insurance companies, and security companies. The committee has already proven effective in implementing reforms of the financial sector.

A number of unprofitable financial institutions have additionally gone out of business. Sixteen (16) merchant banks were closed and several other commercial banks were guided to merge with others to create larger banks. The two most troubled commercial banks were put up for sale: one has been sold to a foreign institution and negotiations for the sale of the other are underway. Six security brokerage companies, four insurance companies, two investment trust companies, and 18 mutual credit companies have also closed. The Korea Asset Management Company has assumed the management of bad assets from troubled financial institutions- the government has spent more than 7 trillion won (US$ 8.6 billion) to take over the non-performing loans of the two most trebled commercial banks alone. Regulations have also been introduced that require that at 70 percent of the directors on bank boards should be drawn from the population of minority shareholders. Finally, the foreign ownership limit on security brokerage companies has been removed and the limit on ownership of commercial balks has been raised *(Jang Ha-sung, 2001:86).*

The Korea Stock Exchange should take a more active role in monitoring insider transactions and stock price manipulation. Stock manipulation by a group of insider or by employees of security and investment firms is known to be widespread, but no one has ever been heavily penalized for a transgression of this nature. The Financial Supervisory Board should focus a large part of its monitoring efforts on the Exchange in order to catch

price manipulation as and where it happens. Surveillance would be much more effectively executed at the Exchange than from a desk at the Financial Supervisory Board.

The restructuring of the financial sector was central to structural reform program. The authorities' strategy comprised four key elements:

- Emergency measures to quickly restore stability to the financial system through liquidity support a blanket (but time-bound) deposit guarantee, and intervention in systemically important nonviable institutions.
- Restructuring measures to restore the solvency of the financial system by intervention in nonviable institutions, purchase of nonperforming loans (NPLs), and recapitalization.
- Regulatory measures to strengthen the existing framework by bringing prudential regulation and supervision in line with international best practices.
- Corporate restructuring measures to reduce corporate distress and the vulnerability of financial institutions exposed to the highly indebted corporate sector *(Chopra Ajai, Kang Kenneth, Karasulu Meral, Hong Liang, Henry Ma, and Richards, 2002).*

The reform of corporate sector

In the corporate sector, important measures are underway to overhaul the previous and much-abused system of corporate governance. **Chaebol** owners have promised to enhance their transparency of management and to build up healthy financial structures. These fundamental reforms and related legal measures are already being put into effect.

In the Republic of Korea, the corporate restructuring currently underway is similarly designed in part to limit the economic power of the **Chaebols** (although concerns exist that this process of rationalization may actually increase concentrations of power in certain industries). The restructuring may reduce the economy of scale achieved by the largest corporations, but any loss in efficiency should be more than offset by the overall efficiency gained by curbing their excessive market power. Even should this prove not to be the case, the issue of the adverse effect of a few dominant corporations on participation and openness should not be forgotten *(Stiglitz Joseph, 2001: 52-53).*

The Korean government has also taken several steps to enhance transparency and to strengthen management responsibility. The top 30 **Chaebols** have been required to disclose their consolidated statements from 1999; listed companies are required to institute an auditor selection committee; and penalties for deliberately manipulating accounting information have been stiffened. The regulations on accountability have also been reinforced, notably by making controlling shareholders- including the chairmen of the chaebols – legally liable for their decisions. Listing requirements additionally now require listed companies to include at least 25 percent of independent outside directors on their board.

Commercial codes and security exchange laws have been revised to strengthen the rights of minority shareholders. Restrictions on institutional investors' voting rights have been removed, and the required number of shares to file a derivative lawsuit against

management has been reduced significantly from 1 percent to 0.001 percent of outstanding shares. The number of shares required to inspect the financial books of a listed company has also been reduced, from 3 percent to 1 percent. The introduction of a cumulative voting system means that minority shareholders now have the to elect directors to represent them, and shareholders have been granted the right to propose agendas to the management of unlisted companies *(Jang Ha-sung, 2001:87).*

New laws and regulations alone will not make the market function, however. It is important that external forces are nurtured to work in the areas where government cannot or should not intervene. This is particularly true for the private sector. In Korea, the first of these external forces are starting to emerge, in the shape of minority shareholder activism. There are legitimate concerns that while corporate governance has been improved in law, the same is not true in practice. **Chaebol** reform has yet to be cried out. The government has achieved some significant result in restructuring the financial and business structure of the **chaebols**, but while the laws guiding corporate governance have changed, there has in practice been little improvement. The **chaebol** chairmen are still exercising absolute and uncontested authority.

For sustainable and equitable development in Korea, there need to be more changes in corporate governance. Circular and pyramidal shareholding, which had been deregulated at the beginning of the crisis to expedite private sector restructuring, needs to be re-regulated, and in a stricter manner than before. The **chaebols** must not be permitted to exploit this opportunity to further entrench their management, particularly as entrenchment is the single greatest obstacle in the way of better corporate governance.

Inheritance and give tax laws need to be revised to prevent the **chaebol** chairmen from transferring company wealth to themselves and their families. Intra-group transitions should also be more closely regulated for the same reason. Such transactions have additionally been used in the past as an innovative way to avoid inheritance and gift taxes.

Minority shareholder's rights need to be strengthened. Any shareholder should have the right to file derivative suits against management as in the United States and other developed countries. Class action suits should additionally be introduced in order to convince company management and auditing firms of their legal liability to shareholders. This is also important for the reason that **chaebols** are allowed to establish a holding company while holding only 30 percent of the shares of their subsidiaries. The threat of personal liability lawsuits may be the most effective means of deterring management from in legal activities and misdemeanors, and class actions in particular are important because of the greater incentive they offer to the minority shareholders who file the suit.

Regulations governing the procedures through which minority shareholders exercise their rights also need to be enhanced. The current regulations require the shareholders to obtain a share certificate from the Security Depository Agency as proof that he or she actually owns shares. This certificate has to be summated to the company or to the court in the case of a dispute, and the sale of any portion of shareholding is prohibited until the matter is settled. This procedure clearly takes away the freedom of

transaction from the shareholder, and given the rapidity with which share prices fluctuate can act a deterrent to the exercise of shareholder rights.

A further essential change pertains to the composition of the board of directors. The board must have independence from management, which means increasing the number of outside directors and ensuring that they have no relationship with the members of management. Listing requirements and the security exchange law, which applies only to listed companies, need to be revised and expanded to institute proper procedures for the selection of outside directors. In December 1999, the government amended the Commercial Code and Securities to require that 50 % of directors on boards of large companies be outside directors and audit committees be established on the board *(International Monetary Fund, 2002).*

The cumulative voting system should also be made a listing requirement so that management cannot arbitrarily it by amending the company's articles of incorporation – as has occurred even in cases where the system was introduced as a part of the government's current reforms. Cumulative voting system is the only way to give minority shareholders a chance to elect outside directors of their own choice. It is particularly true where ownership and management are not separated as in Korea, and where the management entrenches their control through cross and circular shareholding among affiliated companies.

The regulations on proxy voting need to be completely rewritten. The current produce makes it almost impossible to vote by proxy: the law requires minority shareholders to file a shareholders' proposal 6 weeks prior to a shareholders' meeting, but it requires the company to give no more than 2 weeks' notice of the same meeting. Two weeks is in any case insufficient time for many institutional investors especially foreign institutions, to complete the necessary internal and external compliance procedures. The regulations should be amended to require the company to give at least one month's notice of the meeting and also permit votes by mail in absentia.

The internal compliance rule that governs intra-group transactions needs to be extended to all listed companies and their affiliates. The Fair Trade Commission's efforts to prevent and to monitor unfair intra-group transactions have greatly improved, but compliance could be monitored much more effectively via internal mechanisms, such as by independent outside directors or audit committees.

The independent audit committee should also be introduced for all listed companies, and should comprise a large majority of independent outsiders. Its responsibilities could also be extended to include the evaluation of executives, review of executive salaries, internal monitoring of executives, and the selection of an audit accounting firm *(Jang, Ha-sung, 2001:90-91).*

Bankruptcy laws have been revised to expedite the bankruptcy process and to provide easier exits failed companies. Limits on foreign investments have been either eased or abolished. The **chaebols** have been officially discouraged from engaging in excessive diversification, with business swaps instead encouraged to facilitate

specialization and new tax laws introduced as incentives to encourage the sale of assets during restructuring. A restructuring fund of 1.5 trillion won (US$ 1.85 billion) has been set up exclusively to aid small and medium-sized companies and independent large corporations.

Institutional investors – including investment trust companies, insurance companies, and banks- should be required to disclose their votes on all agenda at shareholders' meeting so that private depositors and investors of those institutions can know whether or not the institution is fulfilling its fiduciary duty to them.

Reform of labor market

In the labor market, reform has also made much progress, thanks to a tripartite agreement by representatives of labor, management, and government – a case example of Korean reform through democratic consensus. In return for accepting layoffs, workers have gained increased rights for labor activities and political participation, and have won back pay guarantees and the consolidation of health care provisions. The government has also set aside considerable funds for the unemployed, and is providing food, clothes, health care, and secondary education for their children. Retraining and reemployment programs have been set up for unemployed workers (Kim Dae-jung, 2001: p.3). Labor laws were changed in February 1998 to allow firms to lay off redundant workers in cases of "urgent managerial need." Although the unemployment rate rose sharply, labor leaders co-operated with the new administration and labor unrest was limited (International Monetary Fund, 2002).

Reform of public sector

Restructuring of the public sector in Korea has been approached in two directions: first, by streamlining government organizations and downsizing staff at both central and local levels; and second, by privatizing public enterprises. The organizational structure of government has been streamlined and downsized as result of two reform measures, first in Feb. 1998 and second in May 1999. To remove overlapping functions, the number of ministries in the central government was reduced from 21 to 17. The government announced its plan to privatize and restructure its public enterprises, or state-owned-enterprises (SOEs), in order to lead reform efforts of the private sector, in August 1998. Under this plan, five out of total 24 SOEs were scheduled to be privatized immediately by the end of 1999, and another six by the end of 2002 *(Kim, Jong Kil, 2000).*

As a fundamental remedy, the government initiated sweeping reform across the business, finance, labor and public sectors with a "small but efficient and better-serving government" as the basic goal for the public sector reform program. Firstly, government functions and organizations have been restructured by eliminating unnecessary functions while bolstering areas of increasing demand by the public. The civil service, state-run enterprises and government-affiliated organizations have reduced their workforces. Privatization and contracting out have been actively implemented to utilize the private sector's creativity and efficiency. Secondly, besides such downsizing, other public sector reform efforts have focused on building a system based on competition and performance.

In this vein, the control-oriented operation system has been innovated to allow greater autonomy to each organization. Specific examples include the introduction of the Executive Agency System and Open Personnel Recruitment System, as well as restructuring of the remuneration system for civil servants to introduce graded pay, reflecting performance and results. Thirdly, transparency of the government has been enhanced to achieve "Open Government" and serve the public more effectively *(Chang Seung- wo, 2003).*

In addition to these, restructuring efforts have taken a variety of measures to enhance public sector performance. Examples include an annual salary system; a performance-based bonus system, a target management system, and an incentive program for budget saving. The government will also continue its efforts to improve customer orientation and to introduce competitive elements into public sector.

The judicial system also needs to be more effective in its efforts to protect minority shareholders' rights. It also needs to operate with greater impartiality. It is the obligation of the judicial authorities to evenly enforce the law when they deal with corruption committed by **chaebols**, but this will require anticorruption laws to eradicate bribery and illegal political donations. It is also important that the close relationships among the **chaebols**, bureaucrats, and politicians be severed. Judges generally must be more proactive on the issue of corporate governance *(Jang Ha-sung, 2001:91).*

Table 3: Contents of four major structural reforms

Corporate sector	Financial sector	Public sector	Labor market
-Reforms of laws relating to corporate governance structure -Elimination of cross-guarantees -Reducing debt-equity ratio under 200% -Large scale business swaps (big deal) and "work-out"	- Closing insolvent financial institutions and clearing of their bad debts - Strengthening the standard of financial sounder ness (requiring to abide by BIS rate)	-Reforming government structure -Privatization -Deregulation	-Flexible employment system and an introduction of worker dispatch scheme -Tripartite committee

Source: Kim, Jong Kil, 2000

After the crisis, Korea has also carried out a bold program of deregulation, reducing the number of government regulations to half the previous level of 11,000. Deregulation will reduce corruption, improve social welfare, promote the development of a market economy, and enhance the limited foreign investment.

In summary, before 1997 Korea had a vibrant economy; the index growth rate exceeded 12 per cent in 1986, 1987, 1988, recording the highest rate in the world. In 1995, Korea's per capita GDP exceeded US$ 10.000. The Korean government intentionally

utilized legislation in achieving its goals of economic development. In some instances, it appears that the law had a positive impact on economic development, while in others; the law produced mere side- effects. Lack of respect for the principle of ***the rule of law*** *is one major reason for the 1997 economic crisis. Now four areas of reform in South Korea concerns with the law.*

CHAPTER III
Lessons for Developing Countries

1. Law disregarded because of Confucian values and agrarian society

In the early 1990s, former Prime Minister Lee Kwan Yew of Singapore and Prime Minister Mahathir Bin Mohamad of Malaysia argued that certain Asian Cultural values contributed to Asia's remarkable postwar success. These leaders maintained that in the political sphere, Asian values sported the paternalistic brand of authoritarian government that they both practiced, and in the economic sphere values provided a work ethic and supported savings, education, and other practices conducive to economic growth.

In the light of the recession that gripped Asia in 1997-1998, the collapse of the paternalistic Asian authoritarian government in Indonesia, and political instability in Malaysia itself, this argument now ring hollow. Lee Kwan Yew *(March 23, 1998)* has publicly backed away from some of his earlier assertions. In an interview in Forbes Magazine, he says: "**Cronyism** and corruption are a debasement of Confucians values. Confucian duty to family and loyalty to friends should be discharged from private, not public wealth. Unfortunately, they have degenerated into abuses of public office and undermined the integrity of government." And many observers now claim that "Asian values," far from explaining Asia's economic success, lie at the root of the cronyism and corruption afflicting these countries.

"The case that Asian values constitute an obstacle to democracy can be summarized succinctly. It we take Confucianism as the dominant value system in Asia, we see that it describes an ethical world in which people are born not with rights but with duties to a series of hierarchically arranged authorities, beginning with the family and extending all the way up to the state and emperor. In this world, there is no concept of the reciprocal obligation between ruler and ruled, there is no absolute grounding of government responsibility in either the popular will or in the need to respect and protect and individual's sphere of autonomy" *(Fukuyama Francis, 2001:149-151).*

The exchange crisis of 1997 turned the **miracle economy** of Korea into a shamble. In an attempt to explain the crisis, many Western observers decried the Asian economics for "**crony** capitalism", ridiculing this as an inevitable byproduct of Asian values. Mortimer Zuckuman, for example, wrote that: "Asian values have now become Asian liabilities." It is true that cronyism is responsible to a considerable degree for failure of the Asian economies, and it is also true that cronyism, while not a uniquely Asian phenomenon, is a distinctive shortcoming of Asian societies *(You, Jong-keun, 2001:170).*

Confucian ethics concerning human relationships are stated in terms of basic moral rules and principles governing the 5 main human relationships: father and son, kin and subject, husband and wife, elder and younger, and friend. In Confucianism, society's rules and principles are largely extensions of those regulating relationships among family

members. Because of Confucianism, the values, ways of thinking, and modes of conduct of present-day Koreans still center on family life and the family system. Koreans also value their families highly because the family has been the only social institution that, throughout Korea's long and turbulent history, including the harsh period of the Japanese colonial rule, could be trusted to provide for the security and welfare of its members. For this reason, too, the influence of the family on the Korean management system – in both business and government – has been highly significant.

In the traditional Korean family, the father is the respected and unquestioned head. He can wield nearly absolute power if he so desires. Haunted by poverty throughout most of their history, survival itself has been a driving force for most Korean. The traditional Korean father had full responsibility to feed the family, to approve marriages, and to decide on the careers and future lives of his children. Daughters traditionally held the lowest status within the family, and when they were married, they were not supposed to return to their former families again. Thus, the only way for wives to survive was to fully commit themselves to their husband's family and to obey their husband and the elders of their husband's family. In all respects, the traditional family was very much like 'a small state with a strong ruler'.

The relationship between the father and his eldest son is the backbone of the Korean family system. The eldest son is traditionally the successor and heir to his father's assets and role in the family and, therefore, is given priority over younger siblings in terms of educational and other opportunities. The power of the father usually transcend to the first son. Within the family, the eldest son's responsibility goes first to his parents, then to his brothers in the order of their birth, and finally to his sisters.

When Koreans organize and manage enterprises, there is a tendency for them to organize and manage them on the basis of the principles governing the family or clan system. Business founders in Korea are expected to feed and provide for not only their immediate family members but other relatives as well. As a result, any Korean enterprises are staffed by the relatives and fellow clan members of the owners and operate under rules, which often resemble those of the clan system.

Song, Byung-nak (1990) calls the Korean company as a semi-familial community. Koreans thus tend to trust the members of the modern-day equivalent of their extended family – for example, clansman, school alumni, and people hailing from their hometown – and strongly distrust others. Members of the "family" are not held accountable for their actions, as introducing accountability would potentially weaken the family to breach by outsiders. By the same token, the rules of fair competition do not apply within the family as a fair competition could conceivably be won by an outsider. Within the family, it is even acceptable to bend the rules and twist or obscure the facts. Koreans may have in principle accepted the tenets of accountability, fair competition, and transparency, but their overriding concern for "family members" has eclipsed their concern for their principles.

The tendency to distrust outsiders can be found in almost every aspect of Korean society. For example, Korean bureaucracy has reputation for refusing to share information between departments or divisions. Even when the nation was at the precipice of defaulting

on its external financial obligations, senior officials of the Korean government were unable to act together and the president was given conflicting information. In the end, it was U.S. President Clinton who warned President Kim Young-sam of Korean's imminent liquidity crisis.

There is another area in which Korea's culture of the extended family exerts a strong influence: corporate structure. Traditionally, Koreans have regarded it a blessing to have a large family and many sons. This may explain why the chaebols have been obsessed with expanding their empires, regardless of profitability, and why their subsidiaries support each other with cross-debt guarantees and unlawful intragroup transactions. It is in sharp contrast with the fact that each subsidiary of a Western conglomerate must stand on its feet, and may again reflect a cultural difference. In the West, siblings are generally expected to compete against each other; in Korea, they are morally obligated to help each other. Rather than sibling rivalry, the chaebols tend to practice a corporate version of sibling solidarity in which the weaker subsidiaries are propped up with financial held from the stronger ones *(You, Joong- keun, 2001:179).*

When Korea launched its industrialization drive in the early 1960s, the Korean government set about pursuing rapid growth. By mobilizing resources and influencing investment and distribution decisions, it was able to achieve a great deal in a short period. The cost of this growth, however, was the suppression of democracy and the perpetuation of authoritarian rule. Other Asian developmental states also followed this path.

Under the Park Chung Hee government, with its primary objective of expanding export capacity, Korean businessmen were expected to maximize exports rather than profits. From the government's perspective, profit was generally considered to be a secondary objective for Korean firms. Under the government's export promotion strategy,' survival of the fittest' among competing firms was not determined in the market-place, not law, but through discretionary government's actions, 'loyalty to the country through export' *(Song, Byung-nak, 1990).* Fitness was judged in terms of the ability to expand exports, rather than based on profitability it determined 'unfit', firms were likely to face bankruptcy. Such firms were under constant threat of tax investigations and other punitive sanctions. On the other hand firs that efficiently used their government- backed loans to expand exports were implicitly considered fit and favored with even further support. In many cases, this included special privileges to star new lines of business with new government loans borrowed and negligible interest rates. Indeed, the terms of government support were the major factors in the success of many Korean firms, which had not accumulated much business expertise of their own. This kind of government support was very effective in motivating firms to expand their export capacity in accordance with the government's development strategy.

By channeling scarce resources into few targeted areas and suppressing social conflict, authoritarian rule can appear very festive in the short run, but hidden bathe façade of rapid growth are the increasing problems of moral hazard, bureaucratic rigidity, and political cronyism. The problem of inequality – between regions, classes, and industries – also becomes more serious. Due to the lack of fair and transparent rules of competition, the concentration of economic power increased in Korea. The cozy relationship between

government, big business, and banks resulted in an institutionalized system of checks and balances, these problems grew into crisis *(Kim Dae-jung, 2001:2).*

For those looking for culculprits on whom to blame the economic crisis in Asia 1997, the favored political explanation is the role of interest groups, and particularly of close political relationships between politicians and business constituencies. This argument has several distinctive variants, but the focus here on the 2 most offends cited stands.

The first is that the Asian crisis was the cumulative result of years of misguided industrial policy. What are their stated justification, industrial policies typically favored well-connected firms who could socialize risk or gain access to subsidies preferential credit, protection, and other sorts of rents through the political process. Government interventions created moral hazard, including excessive risk- taking, inefficient allocation of capital, and the weakening of domestic financial institutions. Weaknesses in the financial system, in turn, were key to the wider economic crises that ensued.

A second line of argument – that crony capitalism and corruption was to blame for the region's difficulties – differs only in that the exchange relationships between business and government is lacking in any social welfare retile. Favors are passed out to political allies not because of their presumed positive economic effects, but on purely political grounds or to enhance the wealth of politicians. An increasing body of empirical evidence suggests that such corruption (or at least international business perceptions of corruption) correlates negatively with economic growth over the long run. In the shorter run, corruption can also generate moral hazard and contribute to financial vulnerability *(Haggard Stephan, 2001:142).*

Most analyses of the Asian financial crisis as South Korea concur that failures of regulation were central to its onset. Financial regulation has received particular attention given the weak standards for capital adequacy, loan classifications, and loan provisioning, and the general lack of information on the part of regulators. Weak rules with respect to corporate governance are additionally at fault for the risky behavior of companies. Governments in the region are also being called on to introduce a variety of the regulatory functions to guarantee that markets work efficiently, including competition policy and oversight of newly privatized utilities, telecommunications, and transportation companies. Public interest groups are furthermore demanding strengthened regulation in areas such as the environment, occupational health and product liability.

Some of regulatory failure and weakness in Asian countries stems from the inadequacy of old methods applied to a changed environment. For example, weak financial regulation incurred lower costs when domestic financial markets were closed than it does now that they are open to rapid, short-term capital movements.

An important component of governance in the post-crisis period will be reform and strengthening of state institutions, particularly with respect to regulation, it means that by law. Delegation to independent regulatory agencies does not mean lack of accountability; a variety of mechanisms exist through which politicians can exercise oversight, but which at the same time limit the direct involvement in agency decision-making of those politicians

and which also increase traparency. One means of achieving this goal is through procedures that allow private acorns a monitoring function in agency decision-making, through mechanisms that provide for public comment, hearings, and the direct participation of diverse social interests and constituencies in consultative bodies.

2. Law disregarded due to lack of democracy

It may be argued that the failure of Asian economies is attributable to their failure to practice genuine democracy. Many Koreans who profess to believe in democracy actually want a "benevolent government" by "virtuous one." To many, democratic processes are cumbersome, inefficient, and unnecessary: even 50 years after democracy was first introduced in Korea, there is a lack of a law-abiding spirit and a persistent avoidance of legal procedures. The contradiction between its wish for democratic governance and our daily practices is a tremendous obstacle to its quest to become a modern democratic society.

While the law presides over government, the maintenance of societal order, realization of rights and responsibilities, punishment, and societal reform, it also holds a bigger role in the development of society. Specifically, adherence to the rule of law enables society to form a basis for rational and predictable behavior. In a truly democratic society where the rule of law prevails, accountability, fair competition, and transparency are the fundamental principles that govern the management of public affairs. Adherence to these principles annuls the threat of cronyism. As such, the lame for the Asian crisis must be placed on Asia's undemocratic governments, as opposed to undemocratic values, culture, and governance between Lee Kwan Yew (1994) and Kim Dae-jung (1994).

An affective regard for democratic values does not by itself guarantee the successful realization of those values. Realization of democratic values requires the institutionalization of fundamental principles of accountability, fair competition, and transparency. Furthermore, successful institutionalization of these principles requires a strict adherence to the principle of the rule of law.

When looking at the causes of the Korean **economic crisis**, it is evident that the problem can be attributed to the weakness of the Korean financial system, and specifically to the plague of the bursting economic bubbles that followed a succession of corporate bankruptcies.

Bad lending practices were not a result of the lack of law or regulations governing financial institutions, but the result of a lack of adherence to these rules. The restructuring agenda of the financial sector reveals the need for reforms to increase the legal liability of management. In other worlds, banks must be effectively supervised to ensure they do not take excessive risks of this nature, and that they maintain the resources to pay back depositors. Furthermore, corporations must follow appropriate rules of governance to ensure that managers, as agents for shareholders, act responsibly. These rules include increasing the transparency of the **chaebols**' operations by requiring consolidated financial statements, by introducing external auditor committees, and improving auditing standards. Markets will not allocate funds to borrowers unless investors have precise and timely

information about the prospective borrower that are able to effectively use. It is because these elements were not in place in the run-up to the crisis were badly allocated, making the Korean economy vulnerable to collapse to a confidence among firms and investors.

Improving governance of the financial institutions does not necessarily entail setting up a legal system modeled on that of the West. Governance should focus primarily on implementing and, more importantly, enforcing rules that prevent the practice of lending to high risk borrowers and that prevent corporate managers form exploiting conflicts of interest. In addition, it is important that Korea increase the capacity of regulatory and judicial bodies to handle disputes over corporate matters.

In a society in which power is overly centralized, such as that in which credence is given to a "heavenly mandate," abuses can spread unchecked by the people- except on the rare occasions when they reach such an extreme that the people rise up in revolt and overthrow their government. The causes of the economic crisis seem to indicate that Asian societies the wisdom of Lord Acton, who wrote that "Power tends to corrupt and absolute power tends to corrupt absolutely" *(Lord Acton, 1904)*. It was because of this understanding of the nature of power that Europe devised what is possibly the greatest contribution to modern democracy: the rule of law coupled with the electoral system.

In many ways, elections are analogous to the market competition that enhances the welfare of consumers. In a monopolistic market, consumers can be – and usually are – exploited. Similarly, one-party rule inevitably results in government arrogance, corruption, and inefficiency. In a political exploitation of the "consumer" – in this case, the constituent. But there is one essential difference between a monopoly in the market for goods and services and monopoly of power by a political party: In the market, consumers have the option to refrain from making purchases. Citizens subjected to a one-party dictatorship do not have this option *(You, Jong- Keun, 1998).*

Where two or more political parties and candidates compete for votes, the constituents are the sovereign power (or de facto sovereign in a constitutional monarchy), just as the consumers exercise the ultimate power in a competitive market for goods and services. Other words, elections are an effective device to ensure that each candidate or party for public office will strive to come up with better policies than its opponents do. Periodic elections are not only a means by which the views of constituents are registered, but are also a powerful reminder to incumbents that they serve at the pleasure of the people. In sum, elections are a device to hold elected officials and their parties accountable for what they have or have not accomplished during their tenure. In both the Eastern and Western interpretation, the people have, in principle, the right to replace a malevolent ruler: one by a mandate from heaven; the other, by a mandate of law. In other words, Eastern societies have also traditionally believed in the principle of holding their governments accountable to the people. Without an institutionalized mechanism to do so, however, the difficulty in upholding this principle has been far greater in the East than in the West.

Herein lies one of the major reasons why Korean and Eastern societies, in spite of their affective regard for democratic principles, have failed to realize these ideals. They do not understand the importance of the principle of the rule of law, without which the

principles of accountability, fair competition, and transparency can be easily violated. Many contemporary Koreans would still prefer a benevolent dictator ahead of an ineffectual democrat, and many years for the days of Park Chung-Hee.

There is another reason why Eastern societies have failed to practice democratic principles: The extended family culture. Our ways of thinking and living - our culture – are conditioned by the prevailing socio-economic structure. As the latter changes, the former also change. But man's thought structure, customs, and behavior can not be quickly changed. In the West, industrialization and the accompanying changes in socioeconomic structure took place over many generations, and people thus were afforded the to adjust their thinking and behavior. In Korea, and Asian counties, in contrast, the transformation from an agrarian to an industrial society has taken place in a single generation, and people have had little time to make the commensurate adjustment of their thinking and behavior. To compound this problem, in Korea and Asian countries now find ourselves at the threshold of an information- and knowledge-driven post-industrial society. The Korea and other Asian family structure have also changed, to the point that the one-common three-generation household is now almost a rarity. In spite these dramatic changes, the dominant feature of Asian customs and behavior is extended family culture of agrarian society *(Francis Fukuyama, 1995).*

An important characteristic of a market economy is that the producer and consumer of a given good or service is seldom the same person. Producers thus compete fiercely for the trust of consumers. This competition is the driving force that helps a market economy grow. At the same time a market economy features extensive division of labor, and, as a result, strong interdependency between economy agents. Prosperity in a society driven by a competitive market therefore requires not only competitiveness but also trust and cooperation, and there in turn depend on fairness, honesty, and accountability.

An agrarian society is characterized by much less division of labor and interdependency. In addition, personal wealth is more or less proportional to how much land one processes. In such a society, particularly in one where there is limited arable land relative to the number of people to feed, such as China and other Asian countries or Korea, wealth distribution is viewed as a zero-sum game. This is explained by a Korean proverb that says, "When your cousin buys an additional rice paddy, you get a stomach ache".

Jong-keun You, Governor of North Cholla Province, Republic of Korea thinks that, Asians countries like those in Europe have the same democratic values. But many Asian countries do not respect the principle of the rule of law. He wrote: "It would be a mistake to blame Asian economic crisis: Asians share basically the same democratic values as their Western counterparts. Realization of these democratic values, however, has been obstructed by a lack of respect for the principle of the rule of law and by the culture of the extended family, in which people tend to trust members of "family" and distrust outsiders. The extended family culture is characteristic of an agrarian society, and is a culture that persists in Korea and other state in Asia as people have struggled to the change, effected in a single generation, from an agrarian to industrialized society. Industrialization in the West took many generations, in contrast, affording people the time to make the cultural adjustment" *(You, Joong- keun, 2001:179).*

Enabling the state and law to do more good for the economy and society means building confidence; people must have trust in the basic rules governing society and in the public authority that underpins them. The task is difficult for two reasons.

First, it requires patience. It takes time for judiciaries to convince firms and citizens that they are impartial in their decisions. It takes time for national and provincial legislatures, political appointees, judges, civil servants, public-private deliberation councils, independent watchdogs, and nongovernmental organizations – arrayed in unique relations to one another in different societies – to learn to respect the limits of one another's authority and to work together. It takes time to lay the foundations of a professional, rule-based bureaucracy. Still, it is possible to sequence reforms in a manner that yields some early payoffs. Such early measures can include strengthening the capacity of central government, raising upper end salary scales to attract capable staff, inviting more inputs into policymaking and making deliberations more open, hiving off contestable and easily specified activities for private sector involvement, and seeking more feedback from clients.

Second, the task is difficult because the same institutions that can foster credibility and accountability can also be constraining. The same rules that prevent abuse of state authority can also lessen the ability to use that authority well. The challenge is to devise institutional arrangements that provide flexibility within appropriate restraints.

The theoretical discussion of why the rule of law may not function fully under democracy, and empirical examples showing the coexistence of democracy and serious corruption in South Korea illustrate that democratization, despite its long-term promise, is not a panacea for development. A two-pronged approach must therefore be considered for other countries.

First, in countries where democratization has already occurred, the top priority must be given to the establishment and consolidation of those institutions that have the most immediate, direct, and powerful impact on macroeconomic stability, security of property rights, and free trade. These steps necessarily involve the strengthening of the independence of the central bank, the regulatory regime of financial system, the courts, and competition regimes. The institutional reform process may encounter political difficulties created by the new democratic institutions and processes. There is no conclusive evidence on whether the democratization process itself would aid or hinder these steps.

Second, in countries where democratization has yet to occur, the emphasis of change should be placed more on the establishment and strengthening of existing economic institutions than on the direct promotion of democracy (or more crudely, elections). The strategy of direct democratic promotion in these societies, however desirable, faces enormous odds, including strong resistance from the ruling elite and weak socioeconomic and institutional foundations. The success of direct democratic promotion is highly uncertain; the beneficial effects of democratization on economic development, even if one assumes the success of democratic promotion, may not be immediately substantial.

Asian countries need to implement and sustain needed reforms. Reform of the state means not only reform of policies but also an institutionalization of good rules of behavior

for government agencies. Institutions must be created that help avoid heavy discounting of the benefits from reform, paralysis due to unfamiliar new circumstances, and problems of social mistrust. A balance must be struck between clear rules that circumscribe the freedom of state officials to act opportunistically, and the need for them to act flexibility and responsively. An effective state operates with clear and transparent rules, yet is quick to exploit opportunities and to reverse course when circumstances demand it *(World Bank, 1997).*

In summary, lack of **the rule of law** is a byproduct of Asian values. It is also true that cronyism, as an Asian phenomenon is a distinct shortcoming of Asian societies, from an agrarian to industrialized society. An important component of governance in the post-crisis period will be to reform and strengthen state institutions, particularly with respect to regulation through the instruments of the law.

CONCLUSIONS

Constitution and the law are means for socio - economic development. These are not only important instruments for economic development but are also important in maintaining social stability and security. There are many reasons for the 1997 economic crisis in Korea and other Asian countries but the lack or disregard for the rule of law is one of them. This has been the case in many Asian societies, as their Confucian ethics, agrarian economic past and single-minded thrust towards industrialization and modernization have shown.

The rule of law is the foundation of a market economy. Whether competition improves or destroys welfare depends on whether the means of competition seek to improve one's own performance or of sabotage and cheat one's competitors. The rule of law enables efficient market competition by prohibiting the latter. No matter how fierce competition may be, a market economy must be a place where the rule of law reins, not the law of the jungle.

But a rule-based government is not enough. State capability will also be improved by institutional arrangements that foster partnerships with, and provide competitive pressures from actors both outside and within the state. Partnerships with and participation in state activities by external stakeholders – businesses and civil society – can build credibility and consensus and supplement low state capability. Partnerships within the state can build commitment and loyalty on the part of government workers and reduce the costs of achieving shared goals.

REFERENCES

- Acton, Lord, 1904, *Letter to Bishop Madell Creighton,* April, 1887 In the Life and Letters of Mandell Creighton.
- Berolzheimer Fritz, 1968, *The World's Legal Philosopher,* 1912 Boston Book Co., Reprinted by Rothman Reprint, Inc., pp. 22-23.
- *Chang Seung- wo, 2003, Sector Reform Key to Prosperity*
- Choi Chongko, 1995, "*Traditional Legal Culture and Contemporary Legal Consciousness in Korea,*"Justice (Korean Legal Center), vol. 27, no. 2.
- Chopra Ajai, Kang Kenneth, Karasulu Meral, Hong Liang, Henry Ma, and Richards, 2002, *From Crisis to Recovery in Korea: Strategy Achievements and Lessons,* in Korean Crisis and Recovery, editors David T. Coe and Se-Jik Kim, International Monetary Fund; Korea Institute for Internatioanl Economic Policy, pp.13-104.
- Cole, David C. and Princeton N. Lyman, 1971, *Korean Development: The Interplay of Politics and Economics.* Cambridge: Harvard University Press.
- *Democracy, Market Economics, and development: An Asian perspective, The International Bank for Reconstruction and Development, The World Bank.*
- *Democracy, Market Economics, and development: An Asian perspective, The International Bank for Reconstruction and Development, The World Bank.*
- Democracy, Market Economics, and development: An Asian perspective, The International Bank for Reconstruction and Development, The World Bank.
- Economic crisis in Southeast Asia and Korea – its economic, social, politic and cultural impacts, Asian university networks the Korean Association of Southeast Asian studies.
- Frank, Charles R. Jr., Kwang Suk Kim, and Larry E. Westphal, l975, *Foreign Trade Regimes and Economic Development: South Korea.* New York: Columbia University Press.
- *Fukuyama Francis,* 2001, Asian values in the Wake of the Asian Crisis, *in*
- Fukuyama, Francis, 1995, *Trust: The Social Virtues and the Creation of Prosperity,* New York: free Press.
- *Haggard Stephan , 2001,* Reforms to Overcome the Crisis
- International Monetary Fund: Korea Institute for International Economic Policy 2002, Korean Crisis and Recovery, editors David T. Coe and Se-Jik Kim.
- Ivanhoe, Philip, 1990, *Ethics in the Confucian Tradition: The Thought of Mencius and Wang Ying- ming,* Atlanta: Scholars Press.
- Jang Ha-sung, 2001, *Corporate governance and Economic development: The Korean Experience, in* Democracy, Market Economics, and development: An Asian perspective, The International Bank for Reconstruction and Development, The World Bank.
- Kim Dae-jung, 1994, "*Is Culture Destiny?"* Foreign Affairs (Winter).
- Kim Dae-jung, 2001, *Democracy an the Market Economy-Two Wheels of a car, in* Democracy, Market Economics, and development: An Asian perspective, The International Bank for Reconstruction and Development, The World Bank.
- Kim, Doo Hwan, "*Legal Aspects of Foreign Investment in Korea,*" Hastings International & Comparative Law Review, vol. 15, 227- 229.

• Kim, J.H., l990, *Korean Industrial Policy in the l970s*: The Heavy and Chemical Industry Drive, Korea Development Institute Working Paper no. 90l5, Seoul.

• *Kim, Jong Kil, 2000,* Economic Restructuring Policies in Korea, *in*

• Lee, Kwan Yew, "*Culture is Destiny*", 1994, Foreign Affairs, (Spring).

• Locke, John, 1690, *Second Treatise on government, Concerning Civil Government,* Second Essay, An Essay Concerning the True Original Extent and End of Civil Government.

• Madison James, *Federalist No. 51* (1788).

• *Pei Mixin, 2001,* Political institutions democracy And Development. *In*

• *Sen, Amartya, 2001,* Democracy and Social justice, in Democracy, Market Economics, and development: An Asian perspective,

• Shin, Kwang Shik and Chang Seung Wha, 1997, *The role of law and legal institutions in Asian economic development: the case of Korea patterns of change in the legal system and socio-economy*. Harvard Institute for International Development, at http://www.adobe.com/products/acrobat/

• Song, Byung Nak, 1990, *The rise of the Korean economy,* Center for Korean studies, Seoul, Hong Kong, Oxford university press.

• Song, Byung Nak, 1997, *The rise of the Korean economy,* Center for Korean studies, Seoul, Hong Kong, Oxford university press.

• Stern, Joseph J., Ji-hong Kim, Dwight H. Perkins and Jung-ho Yoo. l995. *Industrialization and the State: The Korean Heavy and Chemical Industry,* Drive, Cambridge: Harvard Institute for International Development.

• Stiglitz Joseph, 2001, *Participation and development: Perspectives from the Comprehensive development Paradigm,* in Democracy, Market Economics, and development: An Asian perspective, The International Bank for Reconstruction and Development, The World Bank.

• The International Bank for Reconstruction and Development, The World Bank.

• The Korea time's Feb.6

• *The politic of Governance: Lessons from the East Asian Crisis, in*

• Whang, Byung Joon, 1965, *Korea's Industrial Economy*, Korea University. Seoul: Asia Research Institute.

• World Bank And Oxford University Press, 1997, *The State in a changing world. World development report 1997.*

• World Bank, 2001, *Democracy, Market Economics, and development: An Asian perspective,* The International Bank for Reconstruction and Development.

• World Bank, l993, *The East Asian Miracle*. New York: Oxford University Press for the World Bank.

• Yoo, Yong Ju, 1999, *Economic and Social Change for Tow Years under IMF Regime,* CEO Information (No.219) Nov. 4-5.

• Yoon, Dae-Kyu, 1990, *Law and Political Authority in South Korea.* Westview Press & Kyungnam University Press.

• You, Jong- keun, 2001, *"Democracy and the Role of the Media,"* in Creating a Dynamic Future: Local to Global Initiatives, Chonju, Korea, pp 9-23.

• *You, Jong- keun, 2001,* Values, culture, ad Democracy: a Korean Perspective, in Democracy, Market Economics, and development: An Asian perspective,The International Bank for Reconstruction and Development, The World Bank.

ABSTRACT

Economics and the law as social phenomena are related in content and form; but both are subject to change – the one continuously, the other is changed from time to time. State responsibility is to maintain economic development in accordance with the constitution and the laws of the land. The law is an important instrument for stability and economic development.

The role of the constitution and the law in the economic development of Korea may be divided into three (3) periods: 1945 – 1960, 1960 – 1997, and after the 1997 economic crisis. The first period is the enactment of fundamental formal laws, and second is when the laws were gradually increased. The old laws in Korea merely produced negative side-effects in the economy. The economic development of Korea and other Asian countries are basically founded from "crony capitalism," this was an inevitable byproduct of Asian values with Confucian.

Korea is now applying important lessons from its past mistakes. Korea has been carrying out fundamental reforms in four major areas of laws: the financial, corporate, and public sectors, and the labor market. The rule of law is the foundation of a market economy. The rule of law enables efficient market competition. No matter how fierce competition may be, a market economy must be a place where the rule of law reins, not the law of the jungle.

In Vietnamese

Luat va kinh te la cac hien tuong xa hoi co quan he mat thiet voi nhau nhu noi dung va hinh thuc. Luat co tac dung thuc day va lam cho kinh te phat trien mot cach ben vung.

Vai tro cua hien phap va luat cho su phat trine cua nen kinh te Han quoc co the chia ra lam 3 giai doan: 1945-1960, 1960 –1997, va tu 1997 cho den nay. Giai doan dau co nhiem vu thanh lap ra co so cua luat phap. Giai doan hai, hoan thien co so phap luat, va tien hanh thuc hien cac co so phap luat nay. Ve co ban o hai giai doan nay luat khong duoc ap dung tren thuc te do nhu cau cua cong cuoc phuc hoi, va phat trine nhanh kinh te. Kinh te phat trien nhanh o Han quoc, cung nhu cua cac nuoc Dong A khac dua tren co so cua Dao Khong –chu nghia tu ban Bang huu. Do la san pham tat yeu cua gia tri Chau A.

Hien nay Han quoc da nhin thay bai hoc cua su khung hoang tai chinh say ra nam 1997, dang tien hanh cai cach trong 4 linh vuc: tai chinh, cong ty, dich vu cong va thi truong lao dong. Nha nuoc phap quyen dang lam co so cho nen kinh te thi truong. Phap luat tao dieu kien de thi truong co su canh tranh lanh manh. Bat ke canh tranh co du doi den dau thi thi truong cung phai la noi ngu tri cua phap quyen chu khong phai cua luat rung.

INDEX