

## Part IV. Modern concept of law in the Korean legal system

### I. Introduction

Analysis of the national legal system of a traditional society and the developmental process of that legal system provide a basis for an analysis of the contemporary law and society as well as the problem of modernization.

#### 11. Traditional Korean political philosophy

Traditional Korean political philosophy, in both its institutional and theoretical aspects, was based on "Confucian" precepts, and hence law and legal institutions were undervalued and despised. The primary mechanism for government at all levels was presumed to be the force of the moral example of those in authority. Moreover, the hierarchical distinctions of social status and official position and the force of social convention precluded the possibility of predictability in judicial decision-making.

##### 111. Law in Korean political history

Confucianism made the use of moral suasion the paramount tool of monarchical leadership. Therefore, the judges looked to the "circumstances" of each case rather than to the statutory law. They even thought that resorting to law represented a failure of moral leadership on the part of the sovereign and could never become a desirable political goal.

### IV. Reception of modernized legal system

The inherited traditional legal system was transformed first through the gradual reception of modern, western legal principles following the Gabo Reforms of 1894. Therefore, complete reception of a modern, western legal system occurred because it was thought to be modern, regardless of its relevancy to the actual social conditions, while the traditional institutions were discarded as outmoded. The acceptance of western laws rapidly changed the way people thought. They had to obey new types of laws whether they liked it or not.

V. **Conclusion** Korean traditional law is very different from Korean law today. In positive aspects, it can be said that the Korean legal culture is highly developed, though heterogeneous.