

KOREAN LEGAL THOUGHT UNDER YI DYNASTY
AS A REFLECTION OF CONFUCIAN WORLDVIEW
ADOPTED IN EARLY JOSEON PERIOD:
CHINESE INFLUENCE, KOREAN IDEOLOGY¹

In Poland there are still not many academic works dedicated to Korean history, not to mention the history of Korean law. When J.P. Rurarz wrote her book “Historia Korei”² (eng. History of Korea), in the very first sentence she expressed her reflection that the book is “a fruit of irritation” connected with the still too small interest in Korea in our country³. One attempt to fill the void was the book “Korea w oczach Polaków”⁴ (eng. Korea in the eyes of Poles) edited by J. Włodarski, K. Zeidler and M. Burdelski, professors of the University of Gdańsk. Within that work R. Tokarczyk compared legal cultures of South and North Korea⁵ and M.M. Wiszowaty analyzed the political and constitutional system of Republic of Korea writing about its contemporary history and “Confucian constitutionalism” phenomenon⁶.

¹ Author would like to thank Professor Jung Geung Sik, Doctor Jakub Taylor of Seoul National University, and Mateusz Cyrzan, exchange student at Kyungpook National University for providing advice and help in research. Korean words are transcribed according to revised Romanization rules of Republic of Korea standard (Ministry of Culture and Tourism Notice No. 2000-8, 2000. 7.7). Chinese words are transcribed according to hanyu pinyin. The names of authors are transcribed as they were in the original publications.

² J.P. Rurarz, *Historia Korei*, Warszawa 2009. The first edition dates from 2005.

³ About Korean studies in Poland: http://www.koreanistyka.orient.uw.edu.pl/historia_sekcji1.htm (in Polish) (accessed: 23.05.2015). Among the few scholars who dedicated their lives to Korean studies, H. Ogarek Czoj (1931–2004) stands out. She researched Korean culture, language, literature, religion and mythology, see: B. Zakrzewski, *H. Ogarek Czoj (1931–2004) – Koreanistka, tłumaczka, pedagog*, “Azja-Pacyfik” 2007, nr 10, s. 239. Among the scientific journals, the author would like to draw attention to “Przegląd Orientalistyczny”, a journal of Polish Oriental Society and “Rocznik Orientalistyczny” of the Committee of Oriental Studies of the Polish Academy of Sciences (both of them do not focus only on Korea).

⁴ *Korea w oczach Polaków. Państwo – społeczeństwo – kultura*, ed. J. Włodarski, K. Zeidler, M. Burdelski, Gdańsk 2012.

⁵ R. Tokarczyk, *Próba zarysu komparatystycznego kultur prawnych Korei Północnej i Korei Południowej* [in:] *Korea w oczach Polaków...*, p. 311–326.

⁶ M.M. Wiszowaty, *System ustrojowo-polityczny VI Republiki Korei* [in:] *Korea w oczach Polaków...*, p. 327–344.

This article is the fruit of author's interest in the Korean history and culture. The topic of Confucian influence on the Korean legal thought is not entirely new⁷, but given its significant importance in understanding Korean history, it is still worth recalling. The topic of the article is also related to the subject of Chinese cultural influence on Korea in broader sense.

Author chose 93 years period from the beginning of the Joseon Kingdom under Yi dynasty rule (1392) until the enactment of the State Code (Gyeonggukdaejeon) by its ninth king – Seongjong (1485) as the time frame for the paper. First century of Joseon was the period when Confucianism clearly achieved domination over the nation's political ideology, which was reflected in the legal and jurisprudential aspects as well. King Seongjong (1469–1494) managed to compile the State Code started by his predecessors, thus consolidating Joseon's Confucian form of law and government⁸ and for this reason the paper is limited to year 1485. The 16th century (generally speaking) can be regarded as the period of great development of Korean Confucian thought by its most renowned sages – Yi Hwang (Toegye) and Yi I (Yulgok)⁹, but the biggest change in favor of Confucianism occurred during the age specified as the initial period of Yi dynasty.

Jung Geung Sik, noted, that “on the one hand, history proceeds according to the orientation of the law, which acts as an overarching structure restricting the actions of human beings, while on the other, certain events can transform these laws (...) In this sense, laws lay bare the historical characteristics of a nation (...) by examining the flow of history in its laws, as well as by making comparisons with China, one may grasp certain characteristics of Joseon society”¹⁰.

⁷ See: Hahm Pyong-choon, *Essays in Korean Law and legal history*, Seoul 1982; Chun Bong Duck, W. Shaw, Choi Dai-Kwon, *Traditional Korean legal attitudes*, Berkeley 1980; W. Shaw, *Legal norms in a Confucian State*, Berkeley 1981; and more recent articles: Choi Chongko, *Confucianism and Law in Korea*, “Seoul Law Journal” 1996, vol. 37, no. 2, p. 115–138; Choi Chongko, *Traditional Legal Thoughts in Korea*, “Journal of Korean Law” 2003, vol. 2, no. 3, p. 75–108; Jung Geung Sik, *The Codifications and Legal Institutions of the Joseon Dynasty*, “Journal of Korean Law”, December 2013, vol. 13, p. 175–212. Choi Chongko noted, that “traditional Korean society had no professional jurists and legal scholars in the modern sense. Therefore, the »legal thoughts« are the illumination of the legal aspects of the general philosophers and scholars”. Choi Chongko, *Traditional Legal Thoughts...*, p. 78.

⁸ King Sejo ordered the codification of Gyeongguk Daejeon that was completed in 1468, in the first year of king Yejong's rule. Version with Seongjong's revisions is the only one preserved, because the previous versions were disposed of. Jung Geung Sik, *The Codifications...*, p. 182.

⁹ Toegye stressed the importance of a principle called “I” which he believed governs human nature and behaviour. Yulgok put emphasis on the principle of energizing element called “gi”. A. Nahm, *Introduction to Korean History and Culture*, Seoul 1993, footnote 26.

¹⁰ Jung Geung Sik, *The Codifications...*, p. 176.

In the article the author tried to answer the following questions: how was the Confucianism established in Korea? Why did Joseon rulers rely on it? How Joseon legal thought reflected Confucian worldview? What were the results of it for Korea?

Korean Confucian Philosophy

Confucius was a Chinese sage of historic importance who lived in 6th–5th century BCE. His teachings were gathered after his death in form of the Analects (*Lúnyǔ*)¹¹. While they seek answers for ethical problems of individuals, they also cover aspects of social and governmental issues¹².

The key aspect of Confucius' political philosophy is its focus on the person of the ruler, who should lead people by example of his own virtuous behavior: "The Master said, 'If the people be led by laws, and uniformity sought to be given them by punishments, they will try to avoid the punishment, but have no sense of shame. If they be led by virtue, and uniformity sought to be given them by the rules of propriety, they will have the sense of shame, and moreover will become good'" (*Lúnyǔ* 2.3) and "Let your evinced desires be for what is good, and the people will be good. The relation between superiors and inferiors is like that between the wind and the grass. The grass must bend, when the wind blows across it" (*Lúnyǔ* 12.19).

We can also notice Confucius's emphasis on respecting hierarchy and social order. In the Analects we read: "There is government, when the prince is prince, and the minister is minister; when the father is father, and the son is son" (*Lúnyǔ* 12.11).

Confucius' followers adhered to his teachings, commented on them and developed them. Doing so, they were forming Confucianism¹³. Encyclopedia Britannica notes: "Confucianism, a Western term that has no counterpart in Chinese, is a worldview, a social ethic, a political ideology, a scholarly tradition, and a way of life. Sometimes viewed as a philosophy and sometimes as a religion¹⁴. Confucianism

¹¹ Analects are available online with basic scholar commentary in English on the website of Indiana University (translation and commentaries by R. Eno): http://www.indiana.edu/~p374/Analects_of_Confucius_%28Eno-2015%29.pdf (accessed: 22.05.2015); This article quotes J. Legge translation available online at <http://www.gutenberg.org/ebooks/3330> (accessed: 22.05.2015).

¹² J. Riegel, *Confucius* [in:] *The Stanford Encyclopedia of Philosophy*, ed. E.N. Zalta, (Summer 2013 Edition), <http://plato.stanford.edu/archives/sum2013/entries/confucius> (accessed: 22.05.2015).

¹³ Choi Chongko, *Ancient Foundations of East Asian Jurisprudence*, "Seoul Journal of Law" 2002, vol. 43, no. 3, p. 147.

¹⁴ Choi Chongko noted: "Confucianism was not a religion and had no priesthood or liturgy. The statues to be found in its temples were dedicated to a variety of deities, especially those of local heroes, and Confucius himself was not treated as a god. The spiritual side of Confucianism was in the hands of the clan or family head, whose responsibility was to worship before the memorial tablets of deceased ancestors and to maintain appropriate sacrifices to them". *Ibidem*,

may be understood as an all-encompassing way of thinking and living that entails ancestor reverence and a profound human-centered religiousness¹⁵.

Confucian political vision is based on the kingship metaphysically justified by the “mandate of heaven”. Heaven authorizes the monarch, who links it with human beings, bringing harmony and prosperity to his subjects¹⁶. In achieving social solidarity, ritual observance prevails over legal constraint¹⁷.

Due to its geographic proximity to China, Confucian thought started early to spread into Korea¹⁸. Confucianism has had an enormous influence on Korea since the time of the Three Kingdoms (kor. Samguk, approx. 1st century BCE – 7th century CE)¹⁹. Writing about its impact, M.J. Seth states: “It was an ethical philosophy that taught that each individual should strive to pursue a virtuous life (...) It was also a political philosophy that stressed the duty of rulers to act as moral exemplars and to attend to the needs of the people in order to create a harmonious society. Confucianism respected formal learning and accepted a hierarchical society, a patriarchal²⁰ family structure, and an authoritarian state²¹.”

In the Goryeo period (918–1392), Confucianism influenced the state institutions designed according to the Chinese Táng (618–907) dynasty policies models²². Confucianism was present also in education: *Gukjagam*, central national Confucian academy was established in 992 and on the local scale *hyanggyo* – provincial schools were established. Civil servants underwent *gwageo* examinations, testing their knowledge of Chinese classics. King Taejo – the first monarch of Goryeo – by the end of his rule gave 10 injunctions, revealing his ‘political program’. The 1st injunction: “the success

p. 148–149. On the other hand S.J. Palmer describes the religious importance of Confucian rituals. S.J. Palmer, *Confucian rituals in Korea*, Berkeley 1986, p. 89 ff.

¹⁵ Tu Weiming, *Confucianism*, <http://www.britannica.com/EBchecked/topic/132104/Confucianism> (accessed: 22.05.2015).

¹⁶ Jiang Yonglin, *The Mandate of Heaven and the Great Ming Code*, Seattle 2011, p. 33.

¹⁷ Tu Weiming, *Confucianism...*

¹⁸ Choi Chongko points out, that the geographical factor had an impact on Korea’s drawing influence from Chinese law, as well as Korean influence on Japanese law. Choi Chongko, *Traditional Legal Thoughts...*, p. 10

¹⁹ M.J. Seth, *A History of Korea: From Antiquity to the Present*, Lanham 2011, p. 121. The three kingdoms were Goguryeo, Baekje and Silla, subsequently joined together into unified Korean state. Keum Jang-tae points out, that Confucianism was probably introduced already earlier, in the ancient period, see: Keum Jang-tae, *Historia koreańskiej myśli konfucjańskiej*, translated by Lee Haesung, D. Barańska, Skarżysko-Kamienna 2014, p. 15–44.

²⁰ It is worth noting, that while Confucianism had patriarchal tendencies, traditional Korean religion – Shamanism – offered women an important role in religious life. See: L. Kendall, *Confucian Patriarchs and Spirited Woman* [in:] *Shamans, Housewives, and Other Restless Spirits: Women in Korean Ritual Life*, Honolulu 1985.

²¹ M.J. Seth, *A History of Korea...*, p. 121.

²² Keum Jang-tae, *Historia koreańskiej myśli...*, p. 49.

of every great undertaking of our state depends upon the favor and protection of Buddha”, thus putting emphasis on Goryeo’s dominant religion – Buddhism. The 10th injunction however, required the lecture of Chinese classics – a Confucian practice²³.

In the Goryeo many religions and worldviews, such as Buddhism, Confucianism and Taoism coexisted in a relative harmony²⁴. The introduction of Neo-Confucianism into Korea challenged Buddhist dominance and led to the conflict of the two philosophies²⁵.

Neo-Confucianism is a version of Confucianism established during the Chinese Sòng dynasty (960–1279), providing philosophical alternative to Buddhism and Taoism. Koh Young-jin remarked that: “Neo-Confucianism was based on the theory that *li* and *qi* (*i* and *gi* in Korean) combined to drive the creation and evolution of the universe, with *li* as universal and immutable principles and *qi* as phenomenological and variable forces. The theory of *li* and *qi* constitutes the doctrinal foundation of Neo-Confucianism that sought to explain nature, man, and society”²⁶.

Diversely called by scholars as new Confucianism, Sòng doctrine, Chéngzhū school, Zhū Xī’s Neo-Confucianism, Zhū Xī doctrine, the Learning of the Way²⁷, and the Learning of Principle (*Lixue*), Neo-Confucianism may be difficult to grasp. In general, new Confucianism and Sòng doctrine denote the entire Confucianism of Sòng China, while Neo-Confucianism refers to a scholastic system of thought based on discourses on “principle and material force” and “mind-heart and human nature.” This system of thought was initiated by Zhōu Dūnyí and integrated by Zhū Xī. Neo-Confucianism was an ideology that reflected the interests of landowners, particularly small and medium-sized ones under the landowner-tenant peasant system²⁸.

Among the East Asian states, Chinese and non-Chinese, Korean Joseon was the most thoroughly confucianized. Since the 15th century, as the aristocracy (*yangban*) embraced Confucian thought, political and cultural penetration of elites by Con-

²³ *Sourcebook of Korean Civilization*, ed. P.H. Lee, vol. 1, New York 1993, p. 263–266. Kang Jae-eun points out, that “the pillar of founding ideology was Buddhism, but the political thought that supplemented it was Confucianism”. Kang Jae-eun, *The Land of Scholars: Two Thousand Years of Korean Confucianism*, translated by Suzanne Lee 2006, Paramus 2006, p. 95.

²⁴ Keum Jang-tae, *Historia koreańskiej myśli...*, p. 46. On East Asian religious syncretism see: http://afe.easia.columbia.edu/cosmos/main/spirits_of_chinese_religion.pdf (accessed: 30.05.2015).

²⁵ *Ibidem*. Please note, that sometimes notion Neo-Confucianism may be used to describe contemporary philosophy in East Asia, see: J. Potulski, *Neokonfucjanizm – czy Chiny mogą stać się liberalną demokracją?*, “Gdańskie Studia Azji Wschodniej” 2014, z. 6, p. 34–47.

²⁶ Koh Young-jin, *Neo-Confucianism as the Dominant Ideology in Joseon*, “Korea Journal”, Winter 2003, p. 60.

²⁷ Keum Jang-tae put emphasis on the Dohak (learning of the way) notion, which he finds the most suiting Joseon state ideology. Keum Jang-tae, *Historia koreańskiej myśli...*, p. 124.

²⁸ Koh Young-jin, *Neo-Confucianism...*, p. 60.

fucianism was unprecedented²⁹. As Choe Yongho, P. Lee and H.H.W. Kang noted: „the founders of Joseon were fully committed to Sòng Neo-Confucianism as their guiding creed and endeavored to transform Korea into a Confucian state”³⁰.

Early Joseon State and Yi dynasty

There were several states formed over the course of the Korean history. These are Gojoseon (Ancient Joseon; traditionally 2333 BCE – 108 BCE), Buyeo (?-495 CE), Goguryeo (traditionally 37 BCE – 668 CE), Baekje (traditionally 18 BCE-660 CE), Silla and United Silla (traditionally 57 BCE – 935 CE), Gaya (traditionally 42–532), Balhae (698–926), Goryeo³¹ (918–1392) and the last one – Joseon (1392–1910; until Japanese occupation)³².

Goryeo state collapsed in 14th century. General Yi Song-gye deposed the last Goryeo monarch and became the king. His posthumous name is King Taejo, the first of the Yi dynasty. The new government officially named the state Joseon³³, so the period is referred to as either the Joseon or the Yi dynasty period.

Joseon rulers strongly adhered to Confucianism and as M.J. Seth stated the transformation Goryeo-Joseon was “more than a change of dynasties; it was a long-term attempt to create a society in conformity to Confucian values and beliefs. The effort, while involving close study of Chinese models, contributed to the further evolution of a distinctive Korean cultural and political entity. Today, when Koreans talk of »traditional society« they generally are referring to the culture and society that emerged during that period”³⁴.

Possible reason why Joseon monarchs adopted Confucianism so eagerly may be the necessity to justify the *coup d'état*. Yi Song-gye explained the need for new dynasty with the concept of the Mandate of Heaven (Korean: *cheonmyeong*). According to Yi party, the last years of the Goryeo saw rule by immoral men ruling through pup-

²⁹ Tu Weiming, *Confucianism...*

³⁰ *Sources of Korean Tradition Volume One: From Early Times Through the Sixteenth Century*, eds. P.H. Lee, Ch'oe Yongho, W.T. de Barry, H.H.W. Kang, New York 1997, p. 279.

³¹ Name of the kingdom Goryeo (itself drawing on Goguryeo) was the root word for the English and Polish words “Korea”. T. Goban-Klas, *Historia i współczesność Korei: od pustelniczego królestwa do azjatyckiego tygrysa*, Toruń 2006, p. 34.

³² Chronology in: J.P. Rurarz, *Historia Korei...*, p. 405–408.

³³ In fact, king Taejo sent a delegation to Míng China to gain its recognition and help choose a proper name for his new dynasty. He proposed two choices: Joseon and Hwaryong, after the name of his birthplace. Chinese emperor chose Joseon, which can be translated roughly as “Land of the Morning Calm”. R. Saccone, *Koreans to Remember: Fifty Famous People Who Helped Shape Korea*, Seoul 1993, p. 65.

³⁴ M.J. Seth, *A History of Korea...*, p. 127.

pet kings. Confucianism demanded the ruler to be a person of integrity and virtue, setting a moral example, otherwise the harmony between Heaven and Earth would be damaged, which resulted in calamities, and the people becoming restless³⁵. That was said to be the problem of the previous dynasty: “some have been blessed with the Mandate of Heaven, and others have lost it” – stated new king in his Founding Edict³⁶. Interestingly, he put emphasis on the fact that Goryeo ruler “broke the law” and thus had to be replaced³⁷.

As to the Buddhism, the dominant faith of Goryeo, it was thoroughly criticized, Yun Hoe (1380–1436) deputy Director of the Hall of Worthies³⁸, and others, submitted the following memorial in 1424: “...the reference for Buddha has been increasingly fervent, yet neither happiness nor profit has been gained. This is recorded in historical books, which Your Majesty has certainly perused thoroughly. (...) Beasts and birds that damage grain are certainly chased away because they harm the people. Yet even though beasts and birds eat the people’s food, they are nevertheless useful to the people. Buddhists, however, sit around and eat, and there has not yet been a visible profit”³⁹. King Taejo confiscated the huge holdings of the Buddhist temples, so he had practical purpose to follow Confucianism instead of Buddhism⁴⁰.

Nam Chul Bu noted, that in the early period of the Joseon dynasty, scholar-officials believed, that a king could be educated to be a virtuous man through studying Confucian teachings⁴¹. From the first king of the Joseon dynasty, monarchs had to study Confucian classics almost on daily basis. This system, specifically designed to educate the kings, was called Gyeongyeon – the institution of the Royal Lecture⁴². Nam Chul Bu remarked, that in Gyeongyeon, “the kings were advised to study classics such as The Great Learning (大學), The Doctrine of Mean (中庸), The Extended Meaning of the Great Learning (大學衍義), and The Classic of the Mind (心經), these books primarily pertained to how rulers could cultivate themselves

³⁵ *Ibidem*, p. 128.

³⁶ *Sourcebook of Korean Civilization*, ed. P.H. Lee, vol. 1, New York 1993, p. 479 and f., source quote from Taejo’s Founding Edict on page 480, from Taejo sillok (annual record) 1:43a-45a.

³⁷ *Ibidem*.

³⁸ The Hall of Worthies, or Jiphyeonjeon, was a royal research institute set up by king Sejong of Yi dynasty in 1420.

³⁹ M.J. Seth, *A History of Korea...*, p. 156, source quote from Sejong sillok (annual record) 23:27a-b.

⁴⁰ *Ibidem*, p. 128; see also: A. Kość, *Filozoficzne podstawy państwa koreańskiego w perspektywie historycznej* [in:] *Korea w oczach Polaków...*, p. 28.

⁴¹ Nam Chul Bu, *Confucian Kings and Dhammaraja: A Comparative Study of Kingship in the Joseon Dynasty (1392–1910) of Korea and the Sukhothai (1238–1438) and Ayutthaya (1350–1767) Dynasties of Thailand*, “Korean Political Science Review” 2013, vol. 47, no. 6, p. 100.

⁴² *Ibidem*.

and improve statecraft”⁴³. Notable Confucian scholars of the early Joseon period were Jeong Do-jeon, Kwon Geun, Byeon Gye-ryang, and Yang Seong-ji⁴⁴. Privy Council, and later the State Council was also formed of Confucian *literati*.

In international policy Joseon was following the Mencius’ concept of “smaller nation serving a greater nation” (Korean: *sadae*) towards China. Whether that can be qualified as being China’s vassal in Western terms is not unanimously agreed to⁴⁵. Hahm Pyong-choon called Confucianism “the single greatest force for Sinitization”⁴⁶.

Not only Hanyang (renamed Hanseong, nowadays Seoul) – the new capital – was modelled according to Chinese imperial concepts. King Taejong (1400–1418) reformed the administration. Central government was organized into six ministries, following Chinese imperial models. These were Ministry of Personnel, Ministry of Taxation, Ministry of Rites, Ministry of Defence, Ministry of Works and Ministry of Justice⁴⁷.

Restructuration of the government was finalized with the publication of the State Code (*Gyeonggukdaejeon*) in 1485. The code laid down the duties and functions of various offices. In assisting the king’s rule, the State Council staffed by three high state councilors was the highest deliberative organ. Joseon was a highly centralized kingdom, with all the local officials appointed by the central government⁴⁸. In fact, the degree of factual centralization of Korea was greater than in China, due to geographical factor (much smaller territory)⁴⁹.

Centralization did not necessarily mean abuse of competences. A unique feature of the Joseon government were mechanisms to check arbitrary exercise of power. Although according to the State Code (1485) each of the three censorate offices – Office of the Inspector-General (*Saheonbu*), Office of the Censor-General (*Saganwon*), and Office of Special Advisers (*Hongmungwan*) had different duties, they often

⁴³ *Ibidem*, p. 101.

⁴⁴ Koh Young-jin, *Neo-Confucianism...*, p. 65. Choi Chongko remarked: “Among the statesman of Joseon there were its first scholars of jurisprudence: Jeong Do-jeon, a statesman, scholar, and official under both the Goryeo and Joseon dynasties (...) compiled such handbooks as the Joseon Gyeonggukjeon (Code for National Governance, 1394). Gyeongjemungam (Essays on National Policy, 1395), and Gyeongjemungam Byeoljip (Additional Essays on National Policy, 1397) which served as the basic references in the new government organization and administration. Choi Chongko, *Traditional Legal Thoughts...*, p. 87.

⁴⁵ Kang Jae-eun, *The Land of Scholars...*, p. 179.

⁴⁶ Hahm Pyong-choon, *Essays in Korean Law...*, p. 8.

⁴⁷ J.P. Rurarz, *Historia Korei...*, p. 216. Although the dynasty changed, it does not mean that institutional changes were revolutionary – Chinese government structure was present already in Goryeo. A. Nahm, *Korea: tradition & transformation: a history of the Korean people*, Seoul 1991, p. 61–62.

⁴⁸ *Sources of Korean Tradition Volume One...*, p. 263, A. Nahm, *Korea: tradition & transformation...*, p. 97–99.

⁴⁹ Hahm Pyong-choon, *Essays in Korean Law...*, p. 12.

cooperated, and by criticism and surveillance they controlled arbitrary decision-making or exercise of authority by a king or any other official⁵⁰. *Sources of Korean Tradition* authors notice that “constant and persistent reminder to adhere strictly to rigid Confucian principles inhibited inappropriate behavior. And the ubiquitous presence of historians around the throne, taking notes of all the official transactions of the king and the officials so as to include them in the history being compiled for posterity, had the effect of obliging government officials to conform to Confucian norms”⁵¹.

Legal thought of early Joseon period

The foundations of the idea of law in Korea can be traced already to the ancient period and mythology⁵². When Chinese philosophy settled within Korean thought, the concepts of *li* 理 (kor. *I* – the rational principle) and *li* 禮 (kor. *Ye* – the ritual propriety) became prevalent⁵³. Rites served as a middle axiom of law and morality and were related to custom⁵⁴. Hahm Pyong-choon remarked, that *li*, as the propriety is the closest to Western concept of law: “It is an accumulation of political as well as ethical wisdom of the Chinese civilization tried by the Confucian rationality. In a narrower sense it means etiquette and manners. It is one of five constant virtues⁵⁵. In broader sense it means an understanding of the Cosmic Reason. It is a moral expression of the Way of the universe. When both the ruler and the ruled act according to *li*, harmony prevails”⁵⁶.

⁵⁰ *Sources of Korean Tradition Volume One...*, p. 263. W. Shaw noticed “The law of the Yi dynasty was an exercise of imperium, lacking the principles and rules of law designed to restrain the ruler. It was however, interwoven with a system of positive moral principles which applied to the ruler. The moral system designed to curb the ruler’s arbitrary use of power was Confucianism”. W. Shaw, *Traditional Korean...*, p. 50.

⁵¹ *Sources of Korean Tradition Volume One...*, p. 263. One of Joseon important offices was Chun-chugwan – the Office of Historical Records.

⁵² Choi Chongko, *Traditional Legal Thoughts...*, p. 81.

⁵³ *Li* and *li* are homophones, which does not make understanding Chinese philosophy any easier. Korean *literati* were required to understand Chinese language in order to study Confucian classics.

⁵⁴ Choi Chongko, *Law and Custom in Korean Society: A Historical and Jurisprudential Approach*, “Seoul Law Journal” 2006, vol. 47, p. 225.

⁵⁵ The other four are: *ren* (humanness, benevolence), *yi* (rightness, righteousness), *zhi* (intelligence, wisdom) and *xin* (trust, faithfulness). Wu Chang [in:] *The Encyclopedia of Confucianism*, ed. Yao Xinzong, New York 2013, p. 660.

⁵⁶ Hahm Pyong-choon, *Essays in Korean Law...*, p. 21–22.

While *li* was to be followed by the virtuous, on the contrary law was an instrument of punishing the vicious and the depraved⁵⁷. Hahm Pyong-choon commented, that law was seen “as an unpleasant necessity prescribed by the failure of reason in politics. Law as a political norm always meant the positive law. It was something that had been legislated by the ruler. It was sharply distinguished from custom. It always signified a norm with physical force as a sanction behind it”⁵⁸.

The law meant punishment, and the ruling elite considered it to be beneath its dignity⁵⁹. Dai Kwon Choi explaining this attitude, stated: “the Western notion of law is associated with what is morally right, whereas in traditional Korea law is not positively associated with what is morally right, but is something to be avoided – something the government must reserve as the last resort against a morally intractable person. The notion of law in Korea is closely associated with Oriental shame culture. Law represents punishment inflicted upon one who does not know what is shameful. Law is regarded as shameful even if one follows what it says, because law tells you what to do, whereas you are expected to be morally above the law”⁶⁰.

As to personal liberties of Joseon citizens, Confucian philosophy offered people the possibility of ‘freeing themselves’ from their lower instincts and following moral virtue, however in politics the function of the ruler was to rule and the ruled to be ruled⁶¹. One of *li* functions was to maintain the vertical stratification within the society and even among those belonging to the same social class equality was rarely permitted. Factors determining social position were generational rankings on the family tree, defining hierarchical positions in the same clan and the age difference, even in terms of few days. Confucian Korean human relationships were meant to be in superordination-subordination frames⁶².

With so strong social inequality⁶³, even parties in a litigation could not be on an equal footing. Negation of equality led to neglecting private law. Law of contracts, commercial transactions⁶⁴ or property were not developing in Joseon. Torts and

⁵⁷ “When a society is ordered by law or by the threat of punitive sanctions, its members evade it with impunity and feel no shame. But when a society is ordered by *li*, its members not only behave properly but also know shame. *Li* and law are thus mutually exclusive. The rule of *li* not *fa* [law] was the ideal to be pursued in the Korean political tradition”. *Ibidem*, p. 22.

⁵⁸ *Ibidem*, p. 42.

⁵⁹ *Ibidem*.

⁶⁰ Dai Kwon Choi, *Traditional Korean...*, p. 60.

⁶¹ Hahm Pyong-choon, *Essays in Korean Law...*, p. 32–33.

⁶² *Ibidem*, p. 36–37.

⁶³ The author will not present here the class division of Joseon society, but one especially interesting feature was national identification pass system – hopae – personal tags recording the bearer’s name, place of birth, status and residence, see: W. Shaw, *Traditional Korean...*, p. 34.

⁶⁴ Commercial activities were the lowest form of vocation a common man could have, aside from such dishonourable trades as butchery, prostitution and sorcery that were limited to the outcastes class. Hahm Pyong-choon, *Essays in Korean Law...*, p. 38.

even family law were dealt with by penal regulations⁶⁵. According to Hahm Pyong-choon, under the Yi dynasty litigation and lawsuits were considered as a sign of a failure of social harmony⁶⁶.

The importance of Gyeonggukdaejeon codification was already indicated above. As to legislative process, it is worth noting, that Confucian worldview was focused on history, ancestors were venerated and sages of the past honored in the shrines. Given that, it is logical, that main principle of legislation was respect for the ancestor's achievements⁶⁷. Choi Chongko remarked, that Joseon kings "believed that they should keep principally the achievements and the policies of the forerunning kings. This principle ensured that a standard of stability was kept when making and enforcing laws. Thus, the new legal codes kept the old articles without erasing and added the new articles in small letters as supplementary. This principle, on the other hand, hindered legal renovation⁶⁸".

Chun Bongduck recognized 5 principles characterizing traditional Korean law: 1) Korean law was merely the will and command of the sovereign; 2) Korean legislation was hampered by the principle that the older of two conflicting statutes took precedence⁶⁹; 3) Korean law was bureaucratic in character, laws being addressed to officials and not the populace at large⁷⁰; 4) Laws existed exclusively for the benefit of the elite *yangban* class⁷¹; 5) Law was subordinated to considerations of morality in an arbitrary manner⁷².

⁶⁵ *Ibidem*, p. 38.

⁶⁶ *Ibidem*, p. 29–30.

⁶⁷ Dai Kwon Choi, referring to preface to Gyeonggukdaejeon points out, that in establishing the Great Codes, monarchs wished to observe ancient law, not to enact it. Dai Kwon Chon, *Traditional Korean Legal attitudes*, Berkeley 1980, p. 61. Interestingly, Gyeonggukdaejeon stated that Chinese Ming Code was to be the basis of Korean criminal law. W. Shaw notes, that Korean receptivity to Ming law was not merely a matter of "service to the great" policy but that also legal, institutional and conceptual factors played an important role in the reception. W. Shaw, *Legal Norms in Confucian State*, Berkeley 1981, p. 4–6.

⁶⁸ Choi Chongko, *Traditional Legal Thoughts...*, p. 94.

⁶⁹ However, W. Shaw indicates that the codes clearly abrogated and revised earlier law and that the topic of intertemporal rules of Joseon law require further investigation. W. Shaw, *Traditional Korean...*, p. 29; see also: Jung Geung Sik, *The Codifications...*, p. 180.

⁷⁰ Chun Bongduck remarked: "Since the laws were conveyed only to the lower offices, the officials were the only persons knowledgeable of and responsible for the application of the laws, and the laws were applied to the common people, who in turn, were responsible not for knowing the laws but for obeying the officials". See: Chun Bongduck, *Traditional Korean Society and Legal Thought*, "Seoul Law Journal", August 1978, vol. 19, no. 1, p. 9.

⁷¹ "All Koreans wanted to be yangban" yet "there is no other as ambiguous as the word »yangban«" because "there was no lawful regulation". Whether one's ancestors passed the official examinations was the crucial factor in the assignment of that status. Kang Jae-eun, *The Land of Scholars...*, p. 210–211.

⁷² Chun Bongduck, *Traditional Korean...*, p. 52–66.

W. Shaw rejects some of the arguments presented above, especially on the disregard for the law and esteeming only Confucian morality. He quotes Jeong Do-jeon, the influential Confucian scholar of first years of Yi dynasty, to prove that Korean Confucianists realized that law was as indispensable as morality⁷³. When Jeong Do-jeon commented Ming Code provisions on forgery and bribery, he wrote “If the sovereign clarifies the distinction between profit and moral probity and thereby encourages a sense of shame, both problems [of forgery and bribery – W. Shaw] can eventually be eradicated. But the penal statutes may nonetheless not be abandoned”⁷⁴.

Penal law was especially important, because mispunishment of crime was believed to cause disturbances of nature – unseasonable weather, drought or worse – upon the state. Wrongful punishment had cosmic implications as well⁷⁵.

Conclusions

Korean traditional legal culture, with historical grounds common for both contemporary peninsular states⁷⁶ is based on Confucian morality rather than on religion or legalism⁷⁷. When we compare Korean socio-political system of late 14th and 15th century with its equivalents in Europe, the results of comparison are different from the same attempt adjusted to 19th century reality. Joseon law lacked egalitarian approach – it regulated the class society and discriminated certain groups such as women, illegitimate children or Buddhist monks. However, in that period of time European law shared similar flaws.

The problem of Korea was, that after the disastrous wars with the Japanese (1592–1598) and Manchu (1627 and 1637), Korean rulers chose the policy of isolation from the rest of the world, becoming the “Hermit Kingdom”, so the pace of socio-political changes in Joseon slowed down. In later periods social reform movements within Korean Confucianism arouse (Silhak – school of practical learning). Nevertheless, the conservatives did not agree with their postulates, and

⁷³ W. Shaw, *Traditional Korean...*, p. 22.

⁷⁴ *Quote of Jeong Do-jeon from Collected Writings of Sambong*, Seoul 1961, quote for: W. Shaw, *Traditional Korean...*, p. 18.

⁷⁵ *Ibidem*, p. 20.

⁷⁶ N. Levi writes about Confucian influence on North Korean totalitarian regime. In fact both modern Korean states draw from Confucianism in their ideologies, but adapt it respectively to Juche doctrine and southern Korean capitalism. N. Levi, *System polityczny Korei Północnej: aspekty kulturowe*, Warszawa 2013, p. 27–28; see also: T. Śleziak, *The Role of Confucianism in Contemporary South Korean Society*, “Rocznik Orientalistyczny” 2013, t. 66, z. 1, p. 27–46; Lee Haesung, *Kapitalizm konfucjański: Koreańska droga rozwoju*, Toruń 2011.

⁷⁷ R. Tokarczyk, *Próba zarysu...*, p. 324.

factional fights arouse. Already in 1456 King Sejo executed 6 ministers who later became Confucian martyrs and in his successors times *literati* purges were conducted (1498, 1504, 1519).

In relation to arguments brought up before, we may come to conclusion, that Yi dynasty's approach to law was somehow cautious. In legal sphere, as Jung Geung Sik pointed, "the cautious lawmaking was especially valued, and legal codification was not considered for the purpose of creating laws, but (...) finding ancient pre-existing laws (...). The trust of the people provided the basis for lawmaking, expressed in the highly regarded concept of Yangbeobmiui, which acted as a deterrent to careless lawmaking as well as the people's misgivings that accompanied it. (...) In the early Joseon period, it was constantly said within the lawmaking debates, »When laws are made, troubles follow« as well as, »It's easy to make laws, but hard to enforce them«⁷⁸.

Jung Geung Sik remarks, that particularly during the reign of king Sejong, surveys directly enquiring about the opinions of the common people were employed⁷⁹ and precisely king Sejong's rule is considered "the golden age of Korean culture"⁸⁰.

In the end, in the authoritarian and paternalistic system of government depended much on the benevolence of the particular monarch and his counselors⁸¹. It is deeply symbolic, that 10 years after establishment of Yi dynasty, Sinmungo (petitioner's drum) was set up at the royal palace gate so that those who could not get justice through other channels could signal to the king who would act directly – undoubtedly, it was crucial for a Korean king to have good ears⁸².

⁷⁸ Jung Geung Sik, *The Codifications...*, p. 183.

⁷⁹ "In 1430 (12th year in the reign of king Sejong), in the process of adopting a new tax system, a survey spanning the entire country enquired the opinions not only of administrators, but even farmers, collecting a total of 172,806 opinions before ultimately determining to terminate the new tax plan" (*The Chronicles of King Sejong, King Sejong 12th year August 10th, The Annals of Joseon Dynasty*; <http://sillok.history.go.kr> (accessed: 1.10.2013)).

⁸⁰ J.P. Ruraz, *Historia Korei...*, p 228; see also: *King Sejong the Great: the light of fifteenth century Korea*, ed. Young-Key Kim-Renaud, Washington 1993.

⁸¹ This is of course a certain simplification. In Korean historical writing, authors notice the pressure of the *yangban* over the monarch, as well as the censors and bureaucrats control. Sohn Pow-Key, Kim Chol-choon, Hong Yi-sup, *The history of Korea*, Seoul 1984, p. 137, 149.

⁸² K. Pratt, R. Rutt, *Korea: a Historical and Cultural Dictionary*, Richmond 1999, p. 423.

STRESZCZENIE

KOREAŃSKA MYŚL PRAWNA POD RZĄDAMI DYNASTII YI JAKO ODZWIERCIEDLENIE ŚWIATOPOGŁĄDU KONFUCJUSZA PRZYJĘTEGO W OKRESIE WCZESNEGO KRÓLESTWA JOSEON: WPLYWY CHIŃSKIE, IDEOLOGIA KOREAŃSKA

Królestwo Joseon, założone pod koniec XIV wieku przez monarchów z dynastii Yi, było głęboko skonfucjanizowane, co znalazło odzwierciedlenie w przyjętym modelu społeczeństwa, administracji i prawa. Chiny miały znaczący wpływ na kształtowanie się instytucji politycznych w królestwie Joseon oraz pozostały źródłem dominującej ideologii, nawet jeśli w pewnym stopniu nastąpiła jej indygenizacja.

Przybliżając podstawowe informacje na temat konfucjanizmu, królestwa Joseon oraz myśli prawniczej w reprezentatywnym okresie (1392–1485), autor skupił się na czterech głównych zagadnieniach: wprowadzeniu konfucjanizmu do Korei; powodach, z jakich władcy Joseon opierali się na konfucjanizmie; wpływie światopoglądu konfucjańskiego na myśl prawną oraz skutkach przyjęcia konfucjanizmu jako najważniejszej ideologii państwa koreańskiego.

Konfucjanizm dotarł do Korei z Chin ze względu na bliskość geograficzną oraz wpływy kulturowe i został przyjęty jako atrakcyjna myśl polityczna. Władcy Joseon wykorzystywali założenia konfucjanizmu w celu uzasadnienia zmian dynastii i zaakceptowali go jako filozofię dla nowego modelu społecznego. System normatywny w Joseon był wzorowany głównie na chińskim prawie i pomógł zachować nową ideologię narodową.

Ocena, czy wpływy konfucjanizmu na prawo koreańskie powinny być oceniane pozytywnie, czy negatywnie, jest niejednoznaczna. Dla współczesnych ludzi Zachodu nierówności społeczne i prawne, brak wolności oraz autorytaryzm mogą się wydawać sprzeczne z zasadą rządów prawa, jednak okres wczesnego królestwa Joseon był czasem ogromnego rozwoju kultury, był koreańskim „złotym wiekiem”, oferującym stabilny porządek społeczny i harmonię.