

## RELIGION AND LAW IN KOREA

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### I. Problems, Concepts and Definitions

The problems of culture conflict and acculturation (culture contact) have come to occupy a position of increasing importance as a subject of study among anthropologists and sociologists in recent decades. Although these scholars themselves would be the first to agree that there is still considerable room for improvement in theory and conceptualization, there has been substantial contribution to our understanding of the process of encounter between different cultures. With the European colonial powers the question of acculturation of their colonial peoples was a practical one of application. Knowledge of the mechanics of cultural transmission and variety was essential as a basis for their colonial policy. In America the overpowering of Indian culture by white culture has been of interest to anthropologists. Convergence of divergent European cultures in "the great melting pot" has prompted the American social scientists to study the subject from both psychological (personal disorganization) and socio-cultural (cultural change) vantage points (Stonequist 1937 and Beals 1962: 375-395).

In the field of law, culture contact, in terms of an alien legal system being transmitted to a receiving culture with totally different historical background, has been a subject of little interest. It is true that the American Realists (Karl Llewellyn with Adamson Hoebel, for example) and some comparative lawyers have shown some interest in this problem. But the problem has been left largely untouched by lawyers. Even sociologists of law have confined themselves primarily to their own cultures with emphasis on "culture lag." There seem to be several reasons for this neglect. Aside from thoroughgoing ethnocentrism found everywhere with

lawyers, no one seems to have considered the problem of much importance. Receiving cultures themselves have usually decided that their indigenous legal systems were inferior and had to be abandoned in favor of modern systems from European cultures. The adoption of a Western legal system was just another step in a series of "indispensable" measures thought essential for development and modernization. In the case of a colony, the imposition of the legal system of the "mother country" was simply a political question.

In discussing the problems of transplanting a modern legal system, the underlying assumption has invariably been that such an action is unavoidable. Another assumption is that since Roman law "worked" in the case of the Germanic peoples in Europe, there is no reason why the same should not be true with Asians and Africans. Apart from the validity of the assertion concerning Roman law in Europe, the analogy between Europe and Asia seem false. The imported legal system has not "worked" in Korea. It has remained an alien system confined to urban centers. It has failed to make itself relevant, let alone indispensable, to the life of the majority of the population. The indigenous way of life is so different from the European way of life out of which the imported legal system had grown, that the wonder is that it has not caused more disruption and disorganization than it has. The predicament faced by Korea is that the norms of positive law not only lack the support of "the normative customs of the living law" but the two in fact conflict with each other. A major consequence of this state of affairs is "a corruption of legal and political officials which turns positive law into something worse than a dead letter" (Northrop 1960:617)<sup>1</sup>.

It is therefore imperative that the conflict between the imported legal system and the indigenous jural values of the people should be at least minimized. One solution would be to reject the imported system and revert to the traditional system. This appears, however, impossible in view of the existing commitment to modernization on the part of the

political leadership. Moreover, rapidly increasing international interdependence, especially international trade, rules out such a possibility. Another solution would be to go to the opposite extreme and ruthlessly root out the traditional values. But the mores have proven themselves extremely resilient. Such a course of action would only intensify the conflict. It is therefore necessary to accept the fact of conflict and do our best to minimize it. It is the aim of this paper to facilitate a better understanding of the nature of this conflict by examining the relationship between religious and jural values of the Korean people.

The close interconnection between law and religion has received ample documentation throughout history. In many societies law and religion are not differentiated (Maine 1930; Friedrich 1958 8-12; Boddenheimer 1962: 4-5). Even today the willingness to separate the science of law from theology and religion is by no means universal. It is true that the theory of natural law itself has been secularized to a large extent. It is no longer fashionable to evaluate a piece of legislation in terms of "the eternal law of God." Nevertheless, the notion that the law ought to be just and reasonable retains its vitality, albeit its frame of reference is no longer sacred.

Our concern here, however, is not a validation or refutation of any particular theory of natural or divine law. Our interest in the close relationship between law and religion stems from their mutual interaction in the realm of "intuitive legal consciousness" as Leon Petrazycki (1955:221-240)<sup>2</sup> put it or "in the inner order of association" as Eugen Ehrlich (1936:37) perceived it. It is Ehrlich's "living law"<sup>3</sup> and Petrazycki's "intuitive law"<sup>4</sup> that we find of significance in viewing the legal landscape of Korea. Jurisprudents in the past have endeavored to differentiate as well as to relate law and morality. It is not our purpose to define sharply the respective provinces of law and morality. We shall proceed on the assumption that law and morality share a common territory in which they interact with one another<sup>5</sup> as well as with religion. "Law,

morality and religion are three ways of controlling human conduct which in different types of society supplement one another, and are combined in different ways" (Radcliffe-Brown 1952:172).

It is not insisted here that the three forms of social control are identical or that the fields covered by them are the same, but it is argued that the three are closely interrelated and that they do interact with one another. Nor is it the purpose of this paper to establish a causal relationship or primacy among these three types of social control. We are interested in religion because it is "an important or even essential part of the social machinery, as are morality and law, part of the complex system by which human beings are enabled to live together in an orderly arrangement of social relations" (Radcliffe-Brown 1952:154). Thus, we are interested in the "social function" of religion. We are concerned with law, morality and religion because they all contribute to the formation and maintenance of a social order.

Durkheim's definition of "collective conscience" (1964:72) and Parsons' concept of "normative culture" (1964:121-125) are broad enough to encompass all three forms of social control with which we are concerned. Taking the latter as a point of departure for our inquiry, we are faced with several important questions. First, "What are the constituent elements of the normative culture?" Parsons differentiates four components of normative cultural patterns according to four levels of generality. That component which belongs to the highest level of generality is called societal values. Differentiated norms, collectivities (collective goals) and roles (role expectations) are the remaining components of the culture patterns in the descending order of levels of generality (Parsons 1964: 121-125).

Law, morality, and religion--the three conventional categories of social control--appear to function at all four levels of normative culture. They cut across the four levels. It would be unwise to force each of the three conventional categories into one or more of the four

components of normative culture. Religion, morality, and law all share their common root in the societal values. All three influence the delineation of what is the desirable and the good society, and they, as differentiated norms, are in turn legitimized by the value system. The three categories also participate jointly in the articulation of collective goals and in the definition of role expectations. Consequently, in dealing with the questions related to the "functional" aspect of law, morality, and religion, we may properly subsume them under the concept of normative culture or its highest level of generality, societal values.<sup>6</sup>

The second question is, "How is the normative culture maintained?" The normative culture patterns are "institutionalized in the social system and internalized in the personalities of its individual members" (Parsons 1964:122). Anthropologists and sociologists appear to have mainly concerned themselves with the institutionalization of culture patterns (culture). The internalization of cultural patterns has been a subject of study by psychologists (personality). But both the social and individual aspects of the maintenance of social order (or cultural patterns) are the same integral order of human phenomena. Inflexible dichotomy between culture and personality seems unrealistic in view of the increasing awareness among psychologists and anthropologists that their fields of study are the same integral reality of human life (Hallowell 1955:351,357)<sup>7</sup>.

The third question to be posed is, "What are the precise mechanics of interaction between the social system and the individual personality?" How society and culture are internalized within the individual human actor has been a subject of great interest not only to the psychologist as a part of learning process but to every student of sociocultural disciplines as the process of socialization (Parsons and Bales 1957:357). It is pertinent to note that law has usually been identified with the institutionalized facet of normative culture, religion with the internalized (Parsons 1964: 148-149).

It seems obvious that no individual incorporates the local culture

of his time intact. The individual must restructure his own values (Brown 1965:405). But it is equally obvious that the individual restructuring has to be largely conditioned by the local culture. The social system must rely on its individual members to carry on cultural patterns, but the values they incorporate initially are given to them by the social system.<sup>8</sup> Individuals must be made to "want to act as they have to act [author's italics] and at the same time find gratification in acting according to the requirements of the culture" (Fromm 1949:5).

There are still further questions concerning the specifics of motivation. It may be necessary to learn the exact details of how incorporated values control behavior; how new values are chosen to be incorporated; and what happens when the incorporated values mutually conflict. These and other questions are very important. But they fall outside the scope of this paper. It should nonetheless be pointed out that with respect to motivation it has been noted that its mechanisms, hence the mechanisms of social control, are non-rational (Parsons 1964:144-145). Moreover, religion is usually placed in the context of non-rational components of motivation when its relation with the internalized aspects of values and norms (personality structure) is analyzed. On the other hand, law, at least in its higher level of administration, tends to be classed with the more rational areas of social life, e.g., the market (Parsons 1964:145, 148-149).

Before we can proceed any further some sort of definition of religion is required. I should like to make a functional definition of religion that may serve our purpose heuristically. Religion is defined as a system of beliefs that gives meaning and significance to the ultimate reality of the human existence of the believer. This definition of religion would be considered inadequate and/or improper by many. Aside from its omission of any reference to a god, it also omits two important factors stressed by Durkheim: "sacred things" and "one single moral community called a Church" (Durkheim 1965:62-63). The reason for such

omissions should be obvious to anyone with some knowledge of the religions of Asia. Neither shamanism nor Taoism would qualify as a religion under Durkheim's definition. Confucianism and even Buddhism would have difficulty qualifying under a "theological" definition of religion. The simplified definition of religion proposed here and similarly used by Bellah (1957: 6-7) in his study of the religions of Japan should serve as an adequate conceptual tool for our analysis.

## II. Religions from China

History records that as early as 372 A.D. Buddhism reached the northern kingdom of Kokuryo and by 528 A.D. it was officially accepted by the last of the Three Kingdoms that divided the Korean peninsula at the time. As to the other two legs of "the tripod on which the spiritual life of the kingdom may stably rest"<sup>9</sup>--Confucianism and Taoism--history gives us no definite date of official introduction. Having come from China, these three advanced religions were introduced to the Korean people as part of the advanced civilization of China. They were first taken over by the ruling elite, and it was some time before they became the faiths of the common people. It was only after they found responsive chords in the minds of the common men, through the process of indigenization and syncretization, that they became a part of popular faith. The three religions were always thought to be mutually complementary, and each was important in different areas of moral life. They formed an integral whole, for when one of the three occupied a dominant position, the other two continued to play important parts in the spiritual life of the people. This ability of the Chinese and Koreans to tolerate and adhere indiscriminately to many religions simultaneously has already become legendary in the West.<sup>10</sup>

### Buddhism

Of the three systems of beliefs Buddhism had more of a "churchly" quality than the other two. It formed a "moral community." Specialized

ecclesiastic groups and a strong monastic life were an important part of the religion. Aside from the fact that Buddhism was a religion of Indian origin and therefore non-Chinese, it was in a sense more of a religion than the other two. It preached individual salvation, not the preservation and prosperity of family. It stressed a universalistic ethic, not a particularistic standard of behavior based on filial piety. It had a specific concept of the afterlife, the condition of which was to be determined by the quality of the conduct before death.

The Buddhism of Korea is not noted for radical doctrinal innovations. It has, however, made its own creative contributions to the development and expansion of various doctrines transmitted from India and China. In its height of development it not only made original theoretical contributions to T'ient'ai Doctrine but it also achieved a distinct personality in the form of Korean Sŏn (Ch'an in Chinese, Zen in Japanese) by combining Dhyana (meditation) with Prajna (highest knowledge that leads to the realization of the Deity). Its contributions in the area of translation, printing, and publication of Buddhist literature is truly unsurpassed in the history of Buddhism. The Tripataka Koreana which was completed in 1251 A.D. after sixteen years of labor is known to be the most complete collection of Buddhist literature in the world. It is composed of 81,137 wooden printing blocks which were engraved during the Mongol invasion of the peninsula to seek Buddha's protection, and which are still preserved to this day. Its missionary zeal was responsible for the transmission of Buddha's teachings to Japan soon after its own establishment. On several occasions Chinese Buddhism had to rely on the Korean church to re-export its own literature back to China.<sup>11</sup>

Buddhism immeasurably enriched the Korean culture, especially during the Koryo Dynasty (918-1392 A.D.) when it reached its height of development and glory as the state religion. It is a part of Korean cultural heritage and has left an indelible mark on language, manners and customs, arts, folklore, and so on. It is an integral part of modern



Korea. Even today Buddha's birthday draws the multitude to numerous temples throughout the country. But it is no longer a dominant force in the spiritual life of the Korean people. It has never been a "political" religion, as has been pointed out by Toynbee.<sup>12</sup> When Confucian literati steeped in Neo-Confucian ideology overthrew the Koryo Dynasty and established a new dynasty in the image of Sung restorationism, Buddhism in Korea met the same fate as in China. After centuries of suppression and decay it became indistinguishable from Taoism and shamanism. Bonzes were finally made social equals of shamans and prostitutes. They in fact performed the roles of sorcerers and diviners. Their temples came to include small pavilions of worship dedicated to local demons or deities. Buddhism's ability to adapt to the indigenous milieu caused its own ultimate decline. And yet, it is still the most important religion of Korea, albeit few Koreans are willing to claim it as the religion they believe in.

#### Taoism

When Taoism reached Korea, it had already become a "religion", having assimilated a great deal of doctrinal elements from Buddhism. Its capacity to syncretize local deities was no less than that of Buddhism. It borrowed from whatever source appealed to it. Its practicality, without complex and abstract doctrines and precepts, held special attraction for the masses. Its willingness to accommodate local aspirations and conveniences rendered it readily acceptable to the ruling elite. Its doctrinal flexibility removed very quickly whatever foreignness it might have possessed. Its origin as a philosophical system that shared the Book of Changes as a common classic with Confucianism made it an acceptable part of the intellectual dilettantism of the Korean Confucian elite. In the case of China it has in fact been argued that in the realm of political and legal philosophy it was Taoism more than Confucianism that was dominant throughout its history (Tseng Yu-Hao 1930:2). In any event, the importance and powerful influence of Taoism in the political life of the supposedly Confucian Yi Korea cannot be minimized.

But it was in the realm of folk religion that Taoism played an important role. The Taoism that came to Korea had not only borrowed religious ideas, divinities and cults from Buddhism that had come into China in the wake of the disintegration of the Han Empire, but it had also improved and absorbed local divinities and cults of the Chinese peasants. This popular Taoism that had already met the need of "polydaemonic" Chinese masses was well prepared to meet the similar need of the shamanistic-animistic Korean masses. To the Korean peasant Taoism always stood for the technique of acquiring the power to command the life force of the cosmos. It promised longevity. Medicine was an important part of the religion. Tao, the way of ultimate reality, appeared to the popular mind as the fountain of life force. By manipulating this cosmic ether, popular Taoism promised health, strength, longevity, and fecundity. It had an infinite capacity to make itself relevant at every vicissitude of Korean life. It was the ability of Taoism to enjoy hospitality not only at the Confucian ancestor worship rite and at the Buddhist temple but also at the shamanistic ecstasy that made it an important part of the folk religion of the Korean people.

### Confucianism

Of the three religions under discussion, it is Confucianism that encounters greatest difficulty in being classed as a "religion." One finds greater readiness to classify Confucianism as an "ethical system" than as a religion. Professors Reischauer and Fairbank (1960:30) qualify their view of Confucianism as "this great ethical institution" by saying that it "in a sense occupied in China much of the place filled by both law and religion in the West. . . ." The Korean Confucianism with which we are concerned is the Neo-Confucianism that came to serve as the ideological foundation of Yi Dynasty Korea (1392-1910 A.D.). This Confucianism, "reformed" at the hands of Chu Hsi and his successors in China and Korea, had been profoundly influenced by Buddhism which they considered

an enemy. Buddhist ideas were appropriated by the reformed Confucianism to a very large extent. But, as Professor Wright points out, the Neo-Confucianism remained "basically social and ethical in its interests" (Wright 1959:89). In spite of the great influence of Buddhism, this revived Confucianism of Sung China never adopted a central deity of transcendental supremacy or a certainty of the other world.

The real reason, however, for classifying Confucianism in Korea as a religion, lies not so much in the fact that it had appropriated a great deal from Buddhism as in the fact that it provided or at least attempted to provide some meaning and significance to the ultimate reality of the human existence.<sup>14</sup> It is for this reason that we cannot brush Confucianism aside as an ethical system in discussing the religions of Korea. Moreover, ancestor worship which constituted the ritual expression of filial piety--the fundamental principle of Confucian ethics--became in fact a religious (or superstitious, if you will) rite. Rituals became elaborate and standardized, with the male head of the family acting as priest. In any culture the dead seems to inspire awe rather than affection (Cumont 1959:3, 47). Whatever the orthodox Confucian rationale for mourning (Fung Yu-Lan 1952:344-350), it tended to go beyond mere expression of affection and "human feelings." It was used to extract material blessings, especially male children, from the dead. It was used to appease the loneliness and the vengeance of the dead. Mourning and ancestor cult came to be encrusted with supernatural meanings.

It is in geomancy that Confucianism and Taoism came to share common ground. It was the height of filial piety to find a best possible resting place for one's dead ancestors. If, by securing such a comfortable abode for one's "sleeping" ancestors, one could fulfill one's filial duty as well as secure bountiful blessing, it was only proper and wise to acquire such a choice piece of land. It was the art of geomancy that located such a blessed spot for a filialson. No amount of expense or sacrifice was considered excessive for its acquisition. If a geomancer

could convince a filial son of the reliability of the information in his possession, he could well-nigh name his own price. The extent to which a filial son was prepared to go to take possession of myŏngdang (a beneficent plot) was unbelievably great. We can still hear many fantastic stories being told of wonders wrought by the opportune use of myŏngdang. It seems that the ruling elite of Yi Korea expended almost all of their energy in performing mourning and ancestor worship rites, locating myŏngdang and grabbing hold of it. Having forsaken Buddhism as a superstition fit only for gullible women and the ignorant masses, they seemed to have needed a "religion" of some kind that could give them something certain beyond metaphysical disputations. In fact popular Confucianism and Taoism became almost indistinguishable with respect to ancestor cults.

The vulgar aspect of Korean Confucianism described above does not, of course, give us the whole picture. As the state religion and the state ideology of Yi Korea, it was in a position to command the exclusive allegiance and attention of the best minds of Korea for over five centuries. During the sixteenth century it reached the apogee of philosophic development when it produced a host of great intellects, whose prolific writings have been recognized as authoritative expositions of Neo-Confucianism both in China and Japan. The metaphysical debate between the monists and the dualists took Korean Confucianism far beyond the theories of Chu Hsi. The monists who argued that ch'i (Ether) was the Ultimate One from which all life force emanated and that ch'i was the Prime Mover came very close to repudiating Chu Hsi himself whose dualism placed li principle before ch'i. Having been stimulated by the contact of China with Western science and Roman Catholicism, a reformist school called "Silhak" gathered some momentum in the second half of the eighteenth and the first half of the nineteenth centuries. The school stressed greater administrative efficiency and rationalization. They emphasized economic growth and welfare of the common people. They advocated the acceptance of Western science. But in the end Korean Confucianism failed

to reform itself. Its traditionalism prevented it from acquiring dynamism and aggressiveness needed to meet the challenge of the West.<sup>15</sup>

Today, not many Koreans would acknowledge their religious affiliation as "Confucianism." Few young Koreans would profess any interest in its doctrines, but Confucianism still remains the moral foundation of the nation. From family life to the standard of morality, the Confucian heritage is still making itself felt in every facet of the nation's life.

### III. Shamanism: The Indigenous Cult

As with other Asian countries, shamanism was the indigenous "religion" of Korea. The existence of shamanism in the early history of China has been well established (de Groot 1910:1187-1341; Fung Yu-Lan 1952:22-31). The fact that the shamaness of ancient Japan had a close resemblance to that of Korea and of the Altai has been pointed out by Haguenaer (1956:178-179). Although shamanism cannot be restricted to any one region of the globe, Eliade considers "shamanism in the strict sense" to be "pre-eminently a religious phenomenon of Siberia and Central Asia" (Eliade 1964:4). It is in Central and North Asia that the shaman has found himself at the center of the magico-religious life of his society. It was in this area of the world that the earliest travellers began documenting shamanism. As a peninsula appended to the northeastern part of the Asian continent, it is only natural that Korea partook in this form of religious life. It is important, however, to remind ourselves that the shamanism we find today in Korea has undergone profound changes through the two thousand years of recorded history. The three religions from China have had ample opportunity to work on the indigenous cult.

The oldest recorded history of Korea contains a specific reference to the employment of a shaman to discover the desires of a dead Kokuryo monarch concerning the planting of rows of pine trees along his grave for the purpose of screening his resting place from the tomb of his unfaithful wife.<sup>16</sup> A Chinese source tells us that the tribes in the

southern part of the peninsula each had a shaman whose ritual officiation was centered around a big tree.<sup>17</sup> The essential significance of a tree (the Cosmic Tree) in shamanism has been fully shown by Eliade (1964: 269-274). The importance of birds (raven, cock, crane and others) in the Korean mythology has also been pointed out by historians, thus again connecting Korean shamanism to that of the rest of North Asia. As a people called by their neighbors the People of the Bear, the Koreans have a mythology that claims the first shaman-king of the Koreans to be the son of Bear-Woman conceived by the illegitimate son of Heaven who had come down to earth with various superhuman powers. From the shaman of ancient China who danced with bear-skin masks to the ubiquitous bear symbolism throughout North Asia the bear has occupied an important place in shamanism of the Asians (Eliade 1964:452, 458-459). Another indication that the Koreans have shared shamanism with other peoples of East Asia is the symbolism of stag horns employed in the elaborate gold crowns of Silla (57 B.C.-935 A.D., one of the Three Kingdoms) kings. The same symbolism is used in the headdresses of shamans throughout the large part of Siberia (Eliade 1964:155).

Korean shamanism of today has much less in common with its counterpart in Siberia. It has not only rendered the Supreme Being largely otiose as with shamanism everywhere (Eliade 1964:8-9, 504-505), but it has also lost the masculinity characteristic of Siberian shamanism (Eliade 1964:462). Nowadays the shamans in Korea are almost exclusively females. Male shamans are rare and considered an exception. The appellation mudang refers to female shamans. The profession is inherited through the maternal line. There has been no satisfactory explanation for the femininity of Korean shamanism. A Soviet Russian ethnologist takes the traditional Marxist position that the shamanism in a primitive-totemic society is usually feminine, but when a clan society becomes a tribal society, the transition from matriarchate to patriarchate takes place. He explains the masculinity of Siberian shamanism by arguing that "the

appointment of the shaman as a specialist of the religious cult" was "conditioned by the establishment of the patriarchal clan system. . ." (Anisimov 1963:84, 97). From this theoretical perspective, "early" shamanism is feminine whereas in its later stage of development shamanism becomes masculine. The femininity of Korean shamanism is thus "explained" within the Marxist framework by arguing that the Korean shamanism failed to progress beyond the "primitive" stage of development, i.e. stagnated. While the Korean society in general has accomplished the transition from the nomadic-matriarchal to the agricultural-patriarchal stage in obedience to "the law of historical development", its shamanism froze at the nomadic-matriarchal stage under the overwhelming impact of the more advanced patriarchal religions from China. On the other hand, it may be said that the Marxist theory "works" better in China where the ancient wu-ism which had been predominantly feminine (de Groot 1910:1209) has since become predominantly masculine. Today the descendants of the ancient wu are called sai kung and they are mostly males (Eliade 1964:455).

Another theory attributes the femininity of Korean shamanism to the southern (Southeast Asia, southern China and Japan) influence. This theory divides Asian shamanism into northern and southern branches and characterizes the former as masculine and the latter as feminine. According to this theory, Korean shamanism falls into the southern category. But it seems there are as many male shamans as female shamans in Southeast Asia, although there are regions in that part of the world where only female shamans are found, e.g., the sibaso of the northern Batak of Sumatra (Eliade 1964:346). Moreover, it is not at all certain that Korean shamanism has always been feminine. On the contrary, in the ancient days male shamans were as numerous as female shamans, if not more numerous. This is especially true if we accept the thesis that shamans were political and military leaders of the community as well in those days (Hahm 1967:13-14).

The predominance of shamanesses in Korea today may perhaps be

better explained by the "decadence" of traditional shamanism. It has been pointed out by Akiba that the Korean shamanism is primarily "domestic" (Akamatsu and Akiba 1937-1938). In Korea shamanesses are invited to the home of their client. There is no permanently demarcated sacred ground to which the faithful must journey to obtain, or participate in, the services of mudang. There is no temple or shrine where the seance must be held. The dwellings of shamanesses have no sacral significance. In this respect Korean shamanism very closely resembles the "family shamanism" of the Koryak and the Chukchee (Eliade 1964:252-258). In Korea the senior female member of a household usually undertakes to perform the simplified functions of a shaman if the rituals required are minor in importance and routine in nature. Some formalities were required in connection with various events in family life--from birth, minor sicknesses, weddings, long journeys and anniversaries, to death, funeral, mourning, and ancestor worship rites. The senior female of a household usually undertook the task of imitating the mudang in performing the basic rituals required under the routing circumstances. Of course, no amateur could carry out the entire gamut of the shamanistic seance. But she could at least meet the minimum requirements to prevent ill luck or misfortune. If she could save money by obviating the need for inviting a mudang, so much the better. When the importance of the occasion appeared beyond the competence of amateurs, a mudang was called.

Eliade cites Bogoras in stating that some of the Chukchee shamans underwent a change of sex (Eliade 1964:257). They dressed as women. Some of them even married other men. Male shamans of Korea often dress as women. In fact there have been a few instances in Korean history when male shamans, dressed as women, were allowed into the inner quarters of the palace, causing scandals. These and similar scandals with respect to the ruling class were possible because of the widely accepted assumption that the mudang was always female. It is by no means certain that there is a definite causal connection between family shamanism and femininity of the



profession.<sup>18</sup> In the case of Korea, however, one important factor should be pointed out--the dualism in the religious life of the Korean elite. There was a sort of division of labor between the two sexes in matters concerning religion. Confucianism which was both a political ideology and a religion of the ruling elite preempted the attention and the allegiance of the male sex of the elite. The female sex on the other hand had neither the ability (so the myth pretended) nor the duty to understand and observe the requirements of Confucianism. Their indulgence in "superstitions" was generously tolerated by the male yangbans. Indeed, the male yangbans had no reason to interfere in the superstitious practices of their women-folk so long as they did not have to be involved directly. If their wives and mothers could secure blessings from Buddha and successfully avoid misfortunes with the help of shamans, they saw no point in opposing such behavior. Moreover, under the prevailing Confucian code of behavior, the sexes were rigidly segregated, women being completely quarantined from any contact with the opposite sex except immediate kin.

The yangban males, therefore, had more reason to oppose their women having contact with Buddhist priests who were males, after all, though celibate. The faithful female had to journey away from the seclusion of her house to the temple to worship Buddha. With the mudang, however, the problem was much simpler. Since the mudang was a female, she could be safely let into the inner courtyard of a yangban home. The yangban female did not have to forsake the safety of her seclusion even for a minute. As there were no sutras to recite and no temple stairs to climb, the whole mudang ceremonies could be carried on in strict domesticity. The yangban women could never feel comfortable with the male-centered tenets of Confucianism. But with a mudang, they could feel completely at home. It was their own religion. It had more warmth than their men's religion which never ceased to harp on their duty to obey and serve their men. Inasmuch as the mudang's pantheon included any of the numerous Buddhist deities, Confucius, Lao Tzu, famous Chinese and Korean

generals, "mountain women", Taoist immortals, infant spirits, etc., the yangban woman could have all the protection she could hope for through her mudang.

Eliade (1964:4) defines shamanism as "archaic techniques of ecstasy." He also indicates many ways in which a shaman may attain ecstasy. Those shamans with less competence resort to tobacco, mushroom, narcotics and other toxins (Eliade 1964:221). What appealed to the domesticity of Korean females is the fact that shamanism offered them ecstasy, not salvation. This emphasis on the here and now made family shamanism possible. A senior female of a Korean household could attempt to simulate the shamanic techniques of ecstasy without any professional training or "calling" simply because she could attain at least some degree of ecstasy, however incomplete. No lay female would have dared to appropriate the "techniques" of salvation in her domestic seclusion. Ecclesiastical specialization most probably would not have permitted such an appropriation.

#### IV. Conceptual Contributions of the Three Religions

It is in this shamanic milieu that the three religions from China had to function. The three religions came to Korea well equipped with fully developed bodies of concepts and doctrines. Through their interaction among themselves as well as with the shamanic tradition, the three belief systems contributed to the creation of the religious value system characteristic of the Korean people. In order to gain acceptance from the people, the religions from China had to modify, deemphasize or even abandon certain concepts and doctrines that conflicted with the basic desires and aspirations of the Korean people. Confucianism and Taoism encountered least opposition from the native tradition. They experienced little need to syncretize. It was Buddhism that encountered greatest resistance from the native milieu. In addition, it had to reckon with the hostility of the two religions of Chinese origin.

In discussing the conceptual contributions made by Confucianism, Buddhism and Taoism, we will begin with the examination of their conceptualizations of death and afterlife. Death and afterlife, of course, do not exhaust the totality of any religion's doctrinal complex. But as the primary concern of religion is the ultimate significance of human existence, death, either as its termination or as a moment for passage into another dimension of human existence, occupies a very important position in every religious system. If the purpose of religion is to make the believer a stronger man to face life (Durkheim 1965:464), it should also make him stronger to face death.

#### Confucianism

Confucianism has taken the position that afterlife has no special importance. What is important is to attain that degree of perfection of virtue on earth during life where a man could reach complete beatitude (Weber 1951:228). Like the Stoics, a Confucian would have argued that "the sage, a blissful being, was a god on earth; heaven could give him nothing more" (Cumont 1959:14). Confucianism has placed the realization of its ideal in this world, not in the next. All of its five cardinal principles of human life deal with interpersonal relations on this earth. None concerns itself with the individual vis-a-vis God. A man is to be judged by his fellow men, even after death, by what he has accomplished in this world in his interpersonal relationships. One's afterlife had little to do with moral considerations. There was no eschatology for the world. Nor was the eschatology of an individual a "judgment."

#### Taoism

From the beginning Taoism had more to offer to the "this-worldly" Koreans. It willingly promised its followers eternal youth and longevity. Those who could plumb the profundity of its creeds could acquire super-human powers; their eyes would penetrate a thousand leagues; they would

be able to travel a hundred miles in one stride; they could make themselves invisible, etc. Although there were elements of ascetic self-denial in its theories, such material rewards as wealth, honor and many male descendants were to be the ultimate goal of ascetic training. Its reputed ability to divine the fate of individuals strengthened its popularity among a people whose primary concern was with the earthly life. Taoists did not bother themselves with the afterlife. Though they did borrow various notions from Buddhism, they remained essentially this-worldly.

### Buddhism

Buddhism did have a comparatively well formulated theory of afterlife. But it was a circular theory of transmigration of souls. Afterlife takes the form of continuing life on this earth in different biological forms. The final attainment of beatitude comes only when all forms of selfishness are extinguished. This state of extinction--extinction of "the boundary of finite self" (Smith 1965:125)--is, of course, called Nirvana or Enlightenment. Here again the salvation from pain and suffering is not something to be gained only in the other world. Salvation is, furthermore, not by grace but by training, the Eightfold Path. To be sure, there are two kinds of Nirvana: one attained at enlightenment and the other attained at death (Finegan 1965:248). Death is not a condition precedent for Nirvana. "Affirmatively [Nirvana] is life itself" (Smith 1965:125). It is not of the "other world."

Buddhism, however, does have many elements that are at odds with the indigenous concept of life and death. To the Koreans, the totality of human life is certainly more than a condition steeped in suffering, a condition to be emancipated from with single-minded endeavor. Its transitoriness is something to be made a subject of sentimental balladry, always with a tinge of regret, not a cornerstone of religious wisdom or truth. Buddha said that five skandas--body, sense, ideas,

feelings, and consciousness--are painful. But to a Korean they are precisely the elements that make life bearable and liveable. To him these five skandas make up the sum total of human life. After all, a profound social sensitivity is the foundation of virtue to a Korean.

Another possible source of dissonance with the Korean mentality was its individualism. Buddha appealed to the individual to work out his own salvation. This individualistic element in the religion could have come into conflict with the familism of the Koreans. But whatever individualism there might have been in Buddhism had been greatly diluted by Buddha's emphasis on the importance of having a right kind of association as a preliminary step to the Eightfold Path. Its insistence on transcending the boundary of the finite self robbed it of much of its "individualism." The fact that it did not have a God as a personal being who created the universe by a deliberate act of will and guided it to a final goal according to a plan took a source of novelty out of Buddhism for the Koreans who felt much more at home with a host of Bodhisattvas, Lohans, Kwannons, guardians, doorkeepers, etc.

Having undergone Sinicization and syncretic decadence in the Korean milieu, the universalistic tendency in Buddhism lost its force. It had to incorporate familistic ethics of Confucianism in order to enjoy the protection of the state. Its ethics became as particularistic as Confucianism with its emphasis on filial piety and ancestor cults. Although the purity of the faith was maintained among a large number of priests, as far as the popular Buddhism was concerned, it lost power to transform the deeply ingrained mentality of the Korean people. Such profundity as Buddha's negation of soul (the anatta doctrine) was simply too obtuse for the average Korean, especially in view of seemingly contradictory affirmation of transmigration of "streams of consciousness." The notion of soul as some kind of mental substance was much more comprehensible to the Koreans.

Buddhism in Korea had to downplay its emphasis on otherworldly

goals in order to appear less anti-social. Its universalistic ethic which ignored differences of race, class status, sex, age, culture and family identification had to be compromised in order to appear less subversive. If a Korean sought salvation, it was within the family. Shamanism taught him to seek ecstasy, not salvation. Taoism encouraged his search for eternal youth, longevity, wealth and honor. Traditional familism reinforced by Confucian stress on filial piety made him seek more male offspring who could assure him immortality through ancestral rites. Fame or lustrous name preserved in history was another acceptable mode of attaining immortality in the eyes of Confucianism. In this context Buddhism could not insist blindly on salvation outside the family.

#### V. Religious Values of the Korean People

It is difficult to designate any one of several religions found in Korea as the religion with which to characterize the religious values of the Korean people. The pacifism in Confucianism was reinforced by the strong aversion to destruction of anything living fixed firmly in Buddhism. Confucius' emphasis on this-worldly life has been strengthened by similar elements in popular Taoism and indigenous shamanism. Nevertheless, it is possible to delineate a few salient features of the Korean religious mind.

##### Anthropocentrism

Humanism or this-worldliness may be an acceptable synonym for anthropocentrism as used here. For the Korean a deep interpersonal commitment is the bedrock upon which human life rests. It is not a commitment to God. It is not a "surrendering to God," as a Muslim might say. It is a total surrender of one's self to other men. This is essentially what Confucius meant by jen, human-heartedness. But with a possible exception of a few Confucian "scholars" the outlook on life we are here discussing should not be given a metaphysical or universalistic meaning. Confucius might have intended to go beyond the national boundaries with

his jen and apply it to a universal brotherhood of man. To an average Korean, however, such universal brotherhood would have little meaning. For him the warmth of interpersonal affection is an emotional necessity, not merely an ethical ideal. It is a psychological nutriment. It renders life meaningful.

This interpersonal commitment starts with one's own kin. Nothing can be warmer or thicker than blood. Where geographic proximity and social intercourse bring two persons who are not kinsmen close together, an interpersonal commitment of a quasi-consanguineous nature may be created. It is usual for Koreans to turn the second kind of relationship into the first through the means of quasi-adoption. Thus, my close friend would call my mother "mother" and my brother "brother." Kinship and family relationship is the foundation on which all other interpersonal relations are based. If a man could not form and maintain an unconditional commitment with his kin, it was unavoidable that his humanity itself would be suspect.<sup>19</sup> It was not simply a matter of his ethical integrity in the sense that such a man could never form a viable interpersonal relationship with any man. Rather, he lacked the essential ability to make life meaningful to himself as well as to others.

The interpersonal commitment we are here discussing is unconditional and total. It is therefore irrational, illogical, inefficient, unproductive, parochial and often unpatriotic. It is biological ("animal") and emotional rather than intellectual or objective. It is usually blind. This is the reason why it is often referred to as "primitive." According to the modern ethics of industrial society, such a primitive interpersonal dynamics is only detrimental to progress and development.<sup>20</sup> It jeopardizes scientific objectivity. It vitiates rationality and efficiency. It is extremely "wasteful."

The Koreans have not yet succeeded in rationally committing themselves to efficiency and rationalization by sacrificing at least some of what they consider to be the essence of humanity. They have not yet

been able to "shatter the fetters of the sib" (Weber 1951:237). It has not yet been possible for the Koreans to depersonalize the intensely personal nature of their social activities. It should be noted, however, that in the face of the overwhelming influence of a civilization impelled by the energy unleashed by the shattering of the fetters of kinship affection, a gradual disintegration of traditional human relationship is already visible in the name of humanity, progress, science, rationalism, technological efficiency and democracy.

The Koreans have indeed created an "idol." They have made an absolute out of earthly life. It is not God's grace and love that are absolute and certain but the warmth of human affection--affection reciprocated by other human beings with flesh and warm blood. A Christian theologian would call this "idolatry" or "ontocracy" (Van Leeuwen 1964: 165-173). The Koreans have certainly made an earthly phenomenon into an absolute, thus "absolutizing the relative." For the Koreans it is not a transcendental and infinite God that occupies the sovereign place in life, but human affection, man himself.

#### Death as a Mode of Life

When death is spoken of as a mode of life, a contradiction in terms is apparent. It may have been due to the influence of Taoism which eschews all forms of clear-cut dichotomies that the Koreans are willing to tolerate such a contradiction. The tendency to discern the identity of contraries in life is clearly present in the Korean mind. On the other hand, the Koreans are not the only people who have been willing to admit a life after death, be it in the tomb or in the inferno. Reluctance of the Koreans to accept the finiteness and the transitoriness of human life created a need to take death as something other than the irrevocable termination of human existence. It was easier to view death as a prolonged sleep.

The dead continued to linger on among those whom it loved. It had to be remembered at mealtimes. Those who had been close to it during



life had to supply it with necessities. Above all the dead abhorred loneliness. The ancestor rites of the Korean people even today are aimed at making the life of the dead ancestor as comfortable, warm and cheerful as possible. In the old days, a filial son kept vigil for at least two full years by eating and sleeping alone in a hut erected beside the grave of his deceased parent. A portion of a room in the family dwelling was set aside by a curtain, and there the departed ancestor continued to live as a member of the family. Food was offered there at every meal, including tobacco and wine. A bereft son would postpone the burial as long as possible. He could not bear to hasten the departure of his beloved parent to his grave. There was always the possibility that what appeared to be death might in fact have been only a sleep.

Having placed such a high valuation upon interpersonal affection, it was not easy to sunder it abruptly at death. The Koreans still hesitate to cremate their dead unless the dead is unmarried without descendants, the reason being that the cadaver is still a body that seems to retain all the senses. Many dead are said to have complained to their kinsmen in dreams of the discomfort of their water-logged burial chambers. Reinforcing the lingering affection was the notion that the dead acquires superhuman capabilities due to death. Having gone over the barrier of death, the dead becomes in a sense a more complete human being. Just as the shaman is able to exercise superior powers over men because of his ability to die and come back to life, so the dead acquires superhuman powers because of his death.<sup>21</sup> Inasmuch as the dead are thought to be capable of gratitude as well as resentment, prudence, if not affection, dictated affectionate treatment of the dead.<sup>22</sup>

Although there is some tendency to view death as a moment for a final accounting for one's life history, primarily due to Buddhism, there is no definite notion of death as the time for meeting the Creator face to face and submitting to His judgment. To be sure, an evil man may be condemned to a most miserable afterlife. But the reason is not so much

the punishment imposed by the Creator for his sins as that his evil nature would certainly have destroyed any possibility of his having other human beings with enough affection toward him to care for him after death. The spirit most feared by the Koreans is that of an infant or a young girl who has died without ever marrying. It is felt that such a spirit grudges its own untimely death as well as the life of others because it has been deprived of the enjoyment of life. Such a spirit, having no offspring to console it, is considered more dangerous than the spirit of an evil person. Consequently, a man may be more afraid to die without offspring than to die in a state of sin. "Salvation" lies more with the affection and care of one's offspring than with the grace of a transcendental abstract entity.

The lack of a transcendental sanction indeed means a lack of "guilt," as has been pointed out by Benedict (1946:222-224). There is certainly no notion of "original sin" that renders God's grace indispensable for salvation. Moreover, the concept of guilt or sin itself has a different cultural content in Korea than in the West. If there is a sense of guilt among the Korean people, it has primarily an interpersonal connotation. It has little significance in terms of Tillich's "I-Thou" relationship. A man's transgression is against another human being, not against "Thee." This is the reason why the Koreans are said to be preoccupied with "face" and "shame" rather than with guilt. With the Koreans guilt is a this-worldly concept. Interhuman and social substance is so predominant that to the Western observer the sense of guilt disappears entirely and only the sense of shame remains.<sup>23</sup>

Thus, expiation of guilt is not through a supplication to God. It lies in the procurement of forgiveness from the victim (or his family) for one's wrong. The importance of making peace with the object of trespass can never be minimized among the Koreans. It is for this reason that the Koreans are unwilling to punish a man who voluntarily confesses his wrongs and makes restitution. This is especially true when the victim

himself is willing to forgive and forget. It is almost entirely in the hands of the wronged to extinguish or continue the crime or guilt of the wrongdoer.<sup>24</sup> The doctrine of sin, be it "original sin" or "estrangement," is the most difficult of Christian doctrines for the Koreans.

There is, however, a correlative duty on the part of the wronged to expedite reconciliations. If the trespasser shows even the smallest sign of readiness to atone for his trespass, humanity requires that the atonement be facilitated and reconciliation accomplished. This community expectation for the speedy reconciliation can often become an intense group pressure. When the transgressor has attempted in good faith to seek forgiveness and reconciliation, it is now the recalcitrant victim who becomes the object of opprobrium if he refuses the proffered reconciliation. Herein lies at least a portion of motivating force that drives the Korean people to compromise always by giving or losing a little and taking or winning a little in every kind of dispute settlement.

But in the case of a homicide a much more difficult question is presented. Seeking forgiveness and reconciliation from a dead man is infinitely more difficult and complicated. As we have seen, the Korean concept of reparation and reconciliation is human and social. A homicide victim is no longer available in an ordinary social milieu. To be sure, there are means by which the offender can still effect a settlement with the dead victim. A shaman might be able to mediate. The victim's family might agree to a reconciliation after an adequate compensation. The killer may undertake to care for the dead by giving him a decent burial and consoling him as if the dead were his own ancestor. But there is no assurance that any of these substitute means will be effective. They usually are not, as most folktales abundantly attest. Worse still, the spirit of a dead man who has died without granting a reconciliation to the murderer is a spirit to be feared. Having died with enmity and vengeance, he keeps begrudging his own untimely death and the life of the killer. No man can have a worse enemy than the spirit of his own

vindictive victim. A dead man is under no social pressure to accept offers for reconciliation and recompense. With his superior power a vengeful spirit can play havoc with the killer's life at will. A most devastating manner in which the killer may meet his nemesis is to witness a gradual destruction of his offspring and to die without any kin who can care for him after death. Retribution may now be considered complete. It is not a sudden cruel death or material impoverishment but the assurance of lonely, cold and neglected afterlife that is the most dreaded revenge against any killer of man.

It has often been pointed out that one of the reasons for the traditional Chinese pacifism lies in the doctrine of filial piety. The oft-quoted passage is from the Hsiao Ching (The Classic of Filial Submission) that exhorts: "Seeing that our body, with hair and skin, is derived from our parents, we should not allow it to be injured in any way. This is the beginning of filiality" (Makra 1961:3).<sup>25</sup> For the Confucian Korean it is the height of filial impiety to have his life and limbs exposed to a danger of maiming and destruction. As is pointed out by Wright, it is the fear of dying without offspring that is primarily responsible for the strenuous avoidance of violence and perilous adventure (Wright 1959:74). When a Korean dies without offspring it is not he alone but all of his ancestors who will be left without solace and care after death. But there seems to be another more important and compelling reason for the implacable abhorrence of physical violence that might lead to injury and death. If a Korean has to kill someone else to save himself, the outcome will not be much of an improvement.<sup>26</sup> He has now to reckon with a vengeful spirit of his victim who can bring about practically the same result as though he himself had died. It mattered little whether the killing was to achieve justice or to exterminate evil. To a Korean justice can never be achieved through violence. Evil is as much a part of life as good even if one were to accept the dichotomy which is relative and dubious at best.<sup>27</sup> Killing of an evil man would

not result in "killing" evil. Evil would continue to live with the spirit of the dead man. It is the ultimate paradox of supposedly pacifist other-worldly religions to sanction homicide and violence in the name of God, justice, patriotism, loyalty and salvation.<sup>28</sup>

#### Practicality, Syncretism and Worldliness

Many observers of the Chinese scene have commented on the excessive practicality of the Chinese religious mind that seems to verge on commercialism in its relationship with God.<sup>29</sup> It has often been pointed out that a Chinese would not hesitate to worship any deity. He believes that the more gods he worships the greater the number of blessings he will receive, and therefore it is advantageous for him to have as many gods on his side as possible. Consequently, religious syncretism is said to be an ingrained trait of the Chinese character. Such crass worldliness appears to shock the Western observer. These characteristics of the Chinese religious mind are fully shared by the Korean people.

The Koreans have no god (until Roman Catholicism began to gain followers in the second half of the eighteenth century) that demands an absolute and exclusive allegiance with jealous vengeance. Nor is there a personalized Supreme Being who created the universe. Efforts have been made by Korean Christian scholars and Western missionaries to attribute the rapid expansion of Protestant Christianity in the last decades of the nineteenth century and the early decades of the twentieth to the existence of an indigenous god that possessed attributes similar to the God of the Old Testament.<sup>30</sup> But the Korean deity, Hananim, who was the chief of the shamanic pantheon could not be more dissimilar to the God of the Jews and the Christians. The Koreans do not possess a creation myth. Hananim has not been credited with a responsibility for creating the universe and mankind with a preconceived plan, nor has he even demanded an exclusive loyalty and devotion in the manner of the first four commandments of the Mosaic Decalogue. No universal laws of human behavior by which his people were to be judged were laid down, and his princes were never commanded to destroy

evil and to "wield the sword of justice."<sup>31</sup> Hananim never permitted his son to be most cruelly killed by men to save them.<sup>32</sup>

It seems more reasonable, therefore, to look for the reason for the "phenomenal" success of Protestant Christianity in Korea in the practicality, syncretism and worldliness of the Korean religious mind rather than in its ability to identify with the native theology. Had Christianity been identified with Japan, it would never have been able to make any headway among the Koreans. The fact that Christianity was identified with nationalism, anti-Japanese colonialism, America's lack of imperialistic interest in Korea and America's fabulous wealth seems to be the most important reason why it succeeded to the extent that it has. For those Koreans who became Christians there was nothing for them to lose in worshipping the God that had been so munificent to the Americans. Its nationalistic stance made the membership in the church respectable. There were practical advantages, too, such as literacy, thriftiness, overcoming of social class barriers and so forth that followed from membership. Rigid prohibition against smoking and drinking along with a severe interdiction against ancestor cults and other "superstitions" enabled the Korean Protestant Christians to dispense with financially ruinous practices sanctioned by the traditional patterns of social intercourse. With a people whose scheme of social interaction has been entirely built around drinking, non-drinking alone was sufficient to enable the Korean Protestants to avoid most of the financially burdensome social obligations. I hesitate to go so far as to state that the native propensity to syncretism has reduced Jesus to the status of an exceptionally capable shaman who could perform miracles and rise from the dead and has rendered revival meetings indistinguishable from shamanic seances. It is, nonetheless, important to keep in mind that the features of the Korean religious mind we have been discussing are very much in evidence even among the Korean Christians of today.

## VI. Jural Values of the Korean People

### Justice and Peace

Law in Korea has been synonymous with punishment. Its foundation has been physical force. Law has been the antithesis of virtue, good, peace and harmony. It has been a detestable necessity at best and a symbol of violence, disruption, conflict and bloodshed at worst. Order and peace have been based upon virtue and affection, never on punishment. The sword is the cause as much as the result of disorder and violence, and although it may be an indispensable equipment for the goddess of justice in the West, Koreans cannot help but feel an instinctive aversion to it. The sanguinariness of the Western concept of justice prevents Koreans from accepting it wholeheartedly as the ideal of their social life. Law and order may come to an American town when the sheriff shoots a bad man to death in a gun fight, but for the Koreans such bloodshed can never bring peace and order to a community.

From the Western point of view Koreans do little to fight corruption and evil. They seem to condone evil. They have no civic conscience. They have no sense of justice. But for the Koreans, justice has to be for man, not for God; for life, not for death; for peace, not for violence; for forgiveness, not for punishment. This is the reason Koreans consider the Western concept of justice "inhuman."

An American employer who fires (what a martial word!) his Korean employee who has embezzled money will often be called inhuman by Koreans. He naturally feels disconcerted by having his just action so characterized, and his immediate reaction is to accuse the Koreans of thinking nothing of stealing.

How is a "human" employer to act under such circumstances? He tries first of all to determine the truth of the matter, as any American employer would under similar circumstances. But what is involved is not a mere matter of factual investigation. Motives and reasons for the misdeed

must be discovered. The employer must make every effort to get himself fully involved in the life of his wayward employee. Clear willingness to forgive the wrong is implied. This in turn imposes an obligation on the employee to confess his wrongs fully as a prerequisite for obtaining forgiveness. Guilt must be fully admitted. Reparation or restitution in some form and manner is assumed by both parties. The employer's willingness to get himself involved in the life of his offending employee makes him a "human" employer. Having once established an interpersonal relationship, the employer cannot now act as though he were a stranger toward his guilty employee, however evil. No employer in Korea, Korean or American, can enjoy the loyalty of his employees without getting himself fully involved in the total life of his employees. (The French call this engagement, a commitment to a particular human being.)

Matters will not rest there with a really "human" employer, however, he will go a step further and help his guilty employee to remedy the state of affairs that gave rise to the offense initially. Having committed himself to the life of his employee, he cannot now turn his face away. If there is extreme financial hardship, he will at least show a genuine desire to render as much assistance as is practically possible. To a Western employer this would amount to rewarding an evil rather than punishing it; an honest employee gets no attention whereas the "prodigal" one seems to benefit from his wrong in the form of more attention, financial benefits, and the like. For the Koreans, however, what is involved is a progressively intensifying mutual commitment. The employer "cares" and so does the employee.

#### Truth and Harmony

The Westerner is apt to complain that Koreans are dishonest. They do not mind telling lies. It is shocking to the Westerner that a surprisingly large number of Koreans do not hesitate to lie even under oath.

If telling a factual truth means destruction of harmonious



social life and of the equilibrium of interpersonal dynamics, a Korean feels little compunction in telling a lie. A guest might falsely express his appreciation of hospitality to a terrible host in order not to hurt his feelings. One might express admiration of an ugly and stupid boy so as to please his mother. A man might tell a lie to his friend's wife for the purpose of hiding the friend's indiscretion with another woman. A son would vouch for his father's false alibi so that his father might escape prosecution. A neighbor might pretend ignorance of facts he witnessed in order to avoid embarrassment to his neighbor. The list can be endlessly multiplied.

To the Korean the whole truth of a matter arising out of interpersonal dynamics can be explicated only when the parties involved voluntarily agree to its formulation. The factual circumstances observed accidentally by a third person are only a portion of the truth. He cannot have understood fully enough the temporal, spatial, and interpersonal dimensions involved to grasp the whole truth. An objective truth without the benefit of involvement and the understanding of particular equities and special reasons is little short of meaningless. Truth is not the concern of an uninvolved third person. It is a matter of concern for the parties involved, and only they can define it in a meaningful way. The whole truth can be delineated only by the voluntary admission and agreement of the parties involved. This is the reason a confession has always been thought of as the best evidence.

When Western law undertakes an investigation, the primary purpose is prosecution and punishment, and the result is further disruption of social harmony rather than a speedy restoration of jeopardized concord. It is rare that the Koreans will cooperate readily with the official investigating authority by coming forth with facts. Factual information will be forthcoming only if it will assist a quick reestablishment of equilibrium. On the other hand, if the investigating authority manifests in a tangible manner a readiness to get itself involved in the lives of

the parties and the community of which they are members, the truth will be more readily established. This is what has been known as "paternalism." The structure of law has been "patrimonial" in Korea (Weber 1951:100-104). The underlying ethics are particularistic rather than universal.<sup>33</sup>

#### Judgment and Reconciliation

There has been no great lawgiver in Korean history, nor any great legendary judge. A truly great magistrate is a bureaucrat who so inculcates virtue in the people that law (the rules of punishment) and courthouses are rendered superfluous. A great magistrate is not one who vigorously prosecutes and punishes criminals; under a great magistrate there would be no criminals in the first place. A great judge with Solomonic wisdom would be a miserable failure in comparison with a magistrate who so shames quarrelsome elements in his jurisdiction that they settle their differences amicably among themselves. Law signifies the failure of princely virtue, and the administration of justice is premised upon the breakdown of harmony and peace.

The Koreans have always favored mediators as peace-makers over judges who fix blame. Mediators do not try to fix blame or lay down the law, but instead encourage the parties themselves to lay down the law applicable to their own case. As Northrop points out, the law is what the disputants themselves approve through mediation. Since the disputants specify the solution, there is no external sanction needed to enforce it. Sanction is built into the solution. Violence, even that inflicted by authority, is avoided (Northrop 1958:347, 351).

To the Korean a litigation is a war, as fully typified by the Anglo-American adversary system of litigation. In a litigation both sides rely on the formalized violence supported by the state. If a man hauls another into court, he is in fact declaring war upon the latter. For a Westerner, who thrives on adversity, who is thrilled by "a modern, dynamic system of dialectic struggle," and who glorifies his "supramundane God" by subduing sin, a courtroom may represent the quintessence of civilized social

living. To the Western man--a Prometheus, a Faust, or just a Christian following the commandment of his God (Genesis 1:26-30)--conflict and struggle are the essence of life. Tension is everywhere: in the world he rejects yet seeks to dominate and master; in the God he sees yet does not see; and in himself, a creature in the image of God and yet a vessel of sin. For him interpersonal conflicts are to be tamed by the rules of fair play and justice. Justice is on the winning side. Good triumphs over evil. It is out of the dialectic struggle that progress comes. And even when the Westerner finally comes to think of reconciliation, he seems more concerned with making peace with himself or with his God than with his fellow man.

A litigious man is a warlike man to the Koreans. He threatens harmony and peace. He is a man to be detested. If a man cannot achieve reconciliation through mediation and compromise, he cannot be considered an acceptable member of the collectivity. It is true that violence can never be eradicated. There will always be those who forfeit their humanity by resorting to violence, and they must be met with violence--although only as a last resort. But Koreans cannot see why violence should be glorified and honored as an instrument of justice. To them wrath, jealousy, vengeance, and judgment cannot be indispensable attributes of God, nor should similar attributes characterize human behavior. Through the Japanese, the Koreans have been exposed to the notion that violence when disciplined and victorious has its glorious beauty. It is needless to add that the Japanese were not alone in this notion. The Koreans were told that war made men out of boys; it fostered courage, altruism, and other spiritual qualities valued by the Japanese society.<sup>34</sup>

Such Western thinkers as Hobbes, Nietzsche and Sorel may be eccentric extremists,<sup>35</sup> but the wish for power to dominate other men by force, if necessary, and the conflicts and struggles engendered thereby is not merely the obsession of eccentrics. Periodic open conflict itself is often viewed as having the salutary effect of reducing or minimizing

social instability by keeping sources of mutual irritation from accumulating (Wilson and Kolb 1949:713-716). Moreover, if one accepts the notion of a primordial murder--whether that of Abel by Cain or that of the marine monster by the god--as the common heritage of mankind (Eliade 1964:100-101), bloodshed may be a sacred imitatio dei. Thus, even a reconciliation with God may have to be through bloodshed. In a culture in which conflict, violence, and bloodshed occupy such an exalted position, perhaps a rationally regulated and disciplined combat in which one has to be the winner (right) and his adversary the loser (wrong) must be the foundation of social life.

## VII. Conclusion

The Rule of Law is a concept very dear to the hearts of lawyers in the West. It has become synonymous with a sum total of cherished Western political ideals. This concept has been transported to Korea as a part of the "superior" civilization of the West, but it has been very slow in gaining ground there. The Korean linguistic equivalent of the concept means nothing more than rule by punishment. Such a concept has never been the ideal of the Korean people, nor is it likely soon to become so. This "alegalness" of the Korean people has sometimes been interpreted as lawlessness. A nation of more than 27 million people with a legal profession numbering about 1300 (of this less than 800 are full-time practitioners) (Murphy 1967:12) can scarcely be labelled a nation under the Rule of Law.<sup>36</sup>

It has been nearly eight decades since Korea first began to model its laws and legal institutions after those of the West. As Roman law is said to have failed to remodel German mores (Sumner 1906:81-82), so the Western legal system has thus far failed to remodel Korean mores. The perennial question raised by this state of affairs is, "What should be done to 'remedy' or 'improve' the situation?" The underlying premise

is that the traditional "alegal" way of life is inimical to the development and progress of the country. Whether one evaluates the present situation as "bad" or not, of course, depends on one's value preferences. Even if one assumes that the present condition is undesirable and needs amelioration, it is still necessary to understand completely the underlying factors that are responsible for the condition. I have attempted to trace in this paper the Korean unwillingness to resort to the law to the religious values of the people.

Inasmuch as religious values are at the core of cosmology and of social ethics, the fundamentally this-worldly life-view of the Korean people has made them prefer human affection to God's grace, ecstasy to salvation, peace to justice, harmony to truth, and mediation to adjudication. If the mores of the Korean people are as inert and rigid as mores are said to be in general (Sumner 1906:79-82), it is not likely that Koreans will become a legal people in the foreseeable future. The questions of whether the Koreans ought to become more legal and how they can be made more legal are not answered here.

Both the jural and religious values of the Korean people are in a state of flux. The change is more pronounced in certain segments of population than in others. The impact of the life-views of other cultures is overwhelming. It may be the duty of the social scientist to facilitate "inevitable" change, but he seems doomed to doubt the "inevitability" or desirability of some social change.

## NOTES

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<sup>1</sup>Vinogradoff expresses a similar view as follows. "Laws repugnant to the notions of right of a community or to its practical requirements are likely to be defeated by passive resistance and by the difficulty of constant supervision and repression." (1960:45).

<sup>2</sup>Petrażycki (1955:221-240) also employed another term, "intuitive legal conscience." The concept has substantially the same meaning as what is meant by "jural value" in this paper.

<sup>3</sup>Ehrlich (1936:493) defines the "living law" as "the law which dominates life itself even though it has not been posited in legal propositions." He distinguishes it from the law of the courts and other tribunals.

<sup>4</sup>Petrażycki says, "[Those] legal experiences which contain no references to outside authorities and are independent thereof we shall call intuitive legal experiences or intuitive law" (1955:5).

<sup>5</sup>Hocking observes that there is a "natural and minimal organic connection of the living law with the living ethical convictions of a people" (1931:245). A lively discussion was started by Lord Devlin (1965:6) in connection with the Wolfenden Report (1957) on homosexuality and prostitution. He argued that it was wrong for the Wolfenden Committee to separate "crime from sin." He said, "The criminal law of England has from the very first concerned itself with moral principles." The opposing views were expressed by Professor H.L.A.Hart and others.

<sup>6</sup>"Morality", "value" and "norm" all have respective ambiguities. They are often used as equivalents (Brown 1965:454 and Edel 1959:189-192).

<sup>7</sup>For Parsons, personalities and social systems are "not merely inter-dependent, they interpenetrate" (Parsons and Bales 1955:357).

<sup>8</sup>"[A] human person exists only in so far as he has taken 'society' into himself" (Parsons and Bales 1955:358).

<sup>9</sup>This is in specific reference to a passage under the heading of the second year of King Pochang (643 A.D.) of the Kokuryo Kingdom in Samguk-saki (History of the Three Kingdoms). Samguksaki is a 50-volume compilation under the editorship of Kim Pusik. The corpus was completed in 1145 A.D. The analogy of the three religions to a tripod can be found in many writings throughout East Asia. In the year in question the chief minister recommended to the king that Taoism should be strengthened. To this end he sought to send an emissary to T'ang to acquire a better understanding of the religion. The first specific reference to Taoism in the historical records is found under the year 624 A.D. In that year T'ang sent a Taoist with icons and literature to Kokuryo. But the introduction

of that religion seems to antedate this event considerably. It seems quite probable that Confucianism and Taoism reached the northern region of the Korean peninsula as early as the first century B.C. when the Han Empire colonized that region.

<sup>10</sup>There are few books in English on the subject of Korean religions. Clark's Religions of Old Korea (1932) has been reissued in Seoul, Korea and is about the only book available in spite of its dated and missionary perspective. Underwood (1910) is out of print. Korea Journal, published by the Korean National Commission for UNESCO, has had several issues devoted to various religions in Korea.

<sup>11</sup>The May 1964 issue of Korea Journal (Vol. 4, no. 5) contains several articles in English by Korean Buddhists, including a historical survey of Korean Buddhism.

<sup>12</sup>"[The] Mahayana was a politically incompetent religion" (Toynbee 1957:247).

<sup>13</sup>For the Sung revival of Confucianism and the suppression of Buddhism in its aftermath, see Wright (1959:86-107).

<sup>14</sup>If religion is taken in its widest sense as a way of life woven around a people's ultimate concerns, Confucianism clearly qualifies. Even if religion is taken in a narrower sense as the concern to align man to the transhuman ground of his existence, Confucianism is still a religion albeit a muted one (Smith 1965:188).

<sup>15</sup>The September 1963 issue of Korea Journal (Vol.3, no.9) contains several articles by Korean scholars on Korean Confucianism.

<sup>16</sup>See under the heading of the eighth year of King Tongch'on (234 A.D.) in Samguksaki (Pusik:1960).

<sup>17</sup>Wei Chih, in San Kuo Chih (History of the Three Kingdoms).

<sup>18</sup>It should be remembered that Confucianism, the religion of Korean males, was a "family religion" also.

<sup>19</sup>The importance of family is not a phenomenon unique to the people of East Asia. An old Indian in California had this to say, "A man is nothing. Without his family he is of less importance than that bug crossing the trail, of less importance than the sputum or exuviae." (Aginsky 1940:43).

<sup>20</sup>Weber makes the point succinctly:

The great achievement of ethical religions, above all the ethical and ascetist sects of Protestantism, was to shatter the fetters of the sib. These religions established the superior community of faith and a common ethical way of life in opposition to the community of blood, even to a large extent in opposition to the family. From the economic viewpoint it meant basing business confidence upon the ethical qualities of the individual proven in his impersonal vocational work." (1951:237)

<sup>21</sup>Death is often viewed as the supreme initiatory passage (Eliade 1961:184-201).

<sup>22</sup>For the Chinese fear of the dead, see Kazantzakis (1963:215-218).

<sup>23</sup>Kluckhohn and Leighton had the following to say about the Navaho:  
[There] is no belief that the way one lives on this earth has anything to do with his fate after death. This is one reason why morality is practical rather than categorical. . . .White life is so permeated with the tradition of Puritanism, of the "Protestant ethic," that much Navaho behavior looks amoral or shiftless (1946:232).

<sup>24</sup>The wish of the family of a homicide victim was also decisive in old Japan (Simmons 1891:121-122).

<sup>25</sup>Professor Wright says: "The Chinese cult of filial piety has a chilling effect on martial ardor" (Wright 1959:74).

<sup>26</sup>Kazantzakis relates an interesting episode as to how a Chinese might revenge himself on his enemy not by killing the enemy but himself (1963: 217-218).

<sup>27</sup>Weber's following observation on the traditional Chinese ethics may serve as an apt description of the Korean scene. "Both forms of religion (Confucianism and Taoism) lacked even the traces of a satanic force of evil against which the pious Chinese, whether orthodox or heterodox, might have struggled for his salvation" (1951:206).

<sup>28</sup>For the case of Buddhism in China, see Wright (1959:74-75); for the case of Buddhism in Japan, see Bellah (1957:181-182); for the case of Christianity and Islam, I need not cite any specific references.

<sup>29</sup>Kazantzakis indignantly observes: "The relationship between the Chinese and God is a commercial one; give me something, so that I may give you something" (1963:208).

<sup>30</sup>See Palmer (1967) and the references cited therein.

<sup>31</sup>I am referring to the Byzantine view of the emperor as the executor of justice. See Medlin (1952:28, 48-56).

<sup>32</sup>To the martial Japanese the crucifixion seems to have an entirely different meaning. In this sense they seem to have much more in common with the Christian West than with the Koreans (Sansom 1958:29-30). Kazantzakis found a Japanese Christian closely identifying the Christian concept of sacrifice with Japanese harakiri (1963:36). See also Ishida (1963:21).

<sup>33</sup>Particularism in law and ethics is characterized by Northrop as a perspective in which

Each legal judgment, each moral choice, each dispute and each individual is regarded in its essential normative nature to be unique rather than an instance of a universal scientific law



or a determinate normative ethical and legal commandment or rule. . . . (1960:621).

On the other hand, universalism is characterized as a perspective in which "for any act to be good or just, it must be an instance of a formally constructed universal law which applies to any person whatever who implicitly or explicitly assents to it." In addition, if such a law confers any right or privilege to a member of the community, "it must confer those rights, privileges and duties on any one" (1960:656).

<sup>34</sup>For an interesting comparison of diverse cultural responses to war, see Benedict (1934:30-32).

<sup>35</sup>I am referring to Hobbes' idea of war as a "natural condition" of man (1955:80-84); to Nietzsche's "the will to power which is the will to life" (1955:203); and to Sorel's "creativity" of violence (1941).

<sup>36</sup>These figures should become more meaningful if we compare them with 10,854 (as of 1965) licensed medical doctors who had to complete 18 years of formal education (2 years more than required of an attorney) and pass the national examination. Every year approximately 800 medical college graduates are licensed. There are hundreds of M.D.'s currently receiving training in the U.S. alone. Besides, there were 1,762 licensed dentists and 2,849 licensed doctors of the Chinese school. See Haptong Yon'Gam (1966:826-827) and Statistic Yearbook of Education: 358-359.

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