“Comparing the Incomparable”:
Local Custom and Law in Sixteenth-Century
Korea and France

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Abstract
In the second half of the sixteenth century, prominent Neo-Confucian scholar-officials in Chosŏn Korea formulated community compacts (byangyak), a form of village covenants regulating local residents’ social relationships. Implemented with the main goal of promoting social improvement through moral regeneration in the countryside, community compacts consisted of members of the elite yangban class but their effect reached the entire village community. With its emphasis on coercive commands for rectification of customs, byangyak was the closest the Koreans came to the formation of local rules governing private legal relations. Interesting parallels can be made between the spread of community compacts and the codification and reformation of coutumes in France which took place almost contemporaneously. These two phenomena reveal how each society’s concern for reforming customs evolved in disparate directions, and highlight different assumptions, categories and priorities underlying each legal tradition. Comparing different legal cultures can help in understanding the implications of legal transplant in the modern world.

Keywords
Korea, France, custom, law, sixteenth century, hyangyak

Introduction
In the sixteenth century, the Korean Chosŏn dynasty (1392-1910) oversaw a widespread implementation of community compacts known as hyangyak. A form of a village covenant made by local people to regulate their daily lives and social relationships, hyangyak were advocated by the elites as a means to rectify popular customs and ameliorate society. Several prominent Confucian scholar-officials took the initiative of instituting and implementing village regulations and hyangyak, meaning “village agreements,” functioned as a local-level justice system contributing to the
maintenance of order in the countryside. At about the same time, on the other side of the world, a massive movement was underway to record and reform local coutumes in France. In the late Middle Ages, French private law was largely composed of unwritten popular custom. In the sixteenth century the legal humanists clamored for the rationalization and systematization of provincial customs, and the crown spearheaded the campaign of the reformation and formal publication of customary law texts in most regions in France governed by local custom.

The implementation of hyangyak and the redaction and reformation of coutumes, apart from their apparent resemblance par hazard, can be both viewed as phenomena, often witnessed in history, in which reform-minded intellectuals looked to a foreign prototype to articulate and adapt its conceptions for the purpose of bringing desired changes in their society. Village compacts in Korea were firmly grounded in Neo-Confucian moralism that had been popularized by the Chinese philosopher Zhu Xi (1130-1200) through his creation of a community compact (xiangyue). The public-spirited Korean literati utilized community agreements to spread Confucian ideals and standards that they regarded as essential for improving people’s customs and society. While the Koreans in the early modern period resorted to Confucian norms and precepts inspired by Chinese models to engender and accommodate changes in their country, the French, when they wanted to update and reform law, turned to Roman law. The French humanists in the sixteenth century, many of whom were legal practitioners serving as judges or avocats in the parlements, drew from Roman legal principles and concepts in order to correct and modify local customs deemed to be iniquitous and unreasonable. Their attempts to systematize law by forging logical relationships between Roman law, la raison écrite, and local customs were not very different from the Korean scholar-officials’ recourse to Neo-Confucian norms, the authority of which in East Asia was equivalent to jus commune in Europe.

Of course, the analogy between the two developments, literally a world apart, should not be pushed too far. Indeed it may be a case of a world and a word apart. The French local coutumes referred to custom—customary law—i.e., common usages that obtained the force of law in regulating private relations. Korean customs that were the subjects of reform through community compact were popular habits, practices or rites that were devoid of a similar legal meaning. There is a widespread tendency in scholarship to overlook the conceptual distinction between customs as legal norms and customs as social norms. Confusion over these conceptual