



TRANSCRIPT

Key Conversations with Phi Beta Kappa:

Harold Hongju Koh Talks International Law and College Cafeterias

In our first episode, Fred Lawrence, Secretary and CEO of the [Phi Beta Kappa Society](#), chats with his longtime friend, professor [Harold Hongju Koh](#) from Yale Law School. Professor Koh is a distinguished former diplomat and a renowned authority on public and international law. Their intimate and revealing conversation covers Koh's expansive knowledge of foreign affairs, his views on the state of our nation, and the lasting influence of a father whose curiosity and capacious mind still inspire him.

Fred: Hello and welcome to Key Conversations with Phi Beta Kappa. I'm Fred Lawrence, Secretary and CEO of the Phi Beta Kappa Society. This podcast features conversations with Phi Beta Kappa Visiting Scholars who spend one academic year with us. They travel to up to eight Phi Beta Kappa affiliated colleges and universities, partake in the academic life, and present a lecture on a topic in their field. Lectures are always free and open to the public. For a full schedule, and to learn more about the program, visit [pbk.org](#).

Fred: Today, I'm happy to welcome Professor Harold Koh from Yale Law School. Professor Koh served as the Dean at Yale Law School, and during his tenure at Yale, has taken leaves to serve as the Assistant Secretary of State for Democracy, Human Rights and Labor in the Clinton Administration, and as the Legal Advisor to the State Department in the Obama Administration. He has authored or coauthored eight books, testified regularly before Congress and litigated numerous cases involving international law in the United States and before foreign tribunals. He is a fellow at the American Philosophical Society and the American Academy of Arts and Sciences, and a member of the Council of the American Law Institute. And I'm proud to add that he is a personal friend of many, many years. Welcome professor.

Harold: Great to be here.

Lawrence: Every year the President of the United States gives a State of the Union. It's a major moment in Washington life, but let me ask you to start by giving us a state of international law and international human rights. How would you describe the state of international law today?

Koh: I think we're at a moment of crisis of the kind that we have not experienced since the founding of the modern order right after World War II. I think that what we essentially had was the creation of a global governance order of the kind that Immanuel Kant envisioned in his "Pamphlet to Perpetual Peace." And the idea was that democratic law-governed societies would cooperate in a framework of law to promote human rights and other kinds of values. The alternative was obviously some kind of Orwellian spheres of influence where there is no truth, where authoritarians rule, where human rights are suppressed and where dictators and authoritarians meet in various spaces to make deals. And I think we are teetering at a moment between these two visions. And Donald Trump is a piece of the picture, but there many other pieces as well around the world. You see China with Xi Jinping now president for life, Putin asserting astonishing influence and really taking the United States to the cleaners. You know, the, the threat to Brexit, Poland, Hungary, Philippines, Venezuela. I could go on and on.

Lawrence: Well, I'm going to give you a chance to go on and on and I do want to go back to a number of those things, but let me take you back first. There's been a lot of talk about immigration, immigration policy today. That's a big part of your, your life story. I remember being present when you were sworn in as legal advisor and you spoke very movingly about your parents and their immigrant experience. Tell us a little bit about what that was like growing up as an immigrant's kid and how did it affect your way of looking at the world?

Koh: Well, my late dad, Kwang Lim Koh, was born on a small island off the coast of South Korea. He was the first person from the island ever to go to Seoul to study. But nevertheless he was first in his class and won a scholarship to Harvard. My mother was from a well off family in Seoul and so they never would have met in Korea because they were from very different social classes. But as it was, they made it here just before the Korean War and then the war broke out. They were among less than a couple of hundred Koreans who were living on the East Coast, and they met each other and got married, and both of them got PhDs., my mother at Boston University, which you know well. My dad finished his degree at Harvard and went back to serve the first democratic government in Korea in 1960.

And then that government was overthrown by military coup. My dad was the only guy in the embassy in Washington who did not serve the military junta, although everybody else promised that they would only serve a democracy,

they all recanted, and this had a huge impact on me. So, you know, he told me that the only life that was worth living with the life of a scholar. In Korea, the word sung seng nim means scholar, but it actually carries a tone of reverence that no other English phrase captures. It's more like a Jedi Master. And, um, we were told that to be a sung seng nim was the greatest thing you could do. And sure enough that's how I got involved.

Lawrence: But why law? Do you think there was a connection between the experience of growing up as a child of immigrants and an interest in law, and particularly international law?

Koh: I think that when you grow up in a society that veers back and forth from being authoritarian, the rule of law is what makes the difference. When I was a college student, I went to Korea, just during the summer where Nixon was being impeached. And, um, that same summer, there was an assassination attempt on the president of Korea and they declared martial law so I couldn't leave. So I was stuck in Korea. And on that same day, suddenly Nixon resigned and Gerald Ford became president. And I called home and my dad said to me, "Now you know the difference between a democracy and dictatorship." He said, "In a dictatorship, if the troops obey you, they call you president. But in a democracy, if you're a president, the troops obey you." And that's the difference between the rule of law and the rule of individuals.

Lawrence: Do you have a couple of stories from that time when you were assistant secretary that particularly exemplify countries where you coming in as an American Assistant Secretary of State for Democracy and Human Rights made a particular impact?

Koh: Well, the clearest example was in November of 2000. It was just after the presidential election, which went to the Supreme Court and ended up electing George W. Bush over Al Gore. But during that period I went with Madeleine Albright to Pyongyang, to North Korea. And, um, that was really the most moving trip of my life. We were there for five days. We met with Kim Jung Il, who is the father of Kim Jong Un, who is now the dictator of North Korea. And um, you know, they started by saying, you know, when Albright raised human rights issues, 'You know, we, we Asians don't believe in human rights.' And she just gestured to me. Um, like, you might want to reconsider that. I think what was also extraordinarily powerful was, uh, you know, Korea is a country divided, the South and the North are the same people. And uh, when we landed in North Korea, there were no lights. The people were starving, the streets were deserted. There were no cars, there was no gasoline. And, uh, when we flew out of North Korea to the South, it's only 18 miles to Seoul, suddenly the sky was lit up with lights. And it suddenly dawned on me that, you know, the only difference between the North and the South is the form of government they

hold. These are the same people. And that, you know, the, there's a land of darkness and a land of light. And just metaphorically, it's very much attached to the form of government that they choose.

Lawrence: Was your father still alive when you made that trip to North Korea?

Koh: No, he passed away in 1989. But he was my most powerful role model. He loved the academy. And, um, when we would take vacations as kids we would drive around. And whenever we'd enter a new town, my father would insist to driving to the local college or university, and we'd eat in the cafeteria there. First of all because he figured it was clean and safe and cheap. But I think he just felt at home in any college or university. And as we'd drive out of town he'd say to us 'In Korea, that would be the best university in the entire country, and in America they have thousands of them.' And it really gave me a reverence for the role of higher education in America, and its transformative effect.

Lawrence: So what would it take to see a unified Korea? How far are we from that, do you think?

Koh: We're very far from that. First of all, the North and the South have to talk. One good thing is that they are talking now. Moon Jay Ing, the new president, is committed to this and had his own summit with Kim Jong Un. But secondly, it has to be in a framework of multilateral talks. Every time the United States and its allies have gotten together and the six-party talks with North and South Korea, they start to make progress. What doesn't work is threatening people. You know, no nation state has surrendered its nuclear weapons under threat of force. It's only happened in multilateral talks. The greatest irony is that our president has walked away from exactly the kind of deal, the Iran nuclear deal, that he needs to negotiate in North Korea. And he's celebrating a declaration which has none of the specificity or enforcement mechanisms of the deal he just walked away from. And he's essentially giving Kim Jong Un a ground to say, why should I give up my nuclear weapons after all? How can I trust that Trump won't walk away?

And I think that it creates a real possibility that nuclear weapons will stay. And that what the United States will end up doing is ratifying the presence of nuclear weapons in the North. And that's a great tragedy.

Lawrence: So if Secretary Pompeo walked in here and he said, 'Harold, we got a new plan. You're, you're in charge of the Korean Peninsula for our policy the next year.' What are your, what do you do over the first 90 days?

Koh: I'd say stop meeting at the summit level. Pompeo went and just recently was humiliated. He didn't even get a chance to meet Kim Jong Un. I'd say build up

your career diplomats. The ones who really knew what was going on left. Start having daily talks about tractable issues. For example, returning remains of dead soldiers, family visits, a direct hotline between the South and the North, um, and then start to talk about a framework in which you talk about two issues, denuclearization and peace, and talk about them in a coordinated framework. And then talk about human rights because one of the most appalling things is these guys are masters of arresting people. And then when you go to a summit, they release them and they want to get credited for that. Trump gave them credit for that, which is absolutely astonishing, you know. So it just gives them more incentive to do exactly the same.

Lawrence: First you rob the bank and then you give the money back. And you want to be a hero for returning the money.

Koh: And I'd say most important, Secretary Pompeo, remember that the actual impact that North Korean nuclear weapons on intercontinental ballistic missiles would have on the US grid is nothing compared to what they can do with cyberattacks. After all, the Sony Hack and the WannaCry virus, big ransomware attack, were done from North Korea. So before you have a meeting with someone like Kim Jung Un you say to him, if you want the privilege of having the meeting with the sitting President of the United States, you better stop all cyber activity that could threaten our grid, and if not, your grid's going to go down in accordance with international law rules of retorsion, etc.

Lawrence: Let me go back to your Clinton administration experience and in fact the very beginning of it, if I have it right, you got your job, but you got their interest in you being recruited in an unusual way. You had sued the government and they were impressed with that and they recruited you into the State Department. That's an unusual way to get a job. Were you surprised when you got the phone call?

Koh: I was very surprised. What they said to me, which was very touching, was I said, you know, I spent from 1991 through 1994 suing the Clinton Administration first for refugees from Haiti and then refugees from Cuba. And I said, you know, and both cases ended up resolving themselves with, from my perspective, better policies than we had had before. They said, um, that's why we want you. Because Albright knows that you will give her an honest answer and that you're not a yes man. So if you tell the outside world that what we're doing is consistent with human rights, people are more likely to believe it.

Lawrence: In the Obama administration, under Secretary Clinton, you served as Legal Advisor. Can you tell our listeners a little bit about what that position is? It's an extraordinarily important role in American foreign policy, but probably one of the less known roles.

Koh: So, I was the 22nd Legal Advisor. You're essentially the conscience of the United States on matters of international law and on all issues of foreign policy law, and one of the most totally fascinating job I can remember. On my very first day they tell me at one of our ports they've stopped a box of fertilized panda eggs. And the question--they're owned by a large foreign country, you can imagine which one it is-- can it be attached by a court as a judicial attachment to secure a fund for a lawsuit, or is it subject to the Doctrine of Foreign Sovereign Immunity? The truth was, I had never thought about that question, but literally I started to have a little test for myself. How early in the day would I encounter the problem that I could put on an exam when I got back to teaching. And it was usually by about 8:30 or nine in the morning.

Lawrence: And one of those hard exam questions would have to be one of the most complicated issues you were involved in, and that was the legality of the use of drones. And I know that got to be quite a controversy. What happened there?

Koh: Yeah, I mean, well, first of all I was struck by the fact that many people were very upset about drones didn't go back and say, did we do the right or wrong thing in Hiroshima and Nagasaki. After all, thousands of civilians were killed in those two, and most people, most Americans seem to accept that as part of American history. In 1949, we adopted the Geneva Conventions and that required that you draw lines between lawful killings and unlawful killings in war time. That suddenly makes law very relevant because it's the difference between whether you're committing a lawful act or murder. And I've heard politicians say, let's get the lawyers off the backs of the generals. I'd say to them, don't you dare. That's exactly where you need the lawyers in play.

Now it turns out that we developed this technology. The technology allows you to single out people who are about to attack the United States and have attacked the United States. The question, which I think the Israelis first faced, is can you target them? Can you target Osama Bin Laden? And if so, can you use high tech equipment to do so? And my view is the history of weaponry is more remote, more accurate weapons, and so they can be used legally or illegally. And so I expressed the view that you could under certain conditions do it lawfully. If you violated those conditions, you were acting unlawfully.

What surprised me was that many in the government didn't want to state what those were publicly. They didn't want to state our standards. And so then you had people saying things like the administration claims a right to kill anybody anywhere sitting in a cafe in New York, which is not what they were claiming. So I thought I should give a speech. The good thing about giving a speech is you write it and other people clear it, hundreds of people cleared it. In fact, they were clearing the speech while I was giving the speech. It wasn't even fully cleared until I got to that part of the speech. And it was amazing. Someone

wrote an article where they said, 'at that point in the speech Koh clung to his notes.' The fact is I didn't know what I was authorized to say. I mean people were literally handing me yellow stickies during the speech.

Lawrence: Right on the spot?

Koh: Yeah, to make sure that I was saying what everybody had approved because that's the difference between an approved statement of the US government or not. After that, there was much more specificity in what the standards were. And my view is, if you're a pacifist, you're not going to like drawing these distinctions. I respect that. But if you believe that the rules of war are changing and have to adjust and that we have to define when we have a legal right to protect ourselves and when we don't, then you ought to state those standards. And if you're not prepared to do that, you shouldn't go into the government as a lawyer. When I got back to the academy, I got a lot of criticism and you know, frankly, it's always easy to be in the faculty lounge because you can always be right and you can take inconsistent positions between today and tomorrow.

Lawrence: So you're back in the academy now, and have just completed or are in the process of completing an important book called "The Trump Administration and International Law," which comes out in September, right?

Koh: September 17th.

Lawrence: Which happens to be constitution day is some of us know and a good way to celebrate it will be this book coming out. So tell us a little bit about it, uh, and what was the impetus for it and what issues you're going to deal with in that book.

Koh: Yeah. It comes back to a famous joke that Mel Brooks used to tell. He used to play a guy called the 2000 year old man and they had asked them before there was a god who was there and he said there was a guy named Phil. And he'd say, well, what did Phil do? And he'd say we'd say to Phil, don't kick us and don't beat us. And then one day lightning came out of the sky and struck him dead. And we said, there's something bigger than Phil.

Lawrence: That was the first prayer. There is something bigger than Phil.

Koh: There's something bigger than Phil. Well, you know, every day I watch the news and it's Trump this, Trump that, and my response is, there's something bigger than Trump. It's a web and framework of law and norms that preexisted Trump and, uh, will be there after he's gone.

He's part of the process, he's maybe the most influential player in the process, but he doesn't own that process. And that process is pushing back. Every day he tries to change things and everyday it pushes back. And what I decided to do was to see how it played out in a variety of settings: immigration, human rights, climate change, denuclearization, North Korea, Russian hacking, America's wars. And what I feel across the board is that, yes, Trump is disrupting things. Is he deeply changing things? Not so much.

I'm reminded of the famous rope-a-dope fight between Muhammad Ali and George Foreman where Muhammad Ali was being battered and everybody thought he was about to be knocked out. In fact, his opponent was flailing around, got exhausted, and then at a particular moment, Mohammad Ali came off the ropes and won the fight. But the other part of it was he was badly battered and unglued.

And I think that's what we're witnessing now, is civil society, the existing institutions of law, deeply entwined institutions of law, are resisting, and we'll see who wins the fight.

Lawrence: Which side are you betting on?

Koh: Well, it's not a bet, it's a, it's a commitment. Along with writing this book, we've started something called the Rule of Law Clinic at Yale Law School. We're a law firm. We were involved with the travel ban case. We're supporting transgender soldiers who were being dismissed from the military. We brought a number of cases having to do with climate change. We brought Census cases.

You know, in my view, if you understand the human body, if you become a doctor, you acquire a moral duty to try to make people healthy. You don't have that duty, if you don't understand. If you understand the body politic, then your job is to weigh into the fight and make it better. So I'm not just betting Trump wins or loses. I'm actually going to wade into the fight to make sure that the side I think ought to win prevails, and I think that's what an engaged member of the academy ought to do.

Lawrence: Sounds to me as if you're still in the ring. So tell me how the book and the chapters in the book will correlate with some of the work you're going to do as a Visiting Scholar this year for Phi Beta Kappa.

Koh: Yeah. Part of my lectures will be just kind of recapping the overall themes of the book. But there are different pieces of it which I'm exploring in more detail. The future of climate change, for example. One way to think about climate change is, you know, Trump has said he'll withdraw from the Paris Agreement. In fact, he's done nothing. Tweets don't have legal force. He's announced that in

November of 2019 he will do something. That's like my telling you I'll leave my job in a year. There's been an overreaction to that. In fact, all he's really done is withdraw from the federal government's role. But as you and I know from having been deans, when you have a fundraising thermometer and one of the big donors doesn't fill in their role, you've got others to fill in, states and localities, private parties, and that's what we're seeing is that climate change, again, doesn't belong to Donald Trump. It belongs to all of us, and the future has already shifted to clean energy. And so he's a little bit like King Cnut trying to hold back the tide.

I'm going to lecture about North Korea because people are obviously interested in that. It's something that as a Korean American, I have a deep interest in. I'm going to talk about 21st century war. You know, we don't have, the question that I'm often asked about drones shows that we're in the zone now where we have grown cyber conflict and special operations. You know, we don't have gigantic shock and awe operations anymore. And the question is how can these things conform to the Geneva Conventions?

Lawrence: Delighted that you're going to be a Visiting Scholar this year, but you're a guy with a lot on your plate and a lot of other things you could have done. What made you decide to accept the appointment as a Visiting Scholar for Phi Beta Kappa.

Koh: I love going to colleges and universities. After the Iraq war in 2003, a very depressing time, was a period where I was taking my daughter to college and we drove from really south of Virginia all the way up to Maine. Every 50 miles, there was another college or university. Every one of them was spectacular. And I would think about what my dad used to tell me, "In Korea, this would be the best university in the country." And I thought, this is America's strength. It's not our weapons, it's not our hard power. It's these campuses and their diversity and the way in which they allow people like me to become Americans and then to aspire to serve in the government and um, you know, this is where I should be spending more time.

And so, uh, the Phi Beta Kappa Scholars program gives me a chance to go to schools that I would never just walk into and talk to people. I like the lectures, but I like even more the kind of engagement with the students and just the numbers of them who have these astonishing aspirations. And, you know, I tell them my father is from a little island off the south coast where he spent a lot of time catching fish. And, you know, I got to be here. It's a message that gives maybe some other people, some feeling that they could do something even better.

Lawrence: Sounds like we won't just be having you on all those campuses, we'll have your father right along with you.

Koh: Yeah, he's with me all the time.

Lawrence: Thank you for being with us. Great spending time together, Harold.

Koh: Thank you, Fred.

Lawrence: Thanks for listening. This podcast was produced by Lantigua Williams & Co. Our theme song is "Back to Back" by Yan Perchuk. To learn more about the Phi Beta Kappa Visiting Scholar Program, please visit pbk.org. I'm Fred Lawrence. Until next time.

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