

**Panel I: Different Modes of Legal Education and Legal Thinking:
Three Most Important Issues of Korea's Legal Educational System
that Others Ought to Know**

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Brief Description of the Present Status in Korea

Background – Korea's Legal System

Succinctly put, Korea is based on a Japanised German legal system. German law and legal system initially were imposed on Korea by Japan, which could exercise increased political and other influence over Korea especially after she won the two wars against Russia and China. However, the American military government that ruled Korea from 1945 to 1948 and the long and close ties between Korea and the U.S. have had great influence upon the subsequent development of Korea's law and legal system. As a result, in recent years there has been a strong tendency for Korean legal scholars and professionals to choose to study in the U.S., realising the strong American influence on almost every field of law in Korea. Their such exposure and training have a significant impact on our legal education, legal profession and legal practice. Korea has thus developed a unique hybrid law and legal system.

Legal Education

Law studies in Korea consist of a four-year undergraduate program that admits high school graduates. A total of 79 law faculties in Korea admit between as many as 290 and as few as 40 students. Almost all of about 700,000 high school graduates produced annually do want to go to college and take a qualifying examination administered by the government, which is comparable to the SAT test in the United States. If a student excels in his or her high school along with a high SAT score, pressure mounts around and upon the kid from high school teachers, parents, relatives and alumni, etc., to apply for Seoul National University (SNU) and its College of Law, regardless of the applicant's wish, aptitude, career plan, etc. Consequently, SNU College of Law always can select the 200 brightest high school graduates every year for its undergraduate programme. The selection is mainly based on the SAT scores and an admittance test administered by the university. This college entrance examination system has been in operation in such a way for more than 40 years; thus, the pecking orders among the universities as well as law colleges have been firmly established in Korea.

The first year curriculum consists primarily of general studies, and the following three years are taken up mostly by law courses. Although individual law faculty member may propose to offer a new course, it has to be approved by the faculty meeting. In reality, budgetary and other constraints do not make it always possible to add, drop or change the courses. Courses offered at colleges of law tend to be theoretical. But most agree that legal education should be a professional one, meant to produce both lawyers and legal scholars. Therefore, one of the main criticisms is that law colleges put too much emphasis on doctrinal legal studies, centring around the exegesis of the black-letter law, and that clinical legal studies and

interdisciplinary studies are much neglected. Some argue that even theoretical legal studies are not adequately taught, for two main reasons. First, since no law degree is required to take the judicial examination (see below) and to become a lawyer, the legal profession functions independently and with very little exchange with academia. Second, law is an undergraduate major in the universities where many subjects are taught together, and consequently LL.B degrees may be awarded to students who have taken only 33 credits in law. Moreover, as the curriculum is geared towards the judicial examination, the students' opportunities to explore academic discourses and intellectual developments in legal scholarship are limited. Whatever new courses are developed to meet the needs of our changing society, and however well the courses are prepared, the students' enthusiasm and attendance are low unless the courses deal directly with topics relevant to the judicial examination.

In addition to the undergraduate programmes, many colleges of law have graduate programs that require two years for a Masters of Law (LL.M) degree and another three years for a doctoral degree. A large number of graduate degrees in law are conferred annually, and they are the pool of human resources that supply research and teaching assistants as well as faculty appointments. However, the majority of the graduate students have their name registered purely to secure deferment from the military draft while they study for the judicial examination, and many graduate students aspiring to be law professors seek an opportunity to go abroad for advanced legal studies. There is no customary or established way of hiring a law faculty member. Usually many with a doctoral degree apply, and the competition is rather fierce. Their applications and academic achievements are confidentially sent to internal as well as external evaluators for merit-based deliberations.

Presently, in order to go into the legal profession as judges, prosecutors or attorneys, it is not sufficient to obtain an undergraduate or even graduate degree in law. Future legal professionals have to pass a national judicial examination, followed by a two-year training at the Judicial Research and Training Institute, the nation's only legal apprentice training institution operated by the Supreme Court. There is no linkage between the formal legal education at the law schools and the national judicial examination; the examination is open to anyone, irrespective of whether the candidate has graduated from a law school or not. Nevertheless, only about 1,000 people can annually go into the legal profession as judges, prosecutors, or attorneys because there is a national quota for the judicial examination. All law students and many non-law students devote themselves to preparing for the judicial examination, and the vast majority of them thus end up toiling to pass it for several years after graduation, as the passing rate is only about three percent. Most of the successful candidates are from the SNU. Law students are very intelligent and motivated students, but the psychological pressure to prepare for the examination, and the great potential reward if they are fortunate enough to pass it, tend to give them tunnel vision.

Recent Reforms and New Developments

The legal education and legal profession in Korea currently are undergoing significant changes. First of all, the Presidential Committee on Judicial Reform, of which I was a member, made several far-reaching recommendations in December, 2006, and most of the implementing legislation for them has been enacted in 2007.

Some of the reform measures are:

- 1) adoption of an American style law school (a three year graduate program);
- 2) promotion of greater citizens' participation in the administration of justice (mainly experimental jury trial for certain criminal cases);
- 3) some measures to redefine the functions and organisation of the Supreme Court, restructure the recruitment and appointment of judges, and reform criminal procedures for strengthened protection of defense and victims; and
- 4) some measures for promotion of the rule of law for the better functioning of democracy and market economy in the rapid globalisation.

Secondly, under the Free Trade Agreement (FTA) that Korea and the U.S. have successfully concluded in 2007, a three stage opening plan of the Korean legal services market will begin from the end of 2008. Thirdly, since Korea ratified the Rome Statute in November, 2003, much of the criminal law and procedure have to be amended to conform to the relevant international norms in the form of national implementing legislation.

New Thinking in Legal Education

The recently enacted launch of “American style law schools” will allow a small number of qualified and approved law schools to admit first year law students in March, 2009. This is a significant paradigm shift from the judicial examination-dependent production of legal professionals to quality legal education-based training. The current judicial examination, which has long been an effective birth control mechanism on the legal profession, will be replaced by a new examination providing minimum quality control. The adoption of an American-style law school system indeed is considered a Copernican revolution in Korean history, for the traditional way of producing legal professionals exclusively through the national judicial examination will be taken over by a newly introduced American style legal education and bar examination. Now discussion focuses upon how to offer high quality legal education at the new law schools, realising that legal education will have to cope with globalisation in general and the opening of the legal services market in particular.

It is now generally recognised that the traditional method of theoretical studies alone does not adequately prepare students for the legal practice at the age of globalisation. Law practice already is a total industry that requires professional knowledge about accounting, financing, business management, energy, real property, health, etc. in addition to critical acumen on political, social and economic issues. Thus, a new curriculum that emphasises interdisciplinary legal studies will have to be designed. The new law schools also will eventually take over all the practical training programmes of the Judicial Research and Training Institute. They thus will have to expand their own clinical programs or develop new clinical legal studies properly to equip the students with an ability to confront law and legal practice in the domestic as well as international hands-on environment.

Furthermore, in preparation for the opening of the legal services market, law schools try to develop a curriculum that would strengthen the competitiveness of the Korean legal services industry globally by teaching American law and practice. It is generally accepted that American law now is the global standard, evidenced by the fact that New York State law is usually agreed upon as the governing law for international business transactions. In that sense, globalisation practically means an

expansion of the American rules of game. Some colleges of law, for example, teach borderless litigation, extraterritorial application of domestic law, intellectual property protection and how to deal with patent trolls, and international criminal law.

Nevertheless, there seems to be a noticeable difference of perspectives with respect to how to prepare law students for globalisation. One group of law faculty believe that the advent of the Pangaea for American rules of game is likely and that the present trend of Americanisation of the legal services industry would eventually make the fourth wave. The other group, while being equally well aware of the need of global legal studies, is of a more profound and omni-faceted view: this group agrees by and large with John Sexton in NYU Law Bulletin (1998, Spring) that in order to ensure that law graduates will ably bloom in the new professional environment of globalisation, global legal education should seek to understand great values common to mankind, interaction of law and culture in an age of increased human diversity, and the long term well-being of the human community required for the new global phase of human development. While debating what and how to deliver in the classroom, they acknowledge that theoretical, clinical and global studies present a great challenge to legal education.

Although the opening of the legal services market under the FTA would be a big bang to the domestic legal profession and lead to a fierce competition, its mission as defender of justice should remain the same. Public interest law courses will be strengthened with an emphasis on the importance of social responsibility of lawyers.

Furthermore, the Korean experience of law and society will be taught. The past three decades or so witnessed that law and legal system played a critical role conducive to the process of democratisation and economic development in Korea. Korea's successful example in this regard, the independent judiciary, some unique features of hybrid legal system, and people's attitude toward law will be analysed and compared for the benefit of domestic as well as foreign students. For too long the educational exchange has been a one-way street, with Koreans studying in the U.S. and other advanced countries, seldom vice versa. No more so now. If more foreign students are encouraged to come to study law in Korea, some courses for them should also be offered.