

Legal Education in Korea

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Introduction to Korean Law

I. Introduction

11. Problems of Legal Education in Korea

A. Summary of the Article

- Korean's View : *"Legal Education in Korea : Problems and Reform Efforts"* -

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- Foreigner's View : *"Education of the Legal Profession in Korea"* - James M.

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B. Group's View(Discussion)

1. Introduction

Talks of reforming legal education are not short of history in Korea. Problems of legal education in Korea are well recognized and several shots at reform have been attempted. However, such problems are deeply rooted in Korean society and its legal system, that any proposal of change has been subjected to high opposition and controversy.

This presentation does not attempt to analyze Korean legal system as a whole. Rather, it focuses on a narrower point of *legal education* in Korea, its problems and the possible solutions. The presentation will be largely divided into two parts - problems and reform measures - and under each section, the group will try to voice its own view of the matter after presenting a brief summary of the articles provided.

11. **Problems of Legal Education in Korea**

A. *Summary of the Article*

<Korean's View : "*Legal Education in Korea : Problems and Reform Efforts*">
- Dai Kwon Choi, 1988

1. **Legal Education in Korea**

(1) Legal education on university level

. Legal education on university level is conducted at college of law or at department of law in college of law and political science, etc.

- The first year at such college of law or department of law is devoted entirely to a general education consisting of introductory courses in social sciences and humanities, while the next three years focus mainly on legal subjects. - The major law courses offered are Constitutional Law, Civil Law, Criminal Law, Commercial Law, Civil Procedure, Criminal Procedure, and Administrative Law, but they vary from school to school.

(2) The Korean bar examination

- The absolute majority of law students prepare for the bar exam and try to pass it when they are still in school or immediately following graduation.

What is peculiar is that there is no educational requirement to take the bar examination at all. One does not have to be a law graduate, not even a college graduate to take the bar examination.

(3) Judicial Research and Training Institute(JRTI)

. The lucky three hundred(seven hundred in 1998), who passed the bar exam undergo for two years of professional training run by the Judicial Research and Training Institute composed of various lectures, tours and supervised practices in a judge's, public prosecutor's and attorney's offices.

2. **Problems of Legal Education in Korea**

(1) Inadequate legal education in universities

The problems come no doubt from our conviction that the present university legal education is definitely inadequate.

. Students cannot be properly educated in both humanities and social sciences that are positively, conducive to the formation of morally and intellectually matured personality, and in professional knowledge and skill.

- In fact, the present university legal education has been for too long too deficient in many aspects.

(2) Legal education badly influenced by the bar examination

- . Legal education actually conducted in university has been terribly affected by the bar exam which we have had.
- As we have already indicated, no formal educational requirement exists for one to take bar exam.
- Therefore, in order to pass the exam when they are still in school or immediately

following the graduation from school, they intensively prepare for it day and night in library while largely neglecting their classes unless they are dealing with the exam topics.

- Mr. Choi believes that it is reasonable to conclude that (I)the lack of formal educational requirement(like law school degree) for the bar exam and (Zthe consciousness of the popularity counts by success in the exam are two major contributory factors to the problem of legal education.

(3) The problems of the education at the JRTI

. Education at the Judicial Research and Training Institute is not free from problems at all.

. Probably the most critical view on the Institute and its education and training is that they do not add at all academic training to the meager intellectual background of the trainees who passed the bar exam with nothing but a slave-like toiling and they do not provide to them sufficient professional training either to be judge, or a prosecutor or a practicing lawyer.

3. Reform Efforts

(1) Discussions about improving legal education

- One idea is to make a progress in the professor-students ratio(the nationwide situation in the ratio is far behind the ideal).
- . Another idea is about more than 4 year law school plan like five year law school, six year plan and seven year plan as an important means to solve several problems we have in legal education.

(2) Five year law school idea

Mr. Choi believes that the five year course idea is proper.

His personal idea is a radically liberal one that all graduates from it should be admitted to the bar as attorneys, from among whom young judges and prosecutors are recruited or at least that graduation from it is required for the bar exam and the quota of successful candidate should be so opened up that a half of those graduates can pass the exam.

(3) Increasing the number of lawyers

- All the lawyers, judges, public prosecutors and attorneys alike, who had one time passed the bar exam, have been forming an exclusive club-like group of the privileged,

giving rise to a parochialism on their part.

- Meanwhile, they largely neglected developing their learned concerns and skills in other important fields of modern law, such as tax law, consumer protection law, environmental protection law, labor law, patent law, where the legal service of the qualified lawyers is definitely needed in any industrialized society. - The policy of maintaining lawyers as a small sized exclusive group has in fact blocked many of law graduates from becoming lawyers. - Consequently, it is necessary to increase the number of successful candidates for the passage of the bar exam.

(4) Slight change

- The size of layers has been constantly growing beyond the natural attrition rate each year, and a growing number of newly hatched lawyers began to explore in diverse areas of law and legally related activities including such new fields of law mentioned above.

- A qualified legal service is expected to be easily available in the future even in diversified areas of law, and the threshold of lawyer's office is expected to be lowered.

<Foreigner's View : "Education of the Legal Profession in Korea">
- James M. West, 1991.

1. The System of 'Unified Training'

. The Korean legal education system largely followed Japanese models but also reflected the decisions implemented by the former presidents.

The Kab-o reforms brought forth changes in

1. The legal systems of Korea
2. The modernization of the higher education system
3. The traditional state examinations in that it could be taken by aspirants of non-aristocratic descent.

. Meiji oligarches in Japan embraced French ideas and Prussian statism and visions of a Reschstadt to unify the populace in order to achieve rapid economic growth and industrialization and to acquire an international standing. This refoi-i-n resulted in similar reforms in Korea.

. Colonial Korea experienced a centralized authoritarian legal order in which the State Council had expansive powers. This process is still retained in the Korean system today.

. In spite of "Modernization" of the content examined, Confucian traditions was preserved in the State examination system.

Legal education was divided into 2 phases:

1. Initial phase of university study culminated in the examination taken by all aspirants to a legal career.
2. Successful examinees went through the phase of apprenticeship derived from the German Refrendar system.

. With changes in 1947 in Japan, all successful examinees had the status of probationary state officials for a period of 2 years as they underwent practical training irrespective of their career goals.

. Before 1962 one year of apprenticeship training was given to the successful examinees before their first legal appointment but from 1962 to 1970, the second phase of the legal education was conducted in the Graduate School of Law of Seoul Korea University (SNU)

. since 1970 the examinees underwent a 2 year training course in the Judicial Research and Training Institute (JRTI) under the supervision of the supreme court established in 1947.

In 1970 President Park Chung Hee emulated the Japanese model of the JRTI.

During the 1940s through the 1950s there was a short supply in Legal expertise which resulted in Japanese-trained Korean jurists rising to high positions in spite of being charged of collaboration. Therefore in the 1960s and 1970s within the legal profession, there was a lot of friction amongst the older generation of the Japanese-influenced Korean jurists and the younger generation of legal professionals. . In the 1960s, the number of younger generation individuals who under-took academic study of foreign legal systems other than those of Japan and Germany grew. They got an education which taught skills needed in private legal practise instead of the teaching of doctrinal exegesis from the standpoint of a state officer. A number of these Western-educated Korean jurists moved from their judicial careers to become leading members of the Korean bar.

. Through the process of differentiation and specialization since early 1970s, the shortcomings of the present legal system of unified legal education was perceived but was still opposed due to the resistance to change. . The basic features of structural change in the Korean legal process can be approached from several points of views:

1. Economic: shift in the demand for and supply of various types of legal services.
2. Cultural: how deeply embedded normative attitudes (Confucian heritage and nationalism) affect the public's view on the legal system and economic issues.
3. Political roles of jurists.

Byonhosa had high prestige and these 'elite' opposed to the rapid expansion of supply which would increase competition.

. The structure of career paths influenced the low priority accorded to the autonomy of the Korean bar.

The unified course of legal training undergone by all licensed jurists and the

preponderance of SNU law graduates amongst them has reinforced the quasi-official status of byonhosa.

. "Unified Training" has impeded the emergence of a well-differentiated and independent bar.

. Strategic counselling, corporate planning and contract negotiation functions are underdeveloped as specialities of Korean attorney. Therefore there has been inadequate advice which results in loss.

. The Korean bar defines the meaning of 'success' not only in terms of employment opportunities but also in social status, marriage options and self-image

2. A Meritocracy of Memory

Korea has a long tradition of recruiting higher officials through state administered examinations.

. The aspirants to public offices were expected to demonstrate mastery of the rituals and doctrines of Confucianism as well as personal integrity and a loyalty above all question.

It represented the apex of a purely meritocratic system of education.

Although it is possible to rise straight from the bottom to the top of the social hierarchy, most of the examinees are graduates of SNU. . SNU students have shown higher chances of passing the bar though there have been a rise of admittees from other universities recently. . The tests reward the regurgitation of fixed formulae and conventional routines of exegesis more than the display of analytical originality or practical insight into the functional goals of legal non-ns.

. Students spend time in mastering fragments of dogma most likely to be tested, therefore the education received is unbalanced.

Success in the legal field is equated to how much chance one has of passing the bar. It is hard to change the legal education due to the formalistic thought.

"Safety first" principle is observed by legal functionaries as well as by bureaucratism the ministries.

. Korean institutions of higher education are stratified in terms of presumptive prestige. Externally, universities are infon-nally ranked in a prestige hierarchy, internally, law, medicine or engineering departments are more prestigious than non-professional departments.

. Rote memorization and conformity to set analytical routines rather than intellectual creativity and penalizing critical thought are encouraged. . This is to gain only the 'real truth' and therefore be objective but it is like learning a dead language.

3. Premature Specialization and Late Subspecialization

The usual age of freshmen in Korea is 18 to 21 years old.

After 4 years of university, law students have a limited exposure to the social sciences and humanities and even less of the natural sciences.

Time is spent on memorization of material of the bar exam preparation.

Massive quantities are ingested by Korean teenagers but the study is distorted by the examination imperatives.

. Due to the importance laid on the bar, efforts made to deepen the knowledge and practical skills of the students is wasted unless qualitative changes are made in the curriculum.

Devaluation of subject-matter distorts the Korean legal education in 2 ways:

1. Premature concentration on law to the exclusion of a more well-rounded general education.
2. It deters subspecialization in the later years of study.

Students use whether or not a subspecialization will come up on the bar as the indicator of "value". Therefore only those subdivisions that are of "value" are studied.

4. Theory versus Practice? - Knowing and Doing.

Criticism on Korean Law schools:

excessive time is spent on learning theories and exegesis of legal dogma so that students emerge with limited know-how of practical use in their subsequent careers.

. In America, 'practical training' which is highly valued is started with earnest only after the students have received the JD degree.

In the 1980s the objectives of university law teaching are being reassessed in a broader context to create interaction between the private bar and the law faculties. . Advocates of reform see the lack of practical experiences on part of a law professor as one of the major problems of an unequal balance theoretical know-that and practical know-how.

. A gradual transition to a more pluralistic institutional setting since summer of 1987 gave rise to the conflict between satisfaction of government preferences and loyalty to clients.

As passing of the bar is equalled to success, students have little opportunity for independent thinking about the mission of their future profession. . Formalsitic attitudes and Confucian presumptions and stratification of experience open a large distance between teachers and students. Therefore opposition or talks about professional ethics which overlap with professional competence is not possible.

Legal education will always deeply influence the way in which young jurists conceive

their roles. In a system of Confucian attitudes, the world view of the older generation tends to be pedagogically reproduced in the younger generation.

5. A Pedagogy of Pontification

. Imperatives of collegiality within the law faculties and of obligatory deference to teachers render it difficult for Korean academics and students to approach such issues.

The professors do not have much 'real' experience as lawyers, judges and prosecutors.

Due to the unusual respect accorded to academic professors, they enjoy immense prestige but they do not enjoy great respect within the realm of practicing jurists. . Under the authoritarian regime from 1971 to 1987, academic commentary tended to avoid innovative or critical lines of argument which risked attracting the ire of the higher authorities.

. Professors were looked upon as infallible authorities who's task was to fill the student-receptacles with authoritative information suitable for regurgitation on future exams.

. Such a pedagogical practice presumes that the task of the professor is to transmit the verities of dogma, rather than to develop in students a constructive capacity to formulate and resolve problem which requires an independent exercise of judgement. . Large classes create a "amphitheater technique" where there is hardly any challenge to the professor's point of views or where there is an absence of animated discussions. . Korean Law professors until recently have played a marginal roles in public affair and therefore research, publishing scholarly commentary on current developments in the law etc. have been scarce.

. The Korean characteristic of fear of change has made professors stick to the same type of training and education that they have received.

6. International and Comparative Legal Studies

. Due to the "maxim of exam relevance", the study of foreign and international law have been underdeveloped and underfunded in universities. . As public international law is not a required bar exam topic, it is perceived to have no relevance to the typical career in legal profession. . As the bar is the top priority, this field is left to be learned through apprenticeship after university.

. Another reason for the lack of motivation in this field is the language barrier which is even felt by the professors. The strong sensitivity to foreign intervention or 'cultural imperialism' makes students unreceptive to things foreign.

. In the 1960s judges, prosecutors and professors were sent both to common law and civil tradition countries. In the 1980s attitudes advance training in common law

jurisdiction have grown more positive.

. Non-accessibility of data on international and comparative law in universities can also create barriers to the learning in these fields. . Due to the high concentration on undergraduate studies and the bar, there is an absence of demand from the legal professions for such faculties.

The small size of bar admittees also contributes to this problem.

The expertise in the field of public international law are undervalued by the legal establishment which controls legal education because internationalists are seldom credentialed as judges or lawyers.

. The top law students who were traditionally became judges and prosecutors are directly going into Seoul Law firms. Therefore Korea is experiencing as "internal brain drain" as these law firms serve foreign corporate clients.

B. Group's View(Discussion)

III. Reform Measures

A. Summary of the Article

<"Prospects for a Seven-Year System of Legal Education in Korea" >

- Sang Yuri Kim, 1995

- Legal education reform has been a topic of much debate in Korea recently. One particularly controversial proposal would make law purely a graduate subject of study, along the lines of the United States System.
- The idea behind such idea is to enhance the liberal arts education and cultural enrichment of Korean law student, and to conduct better professional training to future lawyers.

. However, the article argues that adopting the American style seven-year system would not necessarily help Korea establish an effective and comprehensive legal education program, for two reasons :

(1) comprehensive liberal arts education was only a small reason for the adoption of the seven-year legal education system by the United States. (2) in the present day, the seven-year system is linked to features of American social structure and American law school organization in complex ways, and would not respond the same way to Korea as it has to the United States.

1. The Historical Origins of the Seven-Year System in the United States

. An examination of American history reveals that the seven-year figure was arrived at more as a result of historical accidents than any rational determination that seven years,

rather than four or five or six, is the optimal period of a lawyer's education.

(1) Brief history of U.S. Legal Education

- In mid-nineteenth century, when the first American law schools were formed, law was taught at the undergraduate level.

- Initially, law school was only one-year long, until Harvard Law School extended the residency requirements for L.L.B. degree to 3 years by 1899, then to a graduate study in 1896. It was by the early 1960s when nearly all U.S. law schools had moved to require four years of college prior to law school.

(2) Reasons for the Establishment of the Seven-Year System

The desire for cultured attorneys was only one factor among many in the historical rise of the seven-year legal education system.

The establishment of law as a graduate program can also be explained by the following two significant factors that are unrelated to the desire for cultured attorneys.

a Market Power of the Elite Law School

- The rise of the seven-year system was due largely to historical accidents - the end of World War II, the generosity of the G.I. Bill scholarships, and the attendant rise of powerful associations of law schools that had a financial interest in raising educational minimums.

- Besides concern for the general education of the law students, market forces were also at work in establishing the seven-year system. A seven-year minimum may well have been the level at which the unaccredited law schools could no longer effectively compete, and thus served as the tool for the financial gains of the elite. accredited law schools connected to the ABA and the AALS.

"American legal education had become big business"

b. Reaction to the Discipline's Humble Beginning

The extension of legal education to three years, and its subsequent establishment as a graduate program, were both efforts to earn for the study of law as greater respectability, along with efforts by ABA to rename the L.L.B. to a J.D. . The seven-year system can thus be understood in part as a reaction against American legal education's origins as a poor second-cousin of the other disciplines in a university.

(3) Comparison to the Korean Context

- An examination of American history reveals that the seven-year system ascended into prominence not only because it produced lawyers who were better educated and better able to analyze laws in the context of other disciplines, but also because it enhanced the social status and financial condition of elite, accredited law schools and their related associations.
- Even a cursory examination of Korean history and society suggests that the reasons for the United States' adoption of the seven-year system are absent in Korea.

(4) Options for Korean Legal Education Reform

- The point is not that the seven-year system is bad, but rather that it is not a necessary pre-requisite to a good legal and liberal arts education. Instead of establishing a three-year graduate school of law, the same educational goals could be accomplished by revising the current curricula in law school and the Judicial research Training Institute. The importance and content of the bar exam could be reviewed also.

2. The Present-Day Function of the Seven-Year System in the United States

Harvard Law School

all students can be attorneys if they wish, and thus can develop areas of interest within Freedom to the law and take courses in that area.
Choose . only the first year has a required

Electives in

Law School courseload. Beginning with the second year,

students have plenty of room for elective courses.

Opportunity . allows students to work or study between

Legal

legal training.

Interests

Seoul National University

. even with seven-year program, students would not take advantage of diverse and specialized class offerings unless the Korean bar exam were substantially modified or lessened in importance. - if the seven-year system is to yield the same benefits in curriculum selection and diversit@', it must be accompanied by a substantial ref<)ni-i of the way law is practiced in Korea.

to Develop the conclusion of their undergraduate - Korean economy is not structured to process education and the commencement of their large numbers of N@oung people who wish to be

employed for onIN- two years or so before

Before Law - for many students, the time period between returning to school, and thus such actions may

School college and law school is a time to sharpen be regarded alien and impractical.
their interests.

- seven-year system in the United States

. JRTI and military-N. service combine to fulfill the

Maturity of ensures that those entering the profession of
Legal law will be at least in their mid-to late-20s.

function of ensuring that persons admitted to the

Professionals and thus possess some measure of maturity ' practice of law are more experienced and mature
than fresh college graduates.

and self-reflection.

. Institutions - particularly legal ones - are products of the history and culture in which they developed, and it is difficult to discern the exact manner in which institutions interact with the other elements of society and culture. - The seven-year system in the United States is intimately connected with its context, and would not impart the same benefits if simply transplanted to Korea.

3. Conclusion

. United States maintains a seven-year system and can demonstrate the system's advantages in liberal arts education and professional training, but it is a separate matter whether the seven-year system would yield similar benefits in Korea. - Korean law schools and Korean society as a whole do not share any of these American characteristics, thus, the seven-year system probably would not yield the same benefits if transplanted to Korea.

. Simply instituting a seven-year system will not be successful in creating a comprehensive and effective legal education program without fundamental transformations in curriculum, the bar exam, and, in some cases, Korean social practices.

B. Group's View(Discussion)