

Chapter. 5 (pp.285-pp.300)

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<The Judicial Structure and its Operation in Korea>

I. Organization of the Judiciary

There are 3 tiers of courts in Korea : the District courts (including Family Court), which are the courts of original jurisdiction ; the Appellate Courts, which are the intermediate appellate courts ; and the Supreme Court, which is the highest court. Appellate Courts and District Courts are divided into geographic districts.

1. Supreme Court

The Supreme Court is the highest judicial tribunal of the nation. As the court of last resort, the Supreme Court hears appeals from judgments or rulings rendered by the Appellate Courts and the appellate divisions of the District Courts or the Family Court.

The Constitution has vested in the Supreme Court the authority for judicial administration as well as the power to establish regulations regarding the internal disciplines of the courts, the administration of judicial affairs and trial procedures.

The grounds for appeal to the Supreme Court are limited. In civil cases, they have been limited to the constitutional and legal questions material to the judgment appealed from. In criminal cases, an appeal to the Supreme Court may be made.

2. Appellate Court

The Appellate Courts are the intermediate appellate courts with appellate jurisdiction over judgments or rulings rendered by a 3-judge panel of a District Court or a Family Court. It have, however, original jurisdiction over cases contesting administrative actions.

3. District Court

The District Courts have both criminal and civil jurisdiction . The District court also has jurisdiction over various non-contentious cases such as the reorganization or liquidation of business corporations, and the registration of real property and of corporate matters.

There are 42 branch courts and 105 municipal courts as of September 1, 1995.

4. Family Court

The Family Court is a specialized court dealing exclusively with family matters and juvenile delinquency cases. Presently, there is only one Family Court in Korea, and it is located in Seoul. In

other parts of Korea, the functions of the Family Court are served by the respective District Courts.

The Family Court has jurisdiction over all disputes and conflicts within the family and other related affairs of legal significance.

II. Judicial Procedures

1. Civil Cases

The primary source of law regarding the civil litigation procedure is the Code of Civil Procedures, which was enacted in 1960 and revised extensively in 1990. Following the civil law tradition, no court is bound by the views of another court as a matter of law.

Civil lawsuits may be initiated in any District Court, branch court of a District Court, or municipal court. The filing of the complaint in the court by either the plaintiff or the attorney thereof initiates an action. Upon receiving the complaint, the presiding judge will set a date for hearing and will summon the parties to appear. The parties may appear in person or by counsel.

At the end of the trial, the judge enters a written judgment stating the reasons for the decision. A judgment is not enforceable until it becomes final. A party who is dissatisfied with the judgment of a single judge on any question of fact or law may appeal to the appellate division of the District Court.

For more expeditious and simple procedures for the settlement of small actions, civil cases involving claims not exceeding 50,000,000 Won are brought as small claims trials.

2. Criminal Cases

The investigative authorities can arrest a suspect for detention only when they have acquired a warrant of detention issued by a judge. A judge will issue a warrant only if the suspect has no domicile or if there are reasonable grounds to believe that the suspect may attempt to escape or destroy evidence.

Upon arrest, a suspect is entitled to be informed of the right to remain silent and the right to counsel. With neither a grand jury system nor the private prosecution, the public prosecutor has the exclusive authority to institute a criminal action. The prosecutor has the discretionary power not to bring the case to court when the prosecutor believes that the alleged facts do not constitute a crime or that there is insufficient evidence to prove the case. The prosecutor is authorized to bring a case before a court by summary indictment when the offence is punishable by fine. Upon indictment, the accused has the right to be released on bail. A request for bail is permitted except in certain circumstances .

Some minor offences, which are punishable by fines of not much than 200,000 won or detentions

for less than 30 days, may be brought before the court without the formal indictment. The defendant is entitled to request an ordinary trial if the defendant is not satisfied with the summary judgment. In the summary trial, the strict rules of evidence may be waived.

The Roles of Judges in Korea

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I. Comparison between Common Law Judges and Civil Law Judges

1. **Common Law Judges** (depositories of the Law, living Oracle) - the judge is an extremely influential figure in the social and political life of common law countries and enjoys a very high social prestige.

2. **Civil Law Judges** (mouth of the Law, kind of expert clerk, civil servant)

(1) The same basic professional situation (ex/ life tenure, irremovability from their careers) as for the rest of Civil Service is implied to Judges. - this **guarantees their professional stability and independence and as a shield against any outside interference**

(2) **Basic powerlessness of the judges** - being a branch of the Public Administration, the Civil Law Judge lacks totally the power to control the actions and decisions of the Executive. His proper sphere of competence is only that of conflicts among private parties over civil and commercial matters and the application of common criminal laws.

(3) **Basic lack of creativity** - civil law judge must proceed as the mere "operator of a machine designed and built by the legislator" that is to say, in a most mechanical and uncreative way, both with respect to substantive and procedural matters. The judge's task is mainly application of the law for a given factual situation. The judge generalize concrete factual situations in order to transform them into general categories likely to fit into the existing legal types.

II. Creativity in Substantive Matters

Article 1 of the Civil Code presently in force in Korea establishes the **sources of law** in the following order : the **laws**(법률), the **local legal customs**(관습법), and failing these two, the **general principles of law**(Racta Ratio -조리)

The **Judicial decisions**(판례)are not mentioned in the Korean Civil Code among the sources of law, which means their binding, normative character is not established legally. However there has been a

debate among the scholars over the binding force of the judicial decisions.

The following is some of reasons supporting the binding force of the judicial decisions.

- (1) The general principles of law acquire such a character through their recognition and acceptance as such in the decisions of the Supreme Court
- (2) Procedural laws establish the possibility of annulment for any sentence contradicting what has been established by previous concurrent sentences for the Supreme Court.
- (3) Any sentencing judge is required to make explicit the reasons behind his decisions.
- (4) There seems to be little doubt about the enormous importance for the inferior judges of the previous sentences of the Supreme Court.

However, appointment to the Supreme Court has always been subject to close governmental control. It is thus unlikely that judges too critical of government's policies and consequently, prone to scrutinize closely the new legislation and acts of the Administration will ever be appointed to it. This is why the potentially enormous power of the Supreme Court has always remained at a dormant, latent stage.

III. Creativity in Procedural Matters

As we'll look at the basic procedural principles and stages involved in a typical process of Korea, in the procedural respect the margins for maneuver left to the judge are much smaller.

1. Basic Procedural Principles

The judicial process in Korea is based on three principles:

- (1) **The principle of the parties' initiative**, which implies that the initiative for setting the process in motion and for making it proceed belongs mainly to the interested parties. (당사자주의)
- (2) **The principle of controversy** - it belongs exclusively to the parties to produce the facts and evidence around which the process must center. The judge must decide according to what has been alleged and proved (변론주의)
- (3) **The dispositive principle** - gives a practically full control to the parties over the process dynamics. (처분권주의) - when to start and withdraw and what to sentence is determined by the parties. (applies exclusively to civil cases)

As a result of these principles, the judges role is basically a passive one, especially in civil cases.

2. The Stages of the Judicial Process

The proceedings in a Civil Law system are much more elaborate and slow. Its procedural

system can be described as a clockwork system aimed at achieving the greatest possible uniformity, automatism and predictability, as well as the maximum possible protection of the parties' interests. However the result is a complex and at times tortuous, process in which three main phases may be distinguished : introductory, proof-taking and decision-making, In a court of first instance(1 심) instances were decided within 5 months for civil cases and within 6 months for criminal cases in average.

Toward a More Principled Prosecutorial Discretion: A Comparative Analysis of the U.S. and Korean Prosecution.

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1. Introduction

- Reason for prosecutors' extreme power
 - A. Right to deprive a person of liberty, property and life
 - B. The discretion is exercised in their decision making process
- Reasons for allowing prosecutors to exercise the discretion
 - A. The discretion is desirable because rigid application of law can result in intolerable injustice. Excessive criminalization may indiscriminately prohibit behaviors which are socially acceptable in a certain extent
 - B. Because law enforcement resources are limited, discretion must be exercised to prioritize resources.
- Danger of abuse: If the discretion is exercised without proper standards, randomly and discriminately, it has a danger of abuse.
- Four phases in analyzing the prosecutorial discretion:
 - (1) The decision not to charge
 - (2) The decision to charge
 - (3) The plea bargaining
 - (4) The dismissal of a case after charge

2. History and Organization of Korean Prosecution

1) History

- The Korean Criminal Law had been strongly influenced by the Chinese Law before the twentieth century. The court, at local level, was operated by the administrator, taking the charge of abduction.
- After Korea was annexed to Japan, the Criminal Code of Japan was applied. It was strongly influenced by German Code of Criminal Procedure which was influenced by French Code of Criminal Procedure.
- When Korea was liberated from Japan, Korean Law underwent a whole revision by U.S. military government.
- Except the revised process to protect human rights, Korean Criminal Law was not that influenced by the

Anglo-American Tradition in the Criminal Procedure.

2) Organization

- Prosecution in Korea is highly centralized. The Minister of Justice is the chief law enforcement officer and supervises public prosecutors.
- The United States Attorney General divided prosecution organization into Prosecutor General and the Minister. The minister is the only person who can control the prosecutor general and also the prosecutor general has a right to rescind the order of the minister when it is against the law.
- Four levels in Prosecution:
 - (1) The Supreme Public Prosecutor's office
 - (2) Five high public prosecutors' office
 - (3) 12 District public prosecutors' office
 - (4) 37 Branch offices of District Public Prosecutors' office

3. Prosecutorial Discretion not to charge

1) The significance of the decision not to charge

- The non-prosecution rate is significantly high
- The majority of criminal cases end up with non-prosecution and there is an potential of abuse of discretion.

2) Legality Principle and Opportunity Principle

A. Legality Principle: It is referred to the rule of compulsory prosecution. The public prosecutor is required to take action against cases of all acts, punishable in a court

B. Opportunity Principle: A rule that vests a prosecuting attorney with official discretion as to the institution of criminal prosecutions

- Because of the danger of abuse of discretion in opportunity principle, Prussian devised legality principle with highly centralized prosecution organization
- But as we can see Japan' case, the compulsory prosecution showed inefficiency.

3) Korean System

- There are some statutory control over the prosecutorial discretion.

The Discretion of The Korean Prosecutors

A. Principle of Public Prosecution: Only the state organ can make the decision whether to charge or not for all the cases including misdemeanors.

B. Principle of Monopoly of Prosecution: The Principle of Monopoly of Prosecution requires that the prosecutorial power should be conducted only by prosecutors.

* Exception: Summary Proceeding Act

. Petty offense, punishable by little fine or short detention, can be prosecuted by this act according to the authority of the chief of local police station.

. If the judge decided that this case is not suitable to Summary Proceeding Act, it should be transferred to

the public prosecutor's office.

. This act has a risk of being abused. Sometimes an innocent man can be kept in detention without a warrant and the serious crime can be buried into the darkness.

The Controlling Mechanism

A. Complaint by victim and accusation by third party: A victim may file a complaint in the public prosecutor's office. And the third party who believes that an offense has been committed, may lodge an accusation in the same office. When the prosecutor decided not to prosecute the case, he must inform the complainant.

B. Appeal and Reappeal: Any Complainant or Accuser who is not satisfied with the prosecutor's decision not to prosecute, may file an appeal to high prosecutor's office and the appeal is deemed to be well-grounded, the case will be reinvestigated. If the appeal is rescinded in the high prosecutor's office, the complainant can appeal to the supreme public officer's office again.

- The suspicion about the efficacy of the controlling mechanism arises because the system is self-regulation, turned out unfounded in practice according to the low rate of acceptance of appeal and reappeal in the court.

External Control

A. Korean System

a. Judicial Review: The complainant or accuser whose complaint or accusation was dismissed by a prosecutor can apply for an adjudication concerning the appropriateness of the non-prosecution in the competent High Court. If the high court rules that the complaint or the accusation is reasonable, the court sends the case to the competent district court for trial.

4. Prosecutorial Discretion in the decision to charge

1) Korean system

- The abuse of prosecutorial power has been approached in three dimensions

A. When the alleged criminal is arrested with little evidences, the alleged should be declared to be innocent

B. If the alleged criminal is arrested without enough evidences but there is no public interest at stake, sentence leniently.

C. The third question is whether the discriminatory prosecution is legal. The answer is either to sentence the accused as in a normal case or to dismiss the case.

5. Prosecutorial Discretion in the plea bargaining

- After the charging decision is made, the prosecutor often tries to strike a bargain with or to persuade a defendant regarding the amount of punishment, offering seemingly lesser or just fitting punishment.

1) The Korean System

- The negotiation with a defendant is not allowed but the plea bargaining is *de facto* existing

A. Felony case

. If the prosecutor thinks that the defendant committed a crime but there are not enough evidences, he often suggests the plea bargaining to the defendant.

. Though the American court shows the greater deference to the plea bargaining, the Korean court regards it as an recommendation.

. There is a suspicion about the validity of the plea bargaining, because it is involved with the problem with "intimidation" and "deceit" which are against our concept of justice.

B. Misdemeanor case

. A prosecutor can move for the issuance of a summary order on a trial court for minor crimes

. When the defendant is notified of a summary order, he has to decide whether to accept the summary order as a final judgement or to transfer to the trial court again and waive the summary order.

C. The major differences between the plea bargaining and summary order

. The summary order might be said to invite a plea bargaining but not to strike a bargain.

. The summary order does not offer a lesser sanction for the guilty plea.

6. Prosecutorial Discretion in the case dismissal after charge

1) Mutability Principle and Immutability Principle

- The mutability principle says that a prosecutor should remain free to withdraw the already filed charges to carry through the goals of prosecutorial discretion. The immutability principle does not allow to withdraw charges once they have been filed in the court to contain the abuse of prosecutorial discretion.

2) The American System

- The prosecutors are free to stop further pursuing a prosecuted case at any time before judgement except the period between impenaling the jury and reaching a verdict.

- A trial judge has discretion to determine whether dismissal of crime charges is clearly contrary to the public interest to curb improper plea bargaining.

3) The Korean System

- Korean Prosecutors can withdraw his prosecution up to the sentencing point. The circumstance may include the change of policy after prosecution, discovery of new exculpatory evidences, subsequent lacking of procedural condition.

- Restrictions: The prosecutor has to get prior permission from the prosecutor general

After dismissal the prosecutor cannot file an indictment again unless other substantial evidences are found

Part 1. The History of the Bar System of Korea

A. The Bar System under the Chosun Dynasty

The bar system in Korea was born on November 8, 1905 during the period of the Great Empire of Korea with the enactment of the "Lawyers Act". As systematic reforms were being carried out in each of various fields with the opportunity of the Reformation of Kabo of 1894, the Judiciary Composition Act was enacted and executed in 1895, thereby introducing a modern court system. The Lawyers Act stated the qualifications and authorization of lawyers, allowing persons who had passed the bar examination and performed duties for at least 2 years in Pyongriwon and Hansung Court to qualify as lawyers. This Act was amended on April 26, 1909, and although most of the content was still the same, partial amendments were made in regulations and qualifications.

B. The Bar System of the Republic of Korea

The Lawyers Act was promulgated in 1949 through the demand for independent legislation in accordance with the establishment of the government of the Republic of Korea. The Act was amended seven times thereafter, and caused the transfer of responsibility for keeping the lawyers roster from the Ministry of Justice to the Korean Bar Association, introducing a new system for incorporating lawyers' practice as a professional corporation with aims to help meet more diversified demand for legal services by specialized or bigger size professional corporations.

Part 2. Contents of the Bar System of Korea

A. Qualifications and Registration of Lawyers

Any person who is a national of the Republic of Korea and either has passed the Judicial Examination and completed the required course at the Judicial Research and Training Institute or has the qualifications to be appointed as a judge or public prosecutor is qualified to be a lawyer. A military judge advocate is qualified to be a lawyer from the time he or she is appointed as a military judge advocate. However, when a person appointed as a military judge advocate retires from the military after less than ten years of service, he forfeits his qualifications as a lawyer from that date.

When one intends to commence practice as a lawyer, registration must be made with the Korean Bar Association. After receiving an application for registration, the KBA shall register without delay on the Lawyer Registry and shall notify the applicant of such fact. However, in case the KBA recognizes that the applicant for registration does not have the qualifications or comes under any of the reasons for disqualifications (sentence of imprisonment, receiving a suspension of a sentence etc), registration may be rejected upon the resolution of the Board of Directors. In such a case, the rejected applicant can file a protest with the Minister of Justice, and if he finds a reason therefor, he shall command the KBA to register such lawyer.

B. The Mission and Functions of Lawyers

The mission of lawyers is to protect basic human rights and attain social justice. In accordance to this mission, lawyers must sincerely perform their functions and endeavor to preserve social order and improve the legal system. As much as lawyers are the standard bearers of the attainment of justice, they cannot act as bystanders toward unlawfulness but instead must become prosecutors of unlawfulness.

The functions of lawyers are to perform, by way of appointment of the concerned party or other related person or the commissioning by a public agency, etc., acts of litigation and acts on the persons' behalf demanding administrative disposition and regular legal work. Lawyers may also perform notarial services and have qualifications as patent attorneys. As lawyers are in a position as legal experts whereby they enjoy much publicity, they should perform their functions independently and freely.

C. Rights and Responsibilities of Lawyers

Lawyers are entitled to be attorneys, defense counsel, assistants and representatives in every kind of lawsuit such as civil cases, criminal cases, administrative cases or domestic relations cases, etc. Such rights are not provided for by the Lawyers Act, but by the Code of Civil Procedure, Code of Criminal Procedure, Administrative Litigation Act, Domestic Litigation Act and the Juvenile Act, etc. As a right of lawyers under the Lawyers Act, lawyers may establish their own law offices. However, the law office of a lawyer shall be located in the district of the bar association to which he or she belongs.

The Lawyers Act also regulate the responsibilities of lawyers, and they are as follows. Responsibility to maintain dignity is an individual duty of lawyers, and this is demanded not only for propriety in the handling of their functions, but also for trust in lawyers. Responsibility of truthfulness does not allow lawyers to cover up the truth or make misrepresentations in performing their functions, and this is demanded for the attainment of legal justice through fairness in trials. Responsibility to maintain secrecy does not allow lawyers to disclose secrets learned in the performance of their functions, and in the event a lawyer reveals a secret, he is susceptible to the crime of disclosure. Responsibility to conduct the designated work, to obey Bar Association by-laws, restriction on taking certain cases and additional jobs are also other responsibilities of lawyers.

D. The Supervision of and Disciplinary Actions against Lawyers

Lawyers receive the supervision of the local bar association to which he or she belongs, the KBA, and the Minister of Justice. The KBA reports matters of registration of lawyers, rejections, changes of registration, commencement of business, transfer of offices, the suspension of work and cancellation to the Minister of Justice. The KBA receives supervision by the minister, and the contents of resolutions of the general meeting of such association is reported without delay. If the Minister of Justice finds the resolution violates the laws and decrees of the association, or deems that such is against the public interest, he may cancel it.

Seung-Doo Yang, Lawyers and Economic Development in Korea

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A. Introduction [Omitted]

B. The Role of Lawyers in the Economic Progress [Omitted]

1. Lawyers in Korea [Omitted]

2. Brief Description of 5 Year Economic Development Plans

- The First Economic Development Plan: *The Foreign Capital Inducement Act, The Act on the Guaranteeing Payment for Foreign Loan, The Special Measure Act on Capital Inducement by Means of Long-term Payment* were enacted and amended for the sole purpose of introducing much needed foreign capital into Korean economy. And also established the diplomatic relationship with Japan to bring the Japanese capital into Korea and participated in Vietnam War to bring the hard currency into Korea.
- The Second Economic Development Plan: During this period, the primary goal was set to solidifying the very infrastructure of viable economic development.
- The Third Economic Development Plan: The main goals were, first to correct social structural malice, caused by the huge discrepancy between “haves” and “have-nots” and second to develop the economy of rural and fishing villages in a revolutionary way and third to increase export and conduct heavy and chemical industries.
- The Fourth Economic Development Plan: Main targets of achievement were economic growth, efficiency and equity. Technical development was emphasized and large-scale investment in chemical and heavy industries was structured in order to maximize efficiency.
- The Fifth Economic Development Plan: Its goal was “Stability, Efficiency and Balance”. The government liberalized the import of foreign goods, ventured to implement to the policy, aimed to suppress inflation, worked to lessen government interference in economic activities.
- The Sixth Economic Development Plan: Due to low oil price, low international interest rate and low purchasing power of U.S dollar, Korean economy boomed. So the economic development policies during this time have been changed to stress efficiency and balance leaving aside the goal of development.

3. The role of Lawyers in the Economic Progress

- Numerous new laws and regulations were enacted to facilitated the economic progress in Korea
 - All through the legislative process, lawyers (in the wide concept) in and out of government have contributed actively by participating in preparing bills in cooperation with economists and by working as lobbyists and by implementing the laws and regulations
4. Future Perspectives
- The Ministry of Government Administration introduces a new system of national examination, by which legal experts are to be recruited from 1992 as government officials for the purpose of securing the ever needed legal expertise for the government.
 - But the lawyers, who passed the Bar Exam, are reluctant to seek government jobs, because the government administrators are paid less with lower security than a judicial career, and regarded as a less respectable profession.
 - Another new trend is the flux in large number of those foreign lawyers into the Korean Legal service market.
 - The foreign lawyers' main fields are international trade, tax, intellectual property, environment, labor, to which domestic lawyers have paid less attention.
5. Conclusion
- Lawyers in Korea have surely contributed greatly to the economic progress.

Woong Shik Shin, Challenging Opportunities for Korean-American Attorneys

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The political and economic changes that are taking place in Korea and the world at large, present challenging opportunities for Korean-American attorneys.

1. First Generation

- The typical first generation Korean-American attorneys are over the age of 40 and immigrated to the United States after reaching 20.
- The law practice of first generation Korean-American attorneys tends to be small and limited to certain fields because of lack of integration to the American society and fluency in English.

2. 1.5 Generation

- 1.5 Korean-Americans usually speak fluent English and many of them studied and graduated from top colleges and law schools in America.
- Being bilingual and bicultural, ambitious, inquisitive, and eager to take on new challenges, 1.5 Korean-American Attorneys have a great potential to play a major role in the emerging era.

3. Second Generation

- The typical second generation Korean-American attorneys are under the age of 30
- They are making great strides, not only in shaping their own careers, but also in advancing important women's causes through their role as attorneys.

4. Attributes of Korean-American Lawyers and Their Advantages

- Korean-American attorneys generally have proficient legal writing and analytical skills.
- Korean-American, as compared to their Korean counterparts, acquire their interpersonal social skill early in American high schools and they learn to be self-supporting, independent, open-minded, and responsible.
- They have no problem with the English language and some are proficient in other language such as Korean, Japanese, Chinese and languages other than English.
- Korean-American attorneys can take advantage of their status as U.S. citizens or permanent residents.
- Korean-American male attorneys can embark on their legal careers earlier than their Korean counterparts because there is no mandatory military service in the U.S.A.

5. Impact of Korean-American Attorney in Korean Legal Community

- Because of the outcome of the pending Uruguay Round on Services and the changing atmosphere of the world economy, it is inevitable that Korean-American attorneys will play a significant role even in the Korean legal community in near future.

6. Women Lawyers

- A Korean-American women attorney actively pursuing her career in Korea would be viewed as a role model for many aspiring young Korean women willing to take chances to break out of the traditional mold.

7. Prospect for Korean-American Lawyers

- There are several areas which provide special opportunities for Korean-American attorneys

- 1) Korean companies now need and seek legal advice and consultation involving U.S. laws even before entering the U.S. market.
- 2) Business consulting which can provide a wide range of consulting services in business is another area, which needs to be explored.
- 3) Contract negotiation and contract documentation are other areas in which the Korean-American attorneys can excel.
- 4) Korean-American attorneys are also suited to the problems arising from local operations

- Reasons for the great demand of Korean-American attorneys

- 1) The investment climate for Americans in Korea is also changing. The government's liberalization in foreign capital investment would further generate substantial legal work appropriate for Korean-American attorneys
- 2) Globalization of law firms and law practice will also have a significant effect on Korean-American attorneys.
- 3) The prospect for Korean-American attorneys specializing in such areas as patent, trademarks, copyrights, computer software, or entertainment are promising.
- 4) Changing immigration practice is another case to which Korean-American attorneys would be well suited.
- 5) Korean companies both in Korea and the U.S.A. are now facing more litigation.
- 6) Korean-American attorneys can take advantages in the opportunities, created by the newly developing relationship with socialists or communist nations.
- 7) In politics and journalism, Korean-American attorneys can be considered seriously.

8. Some Suggestions and Recommendations

- Study Korean as thoroughly as possible
- Read Korean newspapers and magazines available in the U.S.
- Make friends with Korean nationals and practice speaking Korean with them
- Continue to study and learn about Korea and Korean people at every available opportunity
- Try to learn one or two additional Asian languages, possibly Japanese or Chinese.

Judicial Scriverners in Comparative Analysis of Korean and American Judicial Systems

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(page 349 ~ 370)

Judicial Scriverners are people who help citizens in writing and preparing judicial forms or documents to be submitted to the courts or public prosecutor's officers. They can also prepare or write any other forms or documents legally related. Many activities done by legal offices in US are done by judicial scriverners in Korea.

They are paid with their services of writing up a form, but this is strictly regulated by the law. They may also by way of necessity give legal advice to their clients, but this must be free of charge.

An America once warned people of following advice of unqualified, unauthorized practice of law, and this is also applicable to Korea as it is to the rest of the world. But legal advice given by judicial scriverners are only to the extent that is need to write up the form, and they also have enough knowledge to give some legal advice. But due to various reasons, judicial scriverners are banned from participating in a law suit any other way than of writing or preparing a legal form or a document. They cannot represent their client in a law suit, they cannot refer a client to a an attorney, or give instructions on behalf of his client, opposed to the British solicitor, who may do all of above things.

There are strict qualifications to become a judicial scriverner, and the judicial scriverner's Acts says that those persons, who, in the past, have been in a position higher than a clerk of either a court or a public prosecutor's office for more than five years, who are deemed to have a sufficient educational background or experience equivalent to those persons mentioned above, or who have successfully passed the special examination for the license of judicial scriverner are qualified to become a judicial scriverner. There are also various other rules that may ban, or allow a person to become a judicial scriverner.

The judicial scriverner are supervised by the district court of his jurisdiction, and they are obligated by law to establish a judicial scriverner's association within the jurisdictional territory of their district court, the purpose of which is to insure their professional dignity and to better their business affairs.

Legal Education in Korea : Problems and Reform Efforts

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(page 371 ~ 398)

Legal education in Korea is conducted at a college of law, or at a department of law of college of law and political science, of college of law and economics, or of college of social sciences. The first year of a law student is usually spent with general studies, and number of credits required to graduate usually consists of 140 to 150 units. The primary subjects a law student would undertake are constitutional law, civil law, criminal law, commercial law, civil procedure, criminal procedure, and administrative law, and these vary little from school to school.

There were 63 law schools in 1987, and the number of students vary greatly, from 290 to 30. Usually, in any given school, the college of law is a prestigious and popular subject.

A high percentage of law students prepare for the bar exam, while a small number prepare for civil service examinations these days. From 1981, 300 people pass the bar exam every year. There is no educational requirement to take the bar exam, in fact he doesn't even have to graduate college. However, most of the successful candidates are law students.

Not many law school graduates take legal professions, about 300 out of 6000 or so. Some people take a scholarly and teaching career. After those 300 pass the test, they go in to professional training to prepare for a legal career, and once completing it, they become either a judge, public prosecutor, or practicing lawyer, depending on their wants and performances.

There are some problems about legal education in Korea. First of all, the fact that legal education in an university is that of liberal arts, or not professional enough, students cannot be taught both humanities and social sciences. Also, it is effected too deeply by the bar exam, and people often skip school to study at home or at libraries. Majority of problems occurring in education of law comes from the bar exam, in that one would neglect classes to study for the exam by himself.

Education at the Judicial Research and Training Institute also has its own problems, since they do not add any academic education, but many of trainees are deficient, due to their slave-tolling to pass the bar exam.

There have been many meetings and such to discuss law education reform, and one of the ideas was to increase the professor - student ratio, since it is far from ideal. Others include increasing the time needed to graduate college or the institute, and increasing the number of people who pass the bar exam beyond 300.

Education of the Legal Profession in Korea

2000110012 Lim Keunhyuk College of Law

(page 399~419)

Since the 1970s, Korean jurists have been marking chronic problems in legal education and formulating proposals for reforms. Following the revision of the Korean Constitution that entered into force in February 1988, conferences have been professional training. Changes in legal education are being proposed against a backdrop of reflection and debate on broader issues of education policy and pedagogical methodology.

The present essay, by an American interested in comparative legal education, may meet with a skeptical response from those who believe a foreigner is apt to misunderstand the unique cultural and historical circumstances of Korean society.

The author is the first to acknowledge that what follows is the perspective of an outside observer. What value the analysis may have stems largely from the literature cited and from insights gained through nearly a decade of interactions with Korean legal professionals and scholars.

Most of the empirical information to be presented is readily confirmable, though the interpretations offered may be controversial. Where the discussion touches upon questions of public policy, the aim will be more to identify alternatives and to project consequences than to advocate any particular agenda for reform. Readers must judge for themselves what the proper objectives of legal education are, and what institutional innovations would be best calculated to achieve those goals. It is not argued here that American legal education ought to be emulated in Korea. Nonetheless, experimentation in the United States and in other foreign systems is certainly relevant.

Fundamental questions about the mission and the organization of the legal profession are scarcely unique to Korea—they arise in every modern society. Cultural attitudes do vary and the legal and educational institutions of each nation have been molded by its own distinctive history. In the present age of ever increasing interdependence of political economies, however, a shift is underway toward interpenetration of national legal systems. A comparative approach to legal education is apt in such circumstances, for similar problems recur in diverse societies as they pass through analogous transformations.

Prospects for a seven-year system of legal education in Korea

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Legal education reforms have been a major talking point lately in Korea, and a popular opinion is to adopt the American system, or the 7 year system. But this will not help Korean legal studies system all that much, for various reasons.

First of all, there is nothing special about the number 7. Basically, the reason 5 year law system died and 7 year law system came into being was because of the World War II, the influx of returning veterans and such created such a pool of candidates for schools. In order to increase the standard for the profession, the 7 year system was elected.

This process is absent in Korea. One main reason the 7 year system was chartered was to protect consumers from inexperience, ineducated person, but in Korea, the Bar Exam is protection enough, since it is an insurmountable hurdle for the untried. In Korea, what the people need is not protection but rather more lawyers, since there are only 1 lawyer form every 14747 people. One other reason the 7 year system came in to being was to increase the social status of the legal profession, but in Korea they are already held in the highest regard. They are already highly-paid and highly-respected. In other words, Korea does not need to extend the length of legal education to prevent the production of ill-qualified lawyers from disreputable schools or to rescue the social status of the profession.

If one compares the law school at Harvard to that of Seoul, once can easily see that the 7 year education system would not benefit much, due to the existence of bar exam and the military services.

In conclusion, one can see that but merely 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. Koreans should thus be skeptical of those who claim that the figure of seven years or more will bring the same benefits that it has brought to countries that maintain the seven-year system.