<COMMENTS>

Legal Education in Korea*

by Paul K. Ryu

When speaking of "legal education" we should have in mind what is "law" with a view to which education is being undertaken. There are at least two definitions of "law" to be considered in this context. According to the wider concept, "law" is any system of social control. Any method of dispute settling is "law" in this sense, from the most sophisticated, technically advanced methods of modern codes and patterns of trial and appellate review to the most primitive systems of arbitral awards by chiefs or elders of tribal communities. Throughout her long history Korea had developed her own system of dispute settling, adjusted to her social, economic and cultural community structure. But this type of dispute settling, which may still be found in village communities, requires no special training or preparation, no distinctive "legal education". It is of greater interest to the anthropologist than to the lawyer. Nor did it have any impact on Korean law at large. Some jurisprudents have an exaggerated esteem for this type of primitive arbitration which must not be confused with highly sophisticated methods of modern arbitration; but these views are intellectual fads not to be taken too seriously. When speaking of "legal education", we must rather concern ourselves with "law" in a narrower, modern sense, meaning "law" as a compulsive norm enforced by state authority. Although there are infinite varieties of jurisprudential definitions of law, the stated meaning of law may be sufficient to characterize the contrast to the primitive arbitral type which I mentioned before. This definition of law, indeed, best characterizes for our purposes modern legal systems of the Western World, and it is from these systems that Korea indirectly received the bulk of her present codes and statutes. From them she also received the beginnings of her legal education methods.

By virtue of the type of law which Korea accepted from the Western World, she belongs to a definite Western legal system, the so-called "Roman-civil" legal system. According to Wigmore, there have been sixteen known legal systems from the earliest times until the present. Of these three legal systems have survived: the Roman-civil, the Anglo-American, and the Mohammedan. The last mentioned one is enforced only in a very limited geographical area, and has no bearing on our law. The Anglo-American law has an increasing impact on our legal development. But since the bulk of our present law is derived from Roman-civil sources, from which it has been transmitted to us by Japan, it is only natural for us to concern ourselves primarily with the educational systems of civil law countries. As I stated before, education must be geared to a given system; it is hardly feasible to teach one system

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by methods supplied by another system. For law and legal education are mutually interconnected.

It may be of some interest to note that Korea was never given any choice in the matter of the legal culture she was to receive. Japan at the time of the Meiji Restoration had accepted the French legal system. After France was defeated by the Germans, Japan switched her legal pattern from the French to the German system. It was the latter that she transmitted to us. For this reason, we must focus our comparison on German developments.

There was once believed to exist one "Roman law", as there has been and perhaps still is believed to be one "common law".

As there is good reason to speak of Anglo-American law as a unit, so there is also reason to speak of the laws of the "civil-law" world as a unit. All so-called civil laws have a common source and certain common characteristics. Their systems of legal education, however divergent they may be, have a common background and basic intellectual orientation. The continental European community was once very close, and perhaps the present European community is but a renewal of an ancient tradition. This was a community also of laws and legal education fitted into a pattern of universality.

We may best understand both the civil law and civil law legal education if we trace the beginning or perhaps only revival of both to life at the University of Bologna about 1,100 A.D. At that time in Bologna there had been discovered a precious cultural treasure the Digest or Pandectae of Justinian, part of a book of Roman law, which was a first comprehensive Roman code of laws, enacted in the 6 th century. The belief prevailed that this indeed was the law actually in force all over Europe under the rule of the "Holy Roman Empire", which was thought to be a continuation of the Roman Empire. In fact, the laws that actually were enforced in the various parts of Europe were customary laws of German tribal origin. But, as you see, the concept of "valid law" or the "law in force" is not always considered to be the same as "the law in practice". In any event, the moment Roman law was discovered, every ambitious person was eager to become acquainted with this allegedly most sophisticated, learned law, because such knowledge meant erudition and prestige, also high office and power. So, from all over Europe young men of all nations flocked to Bologna to become learned. Ever since then the tradition was established that to become a lawyer of stature, a man had to take up systematic, "scientific" study of law, practical training being but secondary. The latter was part of the "legal trade", the former part of the "art" or "science of the law". The difference was profound and lasting. Nor was this a mere fad. Systematic study was required by the nature of the Roman law. That law, though it also originated in a sort of "common law", the juristic opinions of Roman jurisconsults given in concrete cases had become highly systematized, and it became even more so due to activities of the Italian and other jurists, who began working on it in the 12th century. The precious manuscripts were glossed and the glosses were further glossed. Hence the name of these

jurists as "Glossators" and "Post-glossators". Every sentence and phrase was interpreted and knowledge and juristic acumen grew steadily.

What then was the system of education? Bologna was not the type of university as we know it anywhere today. It was a students' university. The professor was a learned adventurer, who owned some precious manuscripts a source of invaluable knowledge. Such professor was hired by a number of independent students to teach them the secrets of that knowledge. They treated him entirely like they would anyone employed to do a job. They not only hired, paid, and fired him but they also took active measures to secure the full value of their fees. They bound him by strict rules and submitted him to various penalties in the event he did not perform strictly according to the agreement. He was fined if he skipped a chapter of the text of Justinian or if he evaded a difficult passage. He was not to waste time, for the whole text of Justinian was divided into numbered points and the professor was fined if he did not reach each point by a given date.

It is most important to note, as bearing on the concept of universality of legal knowledge at the time, that in Bologna the whole student-body was divided into guilds which were called "nations". A student belonged to the nation from which he came. There were an English, German, Hungarian, Bohemian nation, and so on. In Bologna there came to be 14 foreign nations and four Italian nations.

Such precious knowledge as was acquired in distinguished universities and the number of these universities grew in time had to be rewarded in terms of prestige and privilege. The distinction in rank was reflected in the division of the legal profession into two classes: the *advocatus*, *barrister*, *Anwalt*, *avocat*, and the *procurator*, solicitor, avoué. The former only, the *advocatus*, claimed and received the right to be a legal expert proper and the privileges associated with it. Access to such privileges was inevitably restricted, and the restriction was accomplished by requiring an educational test. Almost everywhere in Europe except in England the general test was an adequate university training, and even in England such training was in fact possessed by the inner circle.

Both in France and in Germany, a university education and a university degree have remained the first prerequisite of admission to the legal profession. You may notice that in Germany the vast majority of lawyers hold the title of a doctor, although this is not required. Next to a university training and degree, it became customary for a recently graduated lawyer to enter into an apprenticeship for the purpose of learning the practical, technical aspects of the trade. Often the apprenticeship consisted in no more than a close association with a senior lawyer or in frequent observation of the conduct of legal business. Gradually this apprenticeship came to be required. In Germany particularly, legal education came to be divided into two distinct stages: a period of academic study at one or more universities, and a period of practical service under judicial supervision and direction, called "preparatory service" (*Vorbereitungsdienst*). After completion of the university studies, the

candidate had to take the first state examination or the "Referendar Examen", and only thereafter he was admitted to the practical training stage, which culminated in a second state examination, the "Assessor Examen".

In principle, this is the system which we in Korea are supposed to have received via Japan from Germany. But before discussing further the German system, as well as the English and American system, it may be important to note certain basic differences between the preparation of a German law candidate and a Korean one. In the first place, the "Gymnasium" in Europe, to which the corollary in Korea is supposed to be the "High School", is infinitely superior to the latter. Graduation from a "Gymnasium" culminating in a rigorous examination and the earning of a degree called "*Reifezeugnis*" or "*Matura*", "*Baccalaureat*", is being evaluated as equivalent to a two years' college education in the United States, and in many respects represents more than this. After such graduation, the German candidate enters a veritable "university law school", a graduate school devoted to legal training, from which he emerges thoroughly educated in the systematic theoretical aspects of law, as well as its philosophical aspects. He is now truly ready to receive his practical education. Regrettably, the Korean High School is not equivalent to a European *Gymnasium*. This perhaps is the most tragic fact with which we are faced when we receive students at our universities. A young man or woman, whose preparation actually does not qualify him or her for "university" studies, must begin to learn at the university level the things which he should have learned before. Thus, a "college of law" cannot be an equivalent of a European "*faculté de droit*" or"*Rechtsfakultaet*". It is but a glorified "high school". Our law colleges, in fact, usually combine a law department with the department of political science or the department of public administration, but this is not intended to serve a scheme of unified education or of broadening the horizon of future lawyers; rather is this ascribable to the character of these schools as institutions of intermediate preparatory level, training for a variety of professions. In fact, the vast majority of law college graduates in Korea do not become lawyers.

Obviously, university education proper, to be equivalent to the education which a student at a German law faculty receives at his university, must begin in Korea after the student graduates from the "Law College". Let us not be deceived by the fact that after such graduation, he may take a Bar Examination. This is but a name and in fact is a misnomer, compared to what is termed a "Bar examination" in other countries. It is not comparable to a "*Referendarexamen*" and is not comparable to a "Bar Examination" in the United States. This so-called Korean "Bar Examination" has many shortcomings even so far as it goes, but this is not the place to enter upon a comprehensive critique of its inadequacies, except to say that its name is misleading, and that it might be better to rename it, so as to impress upon people's minds the fact that what a candidate passing this examination actually needs is "university legal education" proper.

At this stage I should like to return to the problem of legal education in Germany, which

after all allegedly is the pattern we follow. In Germany in recent decades there has been much criticism of legal education, and after considerable discussion and thorough study, a reform has been introduced—a reform that is believed by many not to be as yet complete. From our point of view it is particularly interesting to notice what has been criticized and what reforms have been introduced even as of the present time.

Of major importance is the fact that it has been thought desirable to extend the period of university education. Formerly, the period of practical training was longer than that of university education. The present law makes the two periods equal. The reform projects suggested making the period of academic training longer. Obviously, it is being felt in Germany that in the preparation of a lawyer, intellectual, academic insight, systematic learning, are paramount to practical training. We may observe again a revival of the ancient tradition that the law is not just a trade to be learned by practice but an academic learned profession. Let us remember this when we are told as we so often are in Korea that what a lawyer needs is practical training rather than academic learning. The reform projects also suggested placing the "*Referendar Training*" within an academic framework.

The second major line of criticism and reform actually reflects a similar stress on education rather than mere experience. Before the reform not all judges were required to have a legal education. Especially in labor law courts and in the so-called "social courts" (*Sozialgerichte*) practical experience was deemed sufficient. Today, every full time judge must have qualified for "judgeship" by virtue of a thorough legal training and experience. There are many other interesting aspects of the German reform, especially in matters of judicial independence and a certain degree of assimilation of the prosecutors' office with the judicial office. But it would lead us too far a field if we were to dwell on these matters, though they are not unrelated to our topic.

When stressing the need for a better academic training of our Korean lawyers, I do not wish to convey the impression as though I did not fully appreciate the significance of experience and empirical studies. In fact, I believe that systematic intellectual studies and emprical studies are not opposites but must complement each other, and in fact, eventually merge with each other in one curriculum. All I am trying to say is that there is a difference between the education of a lawyer or judge and that of a cabinet maker or a cobbler. A lawyer must combine true insight with "know-how". The latter alone is not enough. A lawyer today cannot "learn law" solely by being an apprentice. But this does not mean that he ought not to see the life of the law as it is, realistically and empirically. Indeed, it is my earnest endeavor to draw into the curriculum of our Graduate School of Law "case studies", as known in the United States, and studies in "fact finding", as suggested by Judge Jerome Frank. We are at present engaged in the preparation of materials for the former type of studies, and our students have the unique experience in participating in the introduction into Korea of a thorough case reporting system. They are studying cases and learning how reports

are made. This bring me to the subject of legal education in the lands of "law reports" and "judge-made" or "lawyer-made law". For it is our intention to utilize the best available in all systems, and finally create not just a composite but a truly Korean system, appropriate to our cultural individuality and national temperament.

In England and in the United States different systems of legal education have developed in the course of time. But in both countries the respective systems are closely connected with the "common law" or "case method", in which the judge, not the legislator, is the most prominent figure. Actually, it is not the judge alone who creates law; he does so with the active cooperation of lawyers. Case law is more than in one sense a "lawyers' law".

In the beginnings of the common law, that law was "made" by lawyers as it was by judges. The so-called "serjeants"—from "*servientes*" or servants of the king—prepared the Year Books and published the first Law Reports. When publishing these reports, they exercised a great deal of discretion as to which case was good law and which was bad law. When a case seemed to them to have been wrongly decided, they just put it into a drawer and refused to publish it. So the case became lost to the legal world. Since these serjeants served in various legal capacities, they acquired a great importance, and in due course only serjeants became eligible for appointment as common law judges. How were these men educated? How were they organized?

There was no academic training requirement as a general rule. But notice that many of these men acted as the king's servants and that of these many were learned priests. By the end of the 14th century the serjeants, selected by the king usually on nomination by the bench, constituted a close body in the nature of a guild, from which later developed the so-called "Inns of Court". The medieval universities, Oxford and Cambridge, taught only civil and canon law, and the Inns of Court were in charge of the teaching of English law. In the later Middle Ages the Inns of Court and of Chancery formed a sort of "university" where students, for the most part of noble birth, learned not only English law but history, Scripture, music, dancing and other noblemen's pastimes. The control of a barrister's education by the Inns of court has been modified in the course of time. Today, as a matter of practice, "keeping terms" at an Inn of Court is but a formality, and academic training is of ever increasing importance. To become a lawyer the candidate must pass the examinations of the Council of Legal Education. To assist in passing these examinations, students can attend the lectures and classes of the Inns of Court Law School organized by the Council, but most —Gower estimates about 59 per cent—of those who intend to practice in England instead combine keeping terms with reading law at a university.

Legal education in the United States followed a course quite its own. The American Bar Association almost since its inception has labored vigorously for the improvement of legal education, and has gained general acceptance in theory for a program of preparatory studies, which cover a general high school education and two to four years general college education

before embarking on a law study career.

Most good American law schools are schools of a graduate level. A noteworthy contribution of the American law school to legal study and development is the invention of the so-called "case study" method and of the use of a "case book". It should be remembered that this contribution was made by law professors for and at law schools and has been developed by them into a veritable art of "case analysis". Thus, in the United States, it may be said that practical, empiric education is conducted on an academic level. Many great innovators of the law came from university law schools, where they acted as teachers, later becoming great American judges. At present the American law schools are endeavoring to combine practical and theoretical training into a functional unit. This is an experience which we must follow closely, so as to keep step with each significant development.

Both the English and the American experience shows that in the common law countries, just as in the civil law countries, there is an increasing stress on academic education. This should not be taken to be tantamount to merely theoretical education. Science itself, as well as philosophy today do not make a conventional type of distinction between a brooding metaphysical speculation and crude practice.

At this stage we may be ready to turn to the subject of legal education and preparation in Korea. As I showed, in Korea, the "High School" is not a "Gymnasium" and the "College of Law" actually gives the student the education which he should have received at High School. When such student completes his Law College studies, then only is he actually prepared to enter a university law school. What we call "Bar Examination" should be understood to be an entrance examination into such university law school. Unfortunately, until quite recently, this situation has been completely misunderstood, and many people do not comprehend it even now. Because of such misunderstanding, until 1962 it has been assumed that when a student completes a Law College and pases the Bar Examination, he has had sufficient academic education and now enter upon a practical training stage. Moreover, even this practical training given the candidate for a judicial career, a prosecutor's office or a lawyer's career, was much shorter than in other countries. One and a half years apprenticeship under supervision was deemed enough. Compare this with the three and a half years of apprenticeship in Germany. In Korea such apprenticeship was solely oriented to giving the candidate a bit of practical know-how. To it comes that many of the older lawyers who had learned somewhat more law by long experience had been abducted by the Communists. And yet Korea needed well equipped lawyers badly.

Conscious of the importance of a well-informed, enlightened and responsible legal profession for the Korean economic, political and social development, the Supreme Council of the Republic of Korea, in November 1961, voted to create a Graduate Scool of Law, to be attached to Seoul National University.

There are many reasons for establishing this Graduate Scool at Seoul National University

rather than as a Training Institute attached to the Courts system, after the Japanese pattern. The first among these is that so far, the candidate who passed the Bar Examination in Korea for all practical purposes never had a university education. To permit him to dispense with such education would place him at a great disadvantage in comparison with lawyers in most countries of both the common law and the civil law. Secondly, there is an urgent need for coordination of systematic and practical studies, a combination of learning and know-how, and creation of well-founded "jurists", ready to take up a variety of legal careers which our nation needs, that of a legislative draftsman, that of a judge, that of a prosecutor, that of a practicing attorney, and last but not least, that of an academic teacher. There is an increasing tendency in other countries to abridge the gap now existing between these careers, for instance, in many respects to permit the prosecutor a modicum of the independence enjoyed by judges. The practicing attorney also should share in such independence, and of course the academic teacher has possessed it traditionally in recent modern history in both the civil law and the common law world. Thirdly, there is an urgent need in Korea to rid the legal profession of provincialism, actually but an indoctrination in a single system of foreign law. Comparative legal studies are needed to draw attention of Bench and Bar to new legal ideas and larger horizons. A university rather than the Courts system can facilitate such research. Fourthly, there is need for integration into the law of scientific knowledge and experience, development of forensic medicine and psychiatry, anthropology, sociology, economics, physics, etc. Only a university and not a courts system can facilitate integration of scientific laboratories into a law curriculum. There are but some of the advantages that a University Law School offers. And of course, our Graduate School of Law has established an excellent contact with our courts system, and its placement within the Seoul National University was done with full approval of our Supreme Court Justices.

We believe that our Graduate School of Law, to be a true "Law School" in charge of preparation of well-rounded lawyers —not mere legal technicians or legal tradesmen—, must remain attached to a University— a University of sufficient understanding of the needs of practical life and of close cooperation with the courts. In keeping this school connected with a university, we may indeed set a new pattern for other countries to follow.

We must not forget, as we develop our system of legal education, the special needs of Korea as a growing country. To democratize Korea, to bring to the people of Korea a true awareness of their civil rights and to make them conscious at the same time of their responsibilities as citizens of a free nation, we need lawyers who are not mere technicians. We need lawyers of the style and stature of Marshall and Daniel Webster, Jefferson, Madison, and Holmes. For our survival and the nature of our culture is at present at stake.