Legal Education in the Far East*

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The object of this paper is to interpret the social meaning of the present status of legal education in the Far East and to suggest in what direction it must develop if it is to equip and inspire the legal profession to serve contemporary needs of Asian society. This Conference of World Peace Through Law may have a significant impact on social development in Asian society by furthering both intensive and extensive comparative law studies and by promoting trends in legal education which stress awareness of the social role of the lawyer in democratic society.

Speaking to an audience in Washington, D.C., perhaps I need not emphasize how important it is from the viewpoint of a free society not only that the citizen “have” rights (or, indeed, duties) but also that he be aware of them, that he believe that they are realistically enforceable and that he find a spokesman ready, willing and well prepared to represent his interests in court or before other government agencies. Nor is it necessary for me to elaborate on the special need for having judges of the highest caliber and other public servants of the highest preparation and dedication. It is for these very briefly sketched reasons that the law schools and legal training institutes are not simply “good” or “bad” schools, but beyond this, adequate or inadequate social and political instrumentalities. The fate of a nation may depend on them.

Implicit in any system of legal education is a concept of “law” to which such education is geared. Vice versa, a particular concept of “law” may well emerge from a particular direction of legal education.

The conventional Asian concept of “law” is sui generis. Throughout Asia’s long history Confucianism functioned as one of its most influential teachings. Perhaps understanding of the nature of the Confucian doctrine of “law” may be best conveyed to non-Asian jurists by contrasting the operational concepts of Confucius with those of Socrates. Confucius, born in China in a period known as that of the “Spring and Autumn” (772—481 B.C.), was laying

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stress upon Confucian *jen* (love) rather than on the need for observing law. Socrates, on the other hand, was concerned with law-abidingness, to the point of committing suicide in obedience to a law which he himself regarded as bad. Both notions reflected certain divergent policies which each of these cultural leaders was promoting. Confucius major interest was to bring about the unification of China by a good king, whereas Socrates was rather concerned with the culture image of a good citizen. It was by no means an accident of history that the impact of Confucian philosophy led to the separation of the people from the law and to the establishment of a hierarchy of social authority, within which persons were attributed each a particular rank depending on his relative importance, whereas Socrates’ influence supported the Western concept of social cohesion through, and under, the law. The very Chinese word meaning “law,” 江山 (“fa” in Chinese, “ho” in Japanese, and “pah” in Korean, both the Japanese and the Koreans using the same Chinese character江山) from its inception conveyed no signification other than “pure administration;” this is due to the fact that the major task of the ancient Chinese kings was to release the flooded water (江山 means “water” and江山 means to “discard”).

法, the conventional type of law in Asian countries, has been developed independently. It is often described by anthropologists and anthropologically oriented jurists as an interesting type of settling disputes which may still be encountered in any Asian village community and which does not require legal training or any specifically “legal” education. The traditional Chinese civil examination required memorization of the Confucian classics. However, when approaching the subject of Far Eastern legal education, neither the Confucian image of “law” nor the type of dispute settling encountered in village communities can claim our major attention, although this image of law and this type of litigation influence the people’s approach to modern law and its institutions and instrumentalities and, indeed, constitute a major impediment in the popular acceptance of modern legal patterns.

When speaking of “legal education,” we must rather concern ourselves with another meaning of law, “law” in a narrower, modern sense, that is, compulsory norms enforced by state authority. “Law” for the purpose of achieving World Peace Through Law ought to be accorded as uniform a meaning as possible, so that communication concerning “law” might convey meaning in all corners of the international community. Since the last defined concept of “law” is best suited to formulation of the concept of “authority governed by law” and acceptance of definite legal rights and duties of the citizen, it is desirable that we adopt it as our common operational concept of “law”. We must now trace the emergence and progress of this concept of law in Asian societies and its impact on Far Eastern legal education.
Japan was the first nation in the Far East which successfully adopted the modern legal systems of the Western World. Until her liberation, Korea was not given any choice as regards the legal culture she was to receive. The legal system adopted by Japan and introduced by her into Korea was the so-called "Roman-civil legal system," more specifically, its German version. With this system, the Far Eastern countries adopted German methods of legal education. To convey understanding of the methods of education now obtaining in these countries, it is necessary to submit first a brief survey of the development of legal education in continental European countries, after which our methods are patterned.

In this instance also, the nature of the system of legal education in countries of the Roman-civil law world may be best brought home to jurists trained in the common law tradition by contrasting the object and method of that education with those of common law countries. One might briefly describe the Roman-civil law in terms of its salient feature by use of a Holmesian metaphor: this law has been twice washed by a "rationalistic acid." The Corpus Juris Civilis represented the first rationalization of the Roman law, and its later reception in Prussia in 1791, in France in 1804, and in Germany in 1900, represented a second phase of this process in continental Europe. The prevailing system of legal education has been one fitting this stress on rationalistic systematization of law, that is, university preparation. By contrast, in British England and in the United States there has been no total reception of the Roman law. The "common law," developed in the curia regis and later in a continuing process of ad hoc judicial decision making, has never undergone a total process of rationalistic systematization. Accordingly, preparation for the legal profession was rather, a training in common law method offered in the Inns of Court and in legal apprenticeship.

A second important difference, bearing on legal education, between the Roman-civil law system and common law tradition is rooted in a divergence of ideology as regards the nature of the relationship of authority to "law." Byzantine tradition and Napoleonic law promoted the idea of the sovereign's supremacy and his independence of the law, namely the image of a princeps legibus solutus of imperial Rome (the sovereign is not bound by law). By contrast, Anglo-American tradition has developed under the aegis of Bracton's famous saying: "Ipse autem rex non debet esse sub homine sed sub Deo et sub lege, qua lex facit regem (Even the King himself should not be under [the control of] any man, but under [that of] God and the law, for the law makes the King)."(*) The supremacy of the state over the law in continental Europe

(*) Author's translation.
was importantly reflected in the fact that all continental European law schools have become in the course of time divisions of state universities. By contrast, the supremacy of the law over the sovereign in the Anglo-American sphere of law found expression in the law school's independence of the state power: in common law countries legal training institutes are all private Inns of Court or mostly private university law schools.

These features of "Roman-civil law" tradition in law and its education, as contrasted with those of the common law and its education, are rather obvious and were readily perceived by Far Eastern jurists. Less readily perceivable is another feature of the "Roman-civil law" ideology, in this respect comparable to a parallel ideology of the "common law," namely, the ideology of the universality of the respective legal system. As in the common law world the common law, so in the Roman-civil law sphere the Roman law, was conceived of as being universal and enforceable regardless of enactment or proclamation as law. This is of utmost importance, and it is regrettable that it should have been misunderstood in Asian countries, for clearly the law's universality is not compatible with the idea of its subjection to the state. The idea of the law's universality, operating through the medium of "natural law" concepts, helped Western societies to adjust themselves to the transition from sovereignty of the monarch to the sovereignty of the people and the supremacy of law. In missing this point of Western legal ideology, Asian countries, though anxious to adopt Western patterns, have not quite reached the essence of Western legal tradition. The Far Eastern jurists' lack of appreciation of the ideology of law's universality and of the tradition within which it grew in continental Europe was disastrous, for it led to their acceptance of superficial aspects of the Roman-civil law while believing that "law" is but an instrumentality of the state. In order to clarify this point as much as is possible within the scope of a paper, I shall elaborate briefly on the philosophical development of the "Roman-civil law" tradition and its method of legal education.

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 legal systems which belong to the "civil-law" group have a common source and certain common characteristics. Their systems of legal education, however divergent they may be, have a common background and a common 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 primarily of laws and legal education fitted into a pattern of universality of the law.

The "Holy Roman Empire of the German Nation" was believed to be a continuation of the Roman Empire; the latter's law, codified in the Corpus Juris (6th century), was hence believed
to be the law in force in continental Europe. For this reason, when in the early part of the 12th century a part of this Corpus Juris, the Digest or Pandectae of Justinian, was discovered in Bologna, the jurists' reaction by far exceeded mere satisfaction of an intellectual curiosity in an archeological discovery. For to them the discovery amounted to the finding of a law of immediate applicability and enforceability, the law of the Empire. Actually, the law hitherto applied, the customary laws of German tribal origin, continued to be applied, despite the discovery. But the law believed to be valid was then and before that contained in the Corpus Juris. So, from all over Europe young men of all nations flocked to Bologna to become learned in this highly sophisticated, learned law. Perhaps the continental European tradition that law is a "science" or may be found by "scientific means" may be traced to this historical experience. Ever since then the tradition was established that to become a lawyer of stature, a man had to take up a 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 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 originated in a sort of "common law," the juristic opinions of Roman jurisconsults given in concrete cases, had become highly systematized, particularly due to the work of the Italian and other jurists, who began interpreting in intensively since the 12th century. Every sentence and phrase was repeatedly glossed, as if it contained a revelation of ultimate truth.

The system of education fitting this ideology of the universal law of the "Holy Rome Empire" was one oriented to a finding and understanding of "the" law rather than a training in the technical aspects of law. The law professor was hired by the students to convey to them knowledge of the legal secrets, which he may have acquired by possession of some precious manuscripts. Emphasis was placed and continued to be placed on knowledge. Such precious knowledge 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. Only the former, 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.
Where the academic aspect of legal knowledge and training is deemed more important than practical experience, the law professor's influence and authority exceeds those of the judge. Such has been the case in continental Europe. Moreover, this influence was felt even in practical law administration. Judges would ask their former professor's opinions in difficult legal cases. Indeed, law faculties attained the position of appellate courts to which parties could appeal from decisions of the supreme courts of the territories. This institution of Aktenverwendung (transmittal of the record), now abolished, had a dual importance. It raised the prestige of professors and the authority of professorial law. It also brought them into continuous contact with the actual problems of legal practice.

Continental European university law schools performed two important functions in the life and development of the law. They were communities of legal scholars, whose prestige was tremendous because they were deemed to possess ultimate knowledge of the law, as well as teaching institutions. However, as time went on, particularly when laws were unified and codified, law professors ceased to have such final authority over the meaning of law and such impact on its development, because the unity of the Christian world was gradually lost with the emergence of the various national states and the ideology of the universality of law was abandoned with the emergence of particular national codifications.

The law schools were no longer needed as unifying centers. Their appellate jurisdiction was abolished. "Professors still play an important role in the exegesis of the codes and in their adaptation to the needs of changing times." "However, they have to compete with lawyers, supreme court judges, and ministerial councillors, who contribute an increasing share in the production of textbooks, statutory annotations, and law review articles."

However, even before the unification of German law there arose a need for adjusting legal education to the inconsistency obtaining between the law in books, meaning the Roman law, and the law in action, meaning, the German customary laws actually applied in legal life, and the fact of disparity of diverse local customary laws. No university could by itself prepare students for the practice of the legal profession under these circumstances. The professors have struggled with this problem for centuries and finally worked out a division of legal education into two section, a theoretical and a practical one.

Both in France and in Germany, a university education and a university degree have remained the first prerequisite for 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 once or more universities, and a period of practical service under judicial supervision and direction, called “preparatory service” (Vorbereitungsdiens). After completion of the university studies the candidate had to take the first state examination or the “Referendarexamen;” only thereafter was he admitted to the practical training stage, which culminated in a second state examination, the “Assessorexamen.”

The relationship of the two phases of legal education to each other has been the object of much discussion in recent years. This has been but a partial issue in the debate concerning legal preparation and court reform in Germany. As a result there has been introduced a reform in legal preparation, which 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 more important than practical training. We may observe a revival of the ancient tradition that the law is not just a trade to be learned by practice but an academic learned profession. The reform projects also suggested placing the “Referendar” training within an academic framework.

This has been the type of system of legal education which we in the Far East are supposed to have received from Germany. The stress on academic education and the high esteem enjoyed by continental European law professors fitted well into our traditional Asian culture patterns; in Asian society learning has been always held in high esteem and scholars have been honored and attributed a high social rank. As I mentioned before, however, there was one essential point in the development of the concept of law and hence of legal education in those countries, which we failed to comprehend: their one time belief in the universality of law and the political implications of such belief. The latter furthered the principle of the law's independence from the state, which in turn supported the tenet that a lawyer is not just a public servant but a representative and protector of his client against anyone who might deprive him of his
rights, including the state. In the Far East the education of lawyers has been so closely connected with the traditional process of becoming Confucian literati that we have a long way to go until we reach acceptance of this notion of the independence of the legal profession. Yet, such acceptance is essential to the democratization of our law. I shall elaborate on this later.

Apart from the reasons which produced the latest German reform of legal education, there are other more fundamental considerations favoring stress on academic preparation in Asian countries. The first among them is referable to certain features of the education which a law candidate in Far Eastern countries receives before entering law school. The "Gymnasium" in continental Europe, to which the corollary in Korea, for instance, 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, e.g., the German candidate enters a real "university law school," that is, a graduate school devoted to legal training, from which he emerges thoroughly educated in the systematic theoretical aspects of law, as well as in its philosophical aspects. He is now genuinely ready to receive, partially at least, 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 studies at a "university" level, must begin to learn at the university the things which he should have learned before. Thus, a "college of law" cannot be an equivalent of a European "faculté de droit" or "Rechtsfakultät." 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 the purpose 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. An average of one percent of graduates of colleges of law throughout Korea passes the "Bar Examination." The situation is not substantially different in other Far Eastern countries.

Obviously, university education proper, to be equivalent to the education which a student at a German law faculty receives at this 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,
Legal Education in the Far East

compared to what is termed a Bar examination in other countries. It is not comparable to a "Referendarezamen", nor is it comparable to a "Bar Examination" in the United States. What has been said about legal education in Korea is also true of such education in Japan, except that in Japan the four year course of law college curriculum is divided into two parts, two years of pre-legal studies and two years of legal studies. Such being the situation, the major portion of legal education proper must be undertaken after graduation from a "Law College" and passing the "Bar Examination."

Another, perhaps even more important, reason for stressing the academic aspect of post-graduate legal studies in Asian society lies in the specific needs of that society, as a developing one. Politically, economically and socially, such society depends much more on a well educated, politically and socially responsible legal profession than does a politically, economically and socially advanced, mature society. Where new political institutions are being introduced, new economic structures created, and socially backward customs discarded, the lawyer as a "social engineer" must be much more than a legal technician. For he must perform a *sui generis* function. Whether as judge or any other government servant or, indeed, as a practicing attorney or economic planner, he must serve the democratization of his country. He must do so implicitly, by the manner in which he renders his service, as well as explicitly, by expressing himself freely and by not yielding to pressures. Even in a society as advanced as are the United States, intricate problems concerning the lawyer's responsibility have been raised in recent times. I have in mind such problems as representation in unpopular matters or advertising services to indigent persons. In Korea, for instance, a major problem is that many persons forfeit whatever rights they may have because they are either not aware of them or believe that they are not realistically enforceable, or, indeed, that it would be improper for them to undertake anything toward their enforcement. How must a lawyer resolve conflicts arising from conventional concepts of legal ethics and the social responsibilities facing him where the majority of the people are still under the psychological impact of traditional concepts of law, of former servitude, recent war devastation and present misery? Such questions cannot be answered by a mere legal technician; they are rather problems to be resolved by a legal philosopher, on the basis of a vast knowledge of comparative law, of comparative culture, of psychology, sociology, and a profound insight into the needs of his people.

I should like to stress particularly the *sui generis* function of legal education in Far Eastern countries in developing the lawyers' and the people's awareness of the lawyer's role in society. The "image of the lawyer" obtaining in these countries is not conducive either to the effective
functioning of the “Rule of Law” or to belief in “World Peace Through Law.” In these countries the lawyer is still thought to be primarily a public servant. As I stated before, our failure to comprehend the Western civilizations’ “image of the lawyer” is due to our lack of appreciation of their historical concept of the law’s universality. At this time, the remedy against the results of that lack of understanding can no longer be indoctrination in the idea of the law’s universality, in which most people no longer believe. It must rather consist in a total reeducation of the legal profession, so as to enable it to comprehend the policy wisdom of the independence of the legal profession. Such reeducation cannot be achieved by legal practice, which is conservative and tends to perpetuate the existing law and traditional habits of thinking.

Of course, I do not mean to convey the notion as though I were underestimating the value of practical experience. Nor do I mean to say that there can be fruitful combination of both academic preparation and court experience in the curriculum of law candidates. However, in view of the necessary limitations of time and resources, a decision must be reached as to the relative weight to be given to the two aspects of legal education. As shown above, German policy makers have recently reached the important decision that the academic aspects ought to be given equal weight, if not a preferential status. I believe to have shown that this policy is even more appropriate in developing countries than it is in countries which have the advantage of greater political, economic and social stability.

Outstanding among the many problems of legal education facing Far Eastern decision makers has been the question as to what institution should be placed in charge of the graduate program. Japan, among many other countries, attached her Training Institute for law candidates to the court system. Korea attached her Graduate School of Law to Seoul National University. I believe that the latter choice was correct, in the light of the needs of our society. The reasons which I advanced for stress on the academic aspects of graduate legal training also support assigning responsibility for such training to a university rather than to courts. At the same time, as our experience at the Graduate School of Law shows, excellent results may be expected from cooperation between such academic institution and the courts.

Perhaps it may be useful to the promotion of an understanding of the aims of our system, if I briefly outlined, at least by way of examples, the kind of tasks, among others, which we are undertaking at our Graduate School of Law.

In Korea we are faced with an almost tragic shortage of educational material. At colleges of law students must often rely entirely on class notes. While this situation is improving, we still
have no comprehensive collection of Supreme Court decisions, not to speak of decisions of lower courts. As we became acquainted with the methods of development of Anglo-American law and of legal education in the United States, we realized the great value of judicial decisions, both as sources of law and as means of legal education. We undertook the task of publishing our Supreme Court decisions, at least the most important among them, going back to the year 1945. Such publication in Korea is not a simple task. For it is often impossible to estimate from the face of a decision, indeed, even from its reading in combination with the Supreme Court files, what has been decided, whatever meaning one might attribute to the term "holding." To publish a decision, one must gather pertinent information from the files of lower courts, and edit the decision to be published. We are also supplying each decision with an annotation that connects it with other pertinent legal material and evaluates it critically. We found that enlisting the help of the students of our Graduate School of Law in this task is of great value to them. They are being trained to read decisions intelligently and critically. At the same time, they are performing a creative and practically significant task, and are being made aware of their own contribution to legal development. We expect that publications of these decisions will also serve the purpose of achieving continuity in our judicial law, of making accessible to attorneys judicial precedents, and of making available to future law students a most valuable compilation of educational material.(*)

We are aware of the great importance for the progress of law of interdisciplinary studies, and we are trying to the limit of our resources to give our Graduate Law School students a more than superficial insight into disciplines such as cultural anthropology, economics, sociology, general medicine, psychology, psychiatry, etc., and the impact of their findings upon understanding and progress in law.

While the Graduate School of Law is attached to the Seoul National University, a substantial part of the students training takes place within, and under the supervision of, courts. But critical generalization of experience, which should endow a future professional not only with technical skill but also with creative imagination, requires a type of conceptualization and discussion, which can be best afforded in an academic seminar. We have based our policy on this finding.

(*) I am glad to have this opportunity to thank the Asia Foundation and its officers for having appreciated the importance of this publication and of the educational experience for the students in preparing it.
Max Radin once said that "the law is not merely a learned profession, but the learned profession...... If you deny learning to a lawyer, you touch him—say the old books—in the essence of his calling. If untrue, your statement is a slander and he will get thumping damages." I should like to point out in closing that World Peace Through Law depends perhaps in the first place on the quality of the legal profession. The type of legal education which lawyers receive may have a great impact on this quality. Let us keep this in mind.