

<BOOK REVIEW>

Legal Education in a Developing Nation:  
The Korea Experience (1965)

by Jay Murphy

Professor Jay Murphy originally came to Korea to teach at the Graduate School of Law, Seoul National University in 1963 under the auspices of the Asia Foundation. He also undertook to survey legal education and profession in Korea. He visited many law schools in Seoul as well as in the provinces, sent out questionnaires, obtained various data by the means of personal interviews with the students, the professors, the practicing attorneys, the judges and the prosecutors and produced an excellent book, entitled, "Legal Education in a Developing Nation: The Korea Experience," which has been recently published by the Graduate School of Law.

Professor Murphy deems the Korean legal education, for that matter, [any legal education generally, "as a means of training persons in the use, control, management and direction of authority in the community" in such a manner that democratic goals of the Korean society might be implemented. Therefore, the legal education must be immediately and intimately related to the present and future problems of Korea. The legal education, he urges, must become an invaluable tool for maximizing the values of the Korean institutions, meeting the urgent needs of Korea as a developing nation in the world community. Whether the current Korean legal education in its arrangement of curriculum, teaching, examination and class and of the system of bar examination and legal profession is geared at the kinds of the legal problems requiring pressing solution in Korea is the question he challengingly posed in his book.

To illustrate his method of inquiry and view, let us examine the Chapter IV, Curriculum, in cursory manner. In this chapter, he describes comprehensively courses taught in almost all law schools in Korea. The pattern of the courses is set by Seoul National University Law School, and in all schools, they teach pretty much same courses. The students are to take some liberal arts courses in the first year of the law school, but in the sophomore year, they

begin to deal with Constitutional Law, Civil Law (torts), Administrative Law and Criminal Law and with the third and the fourth year of the studies, the students finish the entire courses of the legal education. Unlike in the United States, when the students are admitted to the law schools in Korea, they are just out of high school, and are not generally exposed to any prior disciplined training or experiences with the functioning of economic communities, both domestic and international, and of political and social institutions, not to mention, the general education dealing with the arts and the letters. The belief that the broadest training for practicing lawyers is ultimately the most practical, and that the liberal and humane tradition of law study best prepares men for service in every branch of the career of law is not apparently upheld in the Korean legal education.

The idea that legal education must integrate interdisciplinary learnings, especially, economics, and social and political sciences is not new to many Korean law teachers. A developing nation such as Korea needs urgently “planners” to help policy formulation in many field of government, culture and business and more “creative persons” who see the whole picture, to coordinate various institutons of society for development of the nation. To meet these needs of the nation, Professor Murphy believes that courses in economics, psychology, art, poetry, literature, language, family, village living, accounting, Far Eastern history and host of others during the law school years are far more important than the courses with the imponderables of the subject of conflict of laws and the others.

His most critical evaluation of the Korean legal education is with teaching, examination method and bar examination system in Korea. In the Korean law schools, the textbook and lecture method of instruction is followed exclusively with minor exception. There is little debate, questioning, arguing and exchange between students and teachers in the class rooms. The teachers lecture on the abstract concept, related to philosophies of law, not to the actual experience of life and test the students with such questions as “Discuss the Freedom of the Person” in constitutional law or as “Discuss Agency” in administrative law.

Further, he fails to see any rational relationship between the bar examination and the selection of the competent legal professions. Moreover, the system of the national bar examination is hampering the progressive development of the Korean legal education and profession. There is the tradition, and the demand for students to take the bar examination without concerning basic and broader training for the law. There is the strong institutional forces against any change in the bar examination system and unfortunately, most of the legal

scholars, students and professions in Korea found themselves involved in this vicious circle.

He placed his hope in the unique position of Graduate School of Law, Seoul National University to lead the way in the development of legal education in the nation, demonstrating alternative ways of the legal systems. Freed from the heavy burden of study for the bar examination, the new school with physical facilities and competent faculties, can experiment fully in the critical, empirical, pragmatic and policy-oriented courses. Professor Murphy devoted the entire Chapters 12 and 13 to examine the potentialities of the school in this program.

Further, he dealt with the Aims or Objective of Legal Education; the Nature of the Faculty or Teachers of Colleges of Law; the Law Student as a Person, his Language Facility. The libraries are also examined and the publication and research facilities proposed and also the problem of the cooperation between the legal profession, and the legal education is considered. Since the book is written under the auspices of the Asia Foundation, he also presented the problem of the cooperation between the cultural institutions of the United States and the legal institutions of Korea. The Appendix contains his "Comments Before the Study Committee on the Judicial Examination System of Korea."

Professor Murphy has never claimed that his book comprehensively dealt with the Korean legal education and professions. However, considering the briefness of his stay in Korea, his analysis of the problems in the Korean legal education is quite extensive and sustaining; it is a challenge to the Korean legal education which emphasis upon the abstract, the conceptual, and the nonexperience related philosophies of law with the sociological jurisprudence tradition of American legal scholarship. The systematic method of inquiry of the McDougal and Lasswell policy oriented legal philosophy is sufficiently demonstrated in the book.

However, since Professor Murphy has not been sufficiently exposed to the general culture, especially, the legal tradition of Korea, it seems that he lacks in connecting the culture and the legal institution; he fails to see the working of the tradition in the current legal practices. The traditional concepts of the "li," as prevailing, ethical sanction and tradition of integration of moral suasion with legal compulsion are operative indices in the Korean legal institution. Largely because of these traditional forces, the time required for termination of the civil and criminal cases is only about two months and the bar examination system is maintained in most impractical manner. They like to view the bar examination system equivalent to Kwa Go, a traditional national examination system. There are numerous other

aspects of Korean legal educations and profession which can be only explained by the traditional forces of the Korean culture. If Professor Murphy were exposed substantially to this kind of vertical communication of the culture, the contents of his book might have been different.

Nonetheless, his book is a stimulating challenge to the existing system of law training in Korea. If the Korean law students and the practitioners are going to serve as guides in the intricate operations of domestic and international finances to which Korea is so urgently involved, the whole range of financial aspects of law such as corporate finance, security transaction, credit system, taxation, antitrust, laws dealing with land planning must be studied. Most of all, philosophical emphasis upon the conceptual thinkings in the legal education must be shifted to the problematical approach as time and time again recommended by Professor Murphy in the book.

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