

Asian Legal Education in the Age of Globalization : A Comparative View*

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Legal education around the globe may seem to many remarkably resistant to fundamental change. In the United States, superficially at least, the curriculum in most law schools has undergone little basic change over the course of a half century. To be sure new courses have been added from environmental law to feminist jurisprudence in response to changing social concerns and values, but the staple subjects of judge-made, private law—contracts, torts, property—still dominate the first year curriculum in nearly all American law schools. And we continue to emphasize our so-called Socratic methods of instruction. So too in the Civil Law World of continental Europe, Latin America, and East Asia neither the mode nor the substance of legal education has undergone the transformation that one might expect in this age of rapid economic, social, and political change. Again private law dominates and the preferred method of instruction remains the lecture.

In my comments on a comparative view of Asian legal education today, I would like to suggest that beneath the surface fundamental changes are indeed taking place and that legal education is in fact responding, albeit at a more gradual pace than many would prefer, to the global changes that surround us. As legal educators we are thus challenged to adapt to these changes and the opportunities they provide us both to broaden and deepen our own understanding of law and its role and function in a world of instantaneous communication and mutual interdependency. Above all, our

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global economic and environmental interdependency requires us to become comparativists, learning from and with each other.

My comments divide rather neatly into three categories. First, at the risk of restating the obvious, I should set out once more the basic contrasts between legal education in North America and the rest of the world. These differences underlie many of the problems in adapting ideas from each other, and thus need to be understood at the start. Second, I would like to offer a critique of what we are now doing and some of the directions of current change I see taking place in both Asia and the United States. Finally, I will conclude with a few related suggestions as to what we could do.

As most if not all of you are very well aware, the structure of legal education in North America is the exception to a worldwide pattern of law as an undergraduate academic pursuit. In the United States and predominately in Canada as well, law is taught at the graduate level in what we call a “professional school”. Our students, unlike yours, have already completed four years of undergraduate education in diverse fields, ranging from literature to the life sciences. Moreover, we assume, correctly, I believe, that we are preparing our students for careers that whatever their ultimate destination will ordinarily begin with the practice of law as a private attorney, public defender, or public prosecutor. Upon graduation, I should note, nearly all of our students will in fact take and pass one or more state bar examinations and be admitted to practice. Although they may later end up in business, education, or government, most will begin their careers as practicing lawyers. Even President Clinton, for example, launched his political career from a law office. More important, because we have no undergraduate program in law, only those who eventually become lawyers in the United States and much of Canada study law. Expressed somewhat differently, our legal profession has a monopoly on legal education.

Because American law schools are preeminently training schools for lawyers, legal education in North America therefore has to be responsive to the variety

of tasks performed by our legal profession. Our curricula tend by necessity to be oriented more to a multitude of professional needs and interests. We must teach trial practice and advocacy, tax law and land use planning, securities regulation and legal accounting. Notwithstanding such professional emphasis, law in the university remains above all an academic subject and as such those of us who teach law must also deal with broader, less professionally oriented issues and concerns, which we justify by arguing that lawyers need to have perspective and understanding on the nature and role of law in society and the underlying considerations of policy legal rules are intended to fulfill.

Finally, there is the simple matter of numbers. With about a half a million lawyers in the United States the market for legal education post graduation is huge. Whereas in most countries Asia, like Europe and Latin America, the number of law students exceed the number of lawyers by several factors—in Korea, for instance there are over 10 times as many students in law faculties as there are lawyers in practice—in the United States the reverse is true. The United States has nearly 5 times as many practicing lawyers as law students. This means that the market for continuing legal education as well as the technologically most advanced legal data and research services is correspondingly great. As a result, law schools in the United States must constantly adapt to new research aids and materials being developed in that market. American students—and their teachers—must know about and be able to use Lexis, Westlaw, and the increasing variety of computer-related means for legal research. They must also be familiar with the increasing variety of looseleaf services and the expanding volume of legal research materials. The law school library is thus central to the quality of legal education, not simply faculty research. Our law libraries are our laboratories and, as such, must be equipped with the most up-to-date research aids. Our law librarians must have the prestige and pay to attract the most qualified of our graduates.

Bound within the North American tradition myself, I cannot perhaps help viewing legal education through peculiarly American lens. I do believe however that whatever our nationality we as legal educators have two overriding obligations. We must offer education that serves our students' future career needs—both broadly and narrowly defined—and we serve a larger constituency of lawyers, judges, government officials, legislators, and the general public who look to us as educators to explain, interpret, and evaluate the legal order in all of its diverse dimensions.

Although for the most part, as I stated at the outset, I believe that we are doing well in responding to the challenges and demands of our interdependent world, we could do better. I suggest that American strengths are Asian weaknesses and Asian strengths are American weaknesses. In other words, we have much to learn from each other. American advances in computer-related research aids, interdisciplinary perspectives, teaching methods, and curricula diversity as well as our traditional emphasis on case analysis and policy implications can be usefully adapted to meet the needs of legal education in Asia. Similarly, the quality of our law libraries can be readily emulated. By the same token, we need to emulate much of what you do. Your emphasis on comparative legal study, legal history, and doctrinal care in the interpretation of legislative texts can be equally usefully emphasized in American legal education. Permit me to amplify these points a bit.

Asian legal education would profit, I submit, from a heavy dose of our increasing interdisciplinary emphases as well as methodology for teaching case law. Law cannot be fully understood or taught without considering its economic, political, and social context. Those who teach commercial law thus must be familiar with the latest economic literature on the firm. Similarly those whose research and teaching interests center on criminal law and procedure must also be aware of current concerns in criminology and social psychology. And our students must have some facility in social science methodologies.

Also, whatever one's view on a theoretical level with respect to judicial

decisions as law, we can all agree that our students as future lawyers, judges, legislators, government officials, business leaders and scholars need to be able to read and interpret judicial decisions by courts around the world accurately. The European Community Court of Justice, for example, has done at least as much as Maastricht in creating a bold, unifying body of law for Europe. In effect, that court has created a constitution out of the Treaty of Rome. The Korean Constitutional Court faces similar challenges.

From my personal experience in teaching law students initially educated in Korea, Japan, China, Taiwan, and Indonesia, case analysis is the single most difficult task Asian students confront in American law schools. In contrast, however, my American students find it equally if not more difficult to read codes and other legislative texts and to reason effectively in doctrinal terms. Thus Korean students in American law schools will often surpass their American classmates in analyzing the finer textual points of the Uniform Commercial Code or a doctrinal problem in property. We thus can usefully learn from each other how best to teach case analysis, doctrinal development and statutory interpretation.

Technology is another area of critical importance. Although Japan, Korea and Taiwan rival the United States in the manufacture of advanced computer-related and other electronic equipment, the availability and use of electronic data services for law lag far behind the United States. As a late-comer to the electronic age myself—I did not own a computer for simpleword processing until this autumn—I appreciate the reluctance of older faculty to learn new tricks. However, our students must be exposed to these new technologies and our libraries require the best data-retrieval services we can afford. And both American and Asian legal education should utilize more audio-visual teaching aids and computer-assisted learning techniques.

Above all else, however, we need to learn from you the importance of comparative legal education. Despite a tremendous growth in comparative law offerings, led, I might add, by the study of East Asian law, American legal

scholars, law students, and lawyers are less well versed in the Civil Law Tradition and other legal cultures than they were a century ago. For too long we have ignored the contributions of continental law to our own system—the French Code influence in the famous contract case of *Hadley v. Baxendale* is but one example. Until comparative and foreign law is treated as a foundational course expected of all our students, we will remain an extraordinarily parochial nation of lawyers.

Let me now suggest in more concrete terms what we might do together. As a comparativist whose specialty is East Asian law, I would stress the need for greater sharing. We desperately need not only to learn more about each other but also to teach together more. For a decade I have taught the only regularly offered course on the Korean legal system offered in the United States. As inadequate as I am to teach such a course, it is better than not teaching one at all. How much better it would be, however, for us to be able to offer on a regular basis a course on Korean law taught by Korean law professors. Whatever perspective I may be able to bring to an understanding of the Korean legal system as an outsider is no substitute for the mastery Korean scholars bring. Together we would do wonders, I suggest, for our students and for ourselves.

In this age of satellite-transmission, facsimile, and electronic mail, of camera-recorders, CD-Roms, and personal computers, it is remarkable that we as legal educators remain so temporally and territorially bound. We need not be together to teach together. We can and should develop new courses, seminars, and simulated exercises in which we with our students cross the borders of time and space from our offices here in Seoul, in Sendai, and in Seattle.

Similarly, we need to cooperate more in library development. Most law libraries on both sides of the Pacific can barely afford to maintain adequate collections of national materials much less the full range of even specialized comparative collections. We can, however, work to facilitate access by our faculty and students to each others collections and to promote the development

and expansion of Asian law data banks similar to Westlaw and Lexis.

And then there is language. Law as we all know is nothing but language. Yet no law school in North America and few in other parts of the world today examines the languages of law as a vital component of instruction. True your students do study English plus perhaps German, French and other Western languages and increasingly Japanese. But how many Japanese law students study Korean, and how many Korean students study Indonesian or Thai. The situation in the United States, however, is even worse. we are eliminating foreign language prerequisites at all levels from university entrance to graduate degree requirements. Despite the demands of global economic interdependency, the American legal profession seems to remain smug in the delusion that knowledge of a foreign language is useful only for client solicitation.

Other ideas and projects can as easily and usefully be advanced. I have mentioned only a few. Whatever we do, however, let us remember that we can and should work together to find better ways to achieve our increasingly common task of best educating those who will be responsible for our future.