
Reform of Legal Education in the Age of Globalization

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Abstract

The Korean Government is now considering the introduction of an “American-style” law school system. It was in the late 19th century that Korean society embarked on the reception of the modern legal system in great earnest. Since that time, Korea has had a European style system of legal education. Therefore, the government policy of reforming Korean legal education on the American model is almost revolutionary. It is no wonder that this plan has set off a heated controversy among Korean legal scholars and practitioners alike.

This article conducts a critical overview of the government plan. First, it will sketch out the background to the current debate. This will be followed by the examination of the activities of the Judicial Reform Committee and the Presidential Committee for the Implementation of Judicial Reform. This paper will go on to discuss major issues of the debate such as the objective of legal education, how to regulate entry into the new law school system, the quota for entrants to the law schools and the cost of legal education.

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I. Background to the Debate on the Introduction of Law Schools

A. Overview

The Korean Government is now considering the introduction of an “American-style” law school system. If everything proceeds according to government plan, Korea will launch the new system from March 2008.

It was in the late 19th century that Korean society embarked on the reception of the modern legal system in great earnest. Since that time, Korea has had a European style system of legal education. Therefore, the government policy of reforming Korean legal education on the American model is nothing short of revolutionary. It is no wonder that this plan has set off a heated controversy among Korean legal scholars and practitioners alike. Some people, especially those who were educated in European universities, raise the fundamental question of whether the American model would be compatible with Korean society. Even among those who are supportive of the law school idea, concerns are expressed on a number of questions connected with the introduction of the new system, for instance, the viable institutional design of a new system, the reform of teaching methods on the model of “Socratic method”, a thorough reconstruction of curriculum, in particular, the incorporation of clinical legal education into the curriculum, the recruitment of faculty members with professional experience, etc.

The issue of the introduction of law schools began to be discussed for the first time in 1995 by the Kim Young-sam government; and while it was discussed officially in the Presidential Commission for the New Education Community in 1998 during the Kim Dae-jung government, discussions for the introduction of law schools began in earnest with the launch of the Judicial Reform Committee (“JRC”) under the umbrella of the Supreme Court in October 2003. The Judicial Reform Committee adopted and deliberated on six areas as its terms of reference:

- (1) Organization and Function of the Supreme Court
- (2) The Unification of Bench and Bar and the Judge Appointment System
- (3) Training and Selection of Judges and Lawyers
- (4) Citizen Participation in the Judicial Process
- (5) Judicial Services and the Criminal Judicial System
- (6) Civil Court Improvement

The Judicial Reform Committee completed its work on December 27, 2004. The

core of the third term of reference “Training and Selection of Judges and Lawyers” was the proposal to abolish the bar examination, which had been the premise of existing university legal education, and to introduce a law school system. Subsequently, for the follow-up work, the “Presidential Committee for the Implementation of Judicial Reform” was launched and commenced work from January 2005; it held a public hearing on April 21, 2005, called “Proposal to Introduce a Law School System”, which was based on the proposals made by the Judicial Reform Committee; also, on May 16, 2005, it passed the proposals called “Law on the Establishment and Operation of Law Schools” and “Presidential Decree to the Law on the Establishment and Operation of Law Schools”. The proposed law passed the Cabinet on October 17, 2005, and is about to enter the deliberation procedures of the National Assembly.

B. Background to the Legal Education Reform Debate: Necessity of Introducing a Law School System

Recently, the debate surrounding reform of legal education and the system of training legal professionals has been carried out along several branches, but a substantial consensus has formed in relation to its fundamental object. Why are we considering the introduction of a law school system? The short answer is that it would resolve various issues that had arisen under Korea's current legal education and training system for legal professionals.

First, there is the issue of the failure of human resource allocation. Presently, high-quality human resources amounting to tens of thousands of students are devoting their energies to the bar examination, which will take them a minimum of 2-3 years or a maximum of more than ten years to complete. The age of young judges and lawyers graduating from the Judicial Training and Research Institute (JTRI) is approaching the mid-30s.

Second, despite the fact that these large numbers of personnel are engaged in bar examination studies over a long period, the quality of newly starting judges, prosecutors and lawyers have dropped each year so that in recent times we have reached the point that complaints have arisen from established judges and lawyers that these graduates are not really equipped with basic skills. Demands are increasing for skilled lawyers having international competitiveness in the era of globalization, yet a sense of crisis is spreading that the qualitative standard of

lawyers is instead dropping.

Third, a curious phenomenon is occurring involving complaints each year that employment opportunities for lawyers are insufficient, even though only around one thousand lawyers are produced each year for a population of close to 50 million people in South Korea. The various services that need to be provided by lawyers have not developed and the conventional thinking focusing only on traditional types of civil and criminal litigation is dominant among the legal profession. Accordingly, an expansion of the field of legal work is needed.

Fourth, despite the above phenomenon, a high-cost structure has become entrenched under which the ordinary citizen finds it hard to obtain legal services from the legal profession. It is only when the ordinary citizen is able to obtain high quality legal services at inexpensive rates that Korea can become an advanced country in terms of legal services.

Law schools are the result of a long debate on how to solve these chronic problems. Further, the core of this debate is that we have to reform the method of selecting the legal profession from “examination” to “education and training” and increase the number of lawyers dramatically.

II. Progress and Outlook Regarding the Debate on Introducing Law Schools

A. Judicial Reform Committee

The issues that the Judicial Reform Committee considered to be the starting point for debate were also based on the awareness that the existing legal education and bar examination systems had serious problems. That is, the starting point for debate was an awareness of two issues: (1) legal education was wide of the mark in relation to the practical needs of “consumers”, being firms and the legal profession; (2) the bar examination system degraded universities to examination hagwons (cram schools), creating many examination nangan (students who continue to take the bar exam despite failing it many times) resulting in a national waste of human resources.

In order to solve these problems, a common understanding developed eventually that it was necessary to transform the paradigm of “selection of judges and lawyers by examination” to “training by education.” Further, as a result of probing into

potential proposals, the JRC recommended the introduction of an American-style law school system, under which students with majors from a variety of faculties would finish a three-year course and the majority of those students would receive legal qualifications through a qualifying examination. Apart from the law school proposal, JRC also debated a proposal to establish a two-year law graduate school (4+2 proposal) following on from the existing four-year undergraduate law degree, as well as a proposal to retain the existing system but to further increase the quota of passing examinees; however, the Law School proposal was adopted. The specific content of that proposal is summarized in the following Table 1.

Table 1 Summary of Proposals by the Judicial Reform Committee

Division	Proposals by the Judicial Reform Committee	
Number of Full-time Professors & Professor/ Student Ratio	Majority Opinion	Max. of 20; Lower than 1:15 or 1:12
	Minority Opinion	Max. of 25; Lower than 1:12
Teachers with Practical Experience	Majority Opinion	More than 20% having experience of more than 5 years in practice as judge/lawyer
	Minority Opinion	More than 30% having experience of more than 5 years in legal practice, government, or other legal institutions
Facilities	Separate Law Library, Moot Court, Seminar Rooms, IT Facilities	
Authorization Criteria	To be decided by the Minister of Education and Human Resources after consultation with the Head of Judicial Administration, the Minister of Justice, the President of the Korean Federation of Bar Associations and the President of the Association of Korean Law Professors	
Authorization Deliberation Body	Legal Education Committee (Government, Legal Profession, Law Professors and Public Interest Representatives)	
Total Entrance Quota	Majority Opinion	Fixed quota of 1200, based on the number passing the bar exam at time of introduction of law schools (1000)
	Minority Opinion	Level appropriate to meet supply and demand for legal personnel

B. Presidential Committee for the Implementation of Judicial Reform

After the Judicial Reform Committee confirmed the principle of introducing law schools, it was dissolved in December 2004, though it still left unresolved core issues such as the number of law school entrants and authorization criteria. As a result, ‘life-and-death’ competition between universities (eg. in facility construction and securing professors) to attract Law Schools, together with the fiercely opposed opinions of academia and legal profession regarding entry quotas and differences of opinion between government departments have emerged. In these circumstances, the Presidential Committee for the Implementation of Judicial Reform (“PCIJR”), which succeeded the duties of the Judicial Reform Committee and commenced work in January 2005, held a public hearing on “Proposals to Introduce a Law School System” on April 21, 2005 based on the proposals of the Judicial Reform Committee; and, based on this, on May 16, 2005, it adopted without amendment the proposals to introduce law schools. This bill passed Cabinet on October 17, 2005. Its details are considered later in this paper.

C. Future Timetable and Prospects

According to the Roadmap presented by the Judicial Reform Committee, the timetable may be summarized as follows.

~ End	2005	Passage of Bill through National Assembly; Enactment of Subordinate Legislation and Finalization of Authorization Standards
~ Dec	2005	Finalization of Total Quota for Law Schools
~ Mar	2006	Ministry of Education Announcement of Authorization Standards and Receipt of Applications
~ Oct	2006	Authorization by Ministry of Education
~ May	2007	Authorized Universities’ Recruitment Outlines Finalized
~ End	2007	Completion of Selection of New Entrants
~ Mar	2008	New Entrants' Matriculation

According to the original Roadmap, the bill was expected to be presented to the Regular Session of the National Assembly in September 2005 as a preliminary step for implementing the above procedures; however, this has not yet occurred so there is an uncertainty as to whether the future timetable will be able to proceed as planned.

III. Examination of PCIJR Proposal on Introduction of Law Schools

A. Outline of PCIJR Proposal on Introduction of Law Schools

The gist of the PCJR proposal on the introduction of law schools is to select students from various undergraduate majors through a test on the basic skills necessary for law classes (e.g, reasoning ability), after which there is a three-year practice-centered legal education and the majority of passing students are then able to receive their practicing qualifications easily. Thus, through specialist legal education at law schools, we will train the skilled legal professionals that are required in a global and specialized society. Furthermore, in order to guarantee a good quality specialist education, the proposal provides for the establishment of strict authorization conditions and periodic evaluation. The strong points of these law schools, if introduced, are that they will be able to address greatly the problems of the current system, where one can make a living as a legal professional for the rest of one's life thanks to passing the bar examination once, as well as to supply lawyers having various majors and experiences. Table 2 below summarizes the PCIJR proposal.

Table 2 Proposals of the Inquiry by the Presidential Committee for the Implementation of Judicial Reform

Division	Tentative Conclusions of PCIJR	
Authorization Procedure	Authorization Procedure	<ul style="list-style-type: none"> - Legal Education Committee deliberations, authorization by Minister of Education & Human Resources Development - On-the-spot survey by committee members composed of professors, legal professionals, CPAs etc.
New Students	Entrance Quota	<ul style="list-style-type: none"> - Total entry quota set by Minister of Education after consultation with legal professionals & legal academia - Annual intake of each law school no more than 150
	Selection Method	<ul style="list-style-type: none"> - Single aptitude test (held by Ministry of Education) - At least 1/3 from other majors and universities, respectively
Education Curriculum	<ul style="list-style-type: none"> - Attendance for three-years (six semesters), taking at least 90 credit points - Legal information research, legal writing and drafting, moots, clinical education, extracurricular trainings - Mandatory course on professional ethics; social volunteer work recommended as requirement to complete course 	
Staff	<ul style="list-style-type: none"> - More than 20 full-time professors, professor/student ratio of 1:12 - More than 20% to include practitioners with more than 5 years experience - In principle, each full-time professors to give 6 hours of lectures per week 	
Post-Authorization Evaluation	<ul style="list-style-type: none"> - Submission every two years of self-appraisal - Three day minimum on-the-spot inspections every five years by an evaluation committee (composed of professors, legal professionals, CPAs etc.) under the umbrella of the Bar Associations 	

B. Response of Stakeholders to PCIJR Proposal on Introduction of Law Schools

The present state of affairs is that the proposal on the introduction of law schools has been finalized and submitted by the PCIJR, though one can raise doubts about whether the above timetable will be adhered to as originally planned, due to deepening conflict and divisions between various sectors of society and professional areas during this process.

First of all, the stances within academia can be divided into three views: (1)

taking the stance of supporting and accepting the proposal at this stage, dealing with problems at later stages (2) while agreeing fundamentally with the introduction of law schools, opposing the main contents of the proposal (3) opposing the very idea of introducing law schools. The legal profession, centered on the Korean Federation of Bar Associations, has made it clear that they oppose strongly the above proposal. Civic groups mainly adopt the second position of academia, which is that they support the idea of law schools but oppose the major aspects of the proposal. While the biggest issue politically is the entry quota issue, apart from this there are a variety of positions being taken criticizing various problems with the proposals, including: criticisms of the violation of university autonomy; obstruction of development of legal studies as a scholastic pursuit; high cost of legal training; concern about further privileging of the legal profession as a result of the introduction of a new system; suitability of the American-style law school in a continental law system, etc.

C. Main Issues in the Debate on Introducing Law Schools

1. Function of Law Schools: Strengthening Practical Education v. Theoretical Education

The PCIJR Law School Proposal is premised on fusing the traditional legal education in universities and the practical education in the Judicial Training and Research Institute. Accordingly, it requires the strengthening of practical education relative to the traditional legal education. This emphasis on practical education, however, should not lead to misunderstanding law schools as practical legal training institutes. Law schools are not national institutions for educating by cramming precedents, investigatory and judicial practices; rather they are educational institutions for examining these critically and fostering the ability of students to construct new legal visions, discourses and arguments. Accordingly, law schools must give an education centering on theory and principles. Practical education must be carried out after graduation from law schools at lawyer training institutes established by bar associations or prosecutor and judge training institutes founded by the state.

From this perspective, we need to establish goals for practical education at standards that are both clear and not excessively high and we must adjust the number

of practicing staff and practical subjects accordingly. The important point relating to actual practice is to learn while practicing. At university, it is sufficient to teach practical subjects to the extent of informing students how certain matters are disposed of in practice. In particular, in the case of students from non-law faculties, there is first of all a need to emphasize basic knowledge, theories and thinking about law; conveying technical aspects first to these students would cause serious deficiencies in their legal education.

According to the present system, lawyers receive four years of legal and general university education, pass the bar examination (of course most students pass the bar examination after further study for a substantial period after graduation) and then receive two years of practical training at the Judicial Training and Research Institute. In case one shortens the minimum five to six year period of education and training to three years at law school, there may be the problem of failure in both legal theory education and practical education areas.

2. Regulating Entry to Law Schools: Discretionary or Mandatory Authorization

One of the biggest issues facing the establishment of law schools in setting certain establishment requirements is whether to allow the establishment of law schools by anyone who meets those conditions (the principle of mandatory authorization) or whether the Minister of Education and Human Resources Development may refuse authorization in consideration of circumstances other than those requirements (the principle of discretionary authorization). The PCIJR proposal restricts the total law school entry quota in consideration of various circumstances such as the smooth provision of legal services to citizens and supply and demand for legal professionals, and again restricts the quota of individual law schools which necessarily leads to the adoption of the principle of discretionary authorization. The true law school, however, should be premised on securing the quality of the legal profession through some form of education and subsequent competition. What the concrete content of that education should be is an issue that universities will determine autonomously. The state should set basic requirements for law schools to meet, and then allow universities satisfying those requirements to establish law schools freely (mandatory authorization).

3. Entry Quotas

The issue most fiercely debated in the context of the law school system is the entry quota system. The opinion of the general citizenry, headed by legal academia and citizen groups, asserts that the number of lawyers needs to be increased dramatically, while current legal professionals including lawyer groups assert that total entry quotas should be set at a level based on the current number of successful bar examinees.

The PCIJR proposal does not indicate the total nationwide entry quota, but on the justification that one needs to prevent a monopoly or oligopoly by certain universities, restricts the quota for an individual law school to no more than 150. It is surmised that this is premised on the total entry quota of 1,200 in the prior JRC proposal, assuming the establishment of between eight and ten laws law schools nationwide. The idea of trying to restrict the law school entry quota to a level based on the current number of successful bar examinees, however, risks harming the objective of introducing law schools.

The method of selecting law school entrants and the appropriate quota should be pushed in the direction of securing the autonomy of universities. In the case of foreign countries also, there is no similar case of the government setting uniform entry quotas and allocating these to each school, which means that the proposed system is not inherently a superior one.

Even from the point of view of individual law schools, there are certain schools aiming to cultivate a small number of top-quality students numbering between 50 and 100 students, while there may also be law schools who aim to cultivate internationally competitive and diverse students; in the case of the latter a large number of students is needed to achieve economies of scale.

As long as entry quotas are restricted to a minimum, then the issues facing the current bar examination will only change form but remain in substance.

4. High Cost of Legal Training

Since, in order to become a legal professional, one must graduate from university and then enrol in a law school, thereby paying expensive tuition fees once again, concerns have been raised that this obstructs the socially disadvantaged from entering the legal profession. Even if law schools are supplemented with various scholarships the problem of high cost structures itself will be difficult to resolve.

IV. Prospects

As we have seen above, the current PCJR proposal faces tough challenges from academia, the legal profession and the majority of citizens. The reason is that the current proposal is removed from the original intent of the reforms to legal education and training of legal professionals. In the future, through debate in the National Assembly, these issues must be addressed and reform should be made so as to match form with substance. So long as this does not occur, it is not expected to pass through the National Assembly easily. The problem is that since certain aspects of the reform that the majority desires impinge upon the vested interests of the legal profession so that the reforms are facing fierce resistance from these groups. Accordingly, there needs to be an open forum for debate in order to meet the demands of the various stakeholders in a rational way.

KEYWORDS : legal education, law school, legal profession, Judicial Reform Committee, Committee for the Implementation of Judicial Reform, practical education