Proposed Legal Education Reform in Korea: Toward Professional Model

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1. Introduction

This paper is designed to describe a proposed university legal education reform initiative toward a graduate-level professional institution and its prospects following a brief discussion of the present legal education and professional training in Korea. The reform idea which will be presented is basically what was proposed by the Presidential Commission for New Education Community in 1999.[1] Incidentally I had headed the task force for the Commission for the reform proposal. I was also involved in another presidential commission, that is, Presidential Commission for Judicial Reform as one of its members. This latter commission made its own legal education reform proposal that was more or less for the continuation of the present Judicial Research and Training Institute in its basic concepts and structure.[2] The discussion that follows will include counter-

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1) See Choi Dai-Kwon, et al., **Bophakkyoyuk jaedokyeson yonku: 'haksahu bophakkyoyuk'ui doip** (Study on Legal Education Institution Reform: Introduction of 'Post-Undergraduate-Degree Legal Education'), (Seoul: Presidential Commission for New Education Community, August, 1999). See also Choi Dai-Kwon, "Hankuk bophakkyoyukui jonmang: 'Haksahu bophakkyoyuk'ui doipul jungsimuro" (Prospect for Legal Education in Korea: With the Special Focus on 'Post-Undergraduate Degree Legal Education'), in **Legal Education Toward the New Millenium,** paper presented at Presidential Commission for New Education Community and Yonsei University Law Research Institute sponsored conference held on June 10, 1999, pp. 11-24; Choi Dai-Kwon, "Bophakkyoyukui munjaejomkwa kyesonbangan: 'haksahu bophakkyoyukui munjaejomkwa kyesonbangan: 'haksahu bophakkyoyuk'ui doipul jungsimuro" (Problems in Legal Education and Reform Ideas: With the Special Focus on 'Post-Undergraduate Degree Legal Education'), in **Bophakkyoyuk kyesonui banghyang** (Direction for Legal Education Reform), paper presented at Korean Legal Center sponsored conference held on June 29, 1999, pp. 11-20.

2) See **Minjusahoelul wihan Sabopkyehyok: Daetongryong jamunwiwonhoe bogoso** (Judicial Reform for Democratic Society: Presidential Commission Report), (Seoul: Presidential Commission for Judicial Reform, 2000), pp. 391-437, esp. 427-430; **Sabopkyehyok jonghap bogoso: yoyakbon** (Final Report on Judicial Reform: Abridged Version), (Seoul: Presidential Commission for Judicial Reform, December 1999), pp. 125-139, 197-98. See also an earlier paper for a public hearing, Kim Il-su, "Bopjoin yangsongjaedoui kyehyokbangan" (Reform Idea for Legal Professional Training Institution), **Sabopkyehyokchujin kongchonghoe: bopjoin yangsongjaedo mit bophakkyoyuk** (Public Hearing for Judicial Reform: Legal Professional Training Institution and Legal Education), held on November 29, 1999, (Seoul: Presidential Commission for Judicial Reform, 1999), pp. 1-37. ↗

arguments to major criticisms directed toward a graduate-level professional legal education reform idea since its pronouncement. The main thrust of this paper will be, however, in providing a sociologically based rationale to a graduate-level professional law school.

A few precautionary remarks may be in order. In our part of the world, all three terms, profession, specialization and two year community college, share the same Chinese characters 專門 in indicating every one of them, 專門職, 專門化 and 專門大学. When the term professional education (專門教育) is used, therefore, it is not understood at all or confused with specialist education (專門家教育) in the most of time. When seminars and public hearings were held for a reform idea toward a graduate-level "professional" legal education, the question of how legal specialists can be trained in the three years program was one of the questions that were the most frequently asked.[3] I wonder how the situation is with the term 專門 in Japan. One who finishes professional law school becomes simply a lawyer (a member of the legal profession) upon passing the bar examination, but not necessarily a legal "specialist" right away. A lawyer becomes a legal specialist in a specific field of law only when he acquires a specialty with, say, 10 years or so of experiences in that area of law. Here, the term profession is used as one indicating a sociological concept composed of at least the following four elements: education and training in special knowledge and skill (like law and medicine); strong ethical standards required; community's stake and interest in the knowledge and skill and in ethical standards; and community-issued license determined on the basis of proof through test that a licensee meets the requirements of having acquired adequate special knowledge and skill and ethical standards. With community-issued license, the professional groups enjoy a community-endorsed monopoly in their practice. Profession is separated from trade or business.

↘ The Commission's legal education reform proposal heavily reflects the sentiments and opinions of the legal profession in general. It proposes to retain the basic structure and concepts of the present legal education and training institution intact in its recommendation with a few minor changes adopted from the proposal of the Presidential Commission for New Education Community like a proposed educational requirement that only those who earned an undergraduate law degree or a certain number of credit units in university law courses are entitled to take the bar examination. See "Daehan byonhyop bopjokyehyokae kwanhan kyonhae" (Korean Federation of Bar Associations' Position on Reforms in the Legal Profession), **Bopyulsinmun** (Law Times), April 3, 1995 issue; Song Ki-bang, "Bophakkyoyuk kyesonui banghyang" (Direction for Legal Education Reform), **Bophakkyoyuk kyesonui banghyang** (Direction for Legal Education Reform), paper presented at Korean Legal Center sponsored conference held on June 29, 1999, pp. 21-31.

3) See, for example, Yang Seung-Kyu, "21 saekirul hyanghan bophakkyoyuk" (Legal Education Toward 21st Century), **Bophakkyoyukkwa bopjoyangsongjaedoui kyehyokbangan** (Reform Ideas for Legal Education and Professional Training), paper presented at a symposium organized by a group of professors who oppose to a graduate-level professional law school and held on June 15, 1999, p. 6. Many others naively think, however, that legal specialists in various specific fields of law would be produced right out of a graduate-level professional law school education. Kwon O-seung, **Sabopdo service da: bopjo kyehyok** (Administration of Justice is also a service: Judicial Reform), (Seoul: Mirae media, 1996), p. 110. Yang refutes that proposition.

The concept professional education is often confused with practical training in Korea. Professional education is often described also as being composed of "theory and practice" (理論・実務).[4] Here the term practice will be used to denote what practitioners do in their daily practice like filing an affidavit, a reply, an indictment and the like. Thus "practical training" like one in "how to write your affidavit" is used as being relevant to but not part of professional education beyond legal writing, professional ethics, and clinical training that are considered as basic in professional training, as will be seen. Professional legal training means training lawyers who think as a lawyer in a professional position. Practical training can best be provided on the job in practice. Professors are prone to theories. Law professors are no exception. Theoretically critical papers produced by law professors are one of the most important standards with which to evaluate their professorial quality. It will be no surprise that knowledge and skill instilled in young lawyers even at a graduate-level professional school smell too theoretical from the practitioner's perspective. Practitioners' complaints are alway "they do not know anything" practical. What is important in professional training is training in analytic ability, logical thinking, and creative mind with whatever law materials one encounters.

2. The Present State of Legal Education[5]

Presently university legal education in Korea is a four year program consisting of one year of general liberal education and three years of legal education. Overall it may better be characterized as one of university's liberal arts program more than professional education. For a university legal education, even a university education itself, is not required for one to become a lawyer in Korea. No doubt, the majority of those who pass the national bar examination each year are university law graduates. But quite a substantial portion of those who pass the bar examination are non-law graduates whose university major lies in others than law such as social sciences, humanities, natural sciences, and engineering.[6] Once in a while, moreover, even one or two self-taught, high

4) Hyon Byong-chol, et al., **Bophakkyoyukjaedo kyesonae kwanhan yonku** (Studies in Legal Education Institution Reform), a study supported by Korea Research Foundation, (December, 1997), pp. 10 and 82. See also Kwon O-seung, **Sabopdo service da: sabopkyehyok,** pp. 83-84 and 109-110; Song Ki-bang, "Bophakkyoyuk kyesonui banghyang," pp. 24-25. They think that particularly a graduate-level professional law school education consists of instructions of theories and practice.

5) Choi Dai-Kwon, "Legal Education in Korea: Problems and Reform Efforts," **Seoul Law Journal,** v. 29 no. 2, pp. 104-122 (1988); Choi Dai-Kwon, "Hakbukyoyukkwa bophakkyoyuk," (Undergaduate and Legal Education in Korea), **Seoul Law Journal,** v. 37, no. 2, pp. 81-114 (1996).

6) Statistics of Seoul National University Students and Graduates Who Passed the Bar Examination by Their Majors Against the Total Number.

According to a daily newspaper report, about 1,000, that is, roughly 70% out of 1400 Seoul National University students and graduates who passed the first round test of the bar examination in 1999 are those of non-law majors. Chosun ilbo May 18, 1999 issue. An official statistics on the entire ↗

school graduates pass the bar examination whereby becoming a national hero in the mass media.

Nevertheless, there are roughly 80 law departments in the nation, whose exact title varies from university to university. The most popular titles include college of law, department of law, and department of law and political science. They together produce about 9,000 law graduates nation-wide each year. And yet there is the government-imposed national quota according to which only 700 out of the total number of more than twenty thousands applicants pass the bar examination in 1998 and 1999 and 800 in 2000[7] and to become lawyers following a two-year training at the Judicial Research and Training Institute. Up to the 1970s, less than one hundred (with two exceptions of 150 or so) passed the examination (once only four passed) each year, and in the 1980s and up to 1995 the quota was unvarying 300. According to a "big deal" between the public-backed reform-minded forces and the established legal profession, the quota was set to increase by one hundred each year from 500 in 1996 up to 1,000 in year 2,000, and yet the quota was again frozen to 700 in 1998 under a strong pressure from the legal profession and the judiciary on the ground of the nation's economic difficulties. Accordingly only 700 passed the bar examination in the year 1999. Again the quota increased to 800 in 2000 and 1,000 in 2001.

Even with the increased quota of 700 or 800, only a dozen or so of law departments nation-wide are successful enough to have one or more of their graduates pass the examination. The rest of the law departments practically do not have the hope of having one or more of their graduates ever pass the examination. Then, a legitimate question naturally is what are the goals to achieve with university legal education. This question equally applies both to the absolute majority of the law departments and to those most of whose graduates pass the examination such as the Seoul National University College of

↘ successful applicants who are classified according to their university majors is not available.

Year	Total No. of Those Who Passed the Bar	No. of Total Seoul National University Students and Graduates and No. of Non- Law Students and Graduates	Presently Enrolled and Graduates
1995	308	138 (Non-Law: 36)	66 (Graduates: 72)
1996	500	195 (Non-Law: 62)	51 (Graduates: 144)
1997	600	224 (Non-Law: 101)	47 (Graduates: 177)
1998	700	195 (Non-Law: 105)	87 (Graduates: 108)
1999	709	273 (Non-Law: 113)	65 (Graduates: 95)
2000	801	336 (Non-Law: 132)	59 (Graduates: 145)

7) For statistics of the yearly total number of applicants and of the number of successful applicants, see **Kosi yonku** (Kosi Journal), Month of January (1999), pp. 189-193; **Kosikye,** Month of January (1999), pp. 252-253.

Law.

In the case of the latter, however, the classes that teach the examination topics such as constitutional law, civil law, criminal law, administrative law, commercial law, criminal procedure, and civil procedure are packed with both law and non-law students, and other law classes teaching non-examination topics, particularly, the "basic" topics such as sociology of law, philosophy of law and legal history, are largely neglected or deserted. Consequently, a balanced legal education as such is not achievable even in the nation's top colleges of law. And hundreds upon hundreds of non-law students across the university department lines attend law classes while deserting classes of their own departments to prepare for the examination. With a measure of exaggeration, therefore, the entire campus has turned literally into a giant preparatory institution for the bar examination in the case of the nation's top universities. Consequently, even professors of other departments than law are sufficiently alarmed to demand for university legal education reform to save university's other undergraduate education. They feel that the very reason of their departments would be eventually questioned because students of their own departments are not interested in classes offered by their departments but law. Not only those departments, but the entire university itself and the academism inseparably associated with it would be indeed at stake.

Why are even a few thousands non-law students motivated to take law classes and to take the bar examination? No doubt, they have contributed to the ever increasing competitiveness with the bar examination. Two factors may be suggested to explain the phenomenon: one a socio-economic, and another an institutional one with the very nature of the bar examination. A university graduate cannot definitely find a better-paid, more-secured job or career in other fields than law. This sentiment has acquired further urgency following the economic crisis and the IMF bailout with mass lay-offs everywhere. The social demand for young bright lawyers thus far has been such that a beginner's monthly after-tax-net income was 5 million **won** or more (roughly 5,000 US dollars) whereas a beginning college graduate in other fields like a well-paid big corporation would earn about 1 million or slightly more **won** monthly. In terms of job security, a lawyer's one has no comparison with other jobs. Once you pass the national bar examination, then your privileged life-long social status of the "natural aristocracy" in Tocqueville's terms is guaranteed. Therefore, self-confident college students and graduates alike with disregard of their majors are sufficiently motivated to take the high risk of preparing for the national bar examination for several years albeit with no guarantee of passing. A successful passing of the bar examination with a guaranteed future nicely matches, moreover, the popular folk tale of a poor Confucian scholar who after years of arduous study passes the royal examination (**kwako sihom**) with the royal blessings and becomes a touring inspector (**amhaengosa**) wielding the power of dispensing justice to the oppressed people in the dynastic days. The national bar examination naturally produces also a large number of

those who spend several years for their full-time preparatory studies during their college days and thereafter in their late twenties, their thirties, and even their forties and yet end up with no success. They become potential or actual "failures in life" called **kosi nangin** who are too old to get a beginner's job. It is estimated that if you pass the examination by your age 35 or 36 your balance makes even between your gains and losses in terms of your initial investment for preparation and your income from practice in law thereafter.

Along with university legal education described above, cram courses increasingly prosper as years pass with an enlarged quota for the bar examination, thereby creating a huge examination-preparation-related business market targeted for an increased number of aspirants. Near the nation's top universities, there have developed the so-called "**kosi** villages" consisting in private cram course institutions providing for instructions in exam topics and skills, book stores with cram course textbooks, private libraries, and rental houses for those who want room and board to spend time efficiently to attend cram courses, to use library there, and others besides supermarkets, neighborhood stores, offices and residential houses along the streets and alleys. The most well-known among them is the one in **Sinlim** District called **Sinlim kosi** village near the Seoul National University campus.[8] Nation-wide about 100 thousand young men and women are estimated to prepare for the national bar examination and the higher civil service examination. Twenty to thirty thousands among them are estimated to constitute clients for the **Sinlim kosi** village. Both law and non-law students and graduates are coming there from all over the nation to conduct an intensive preparatory study. Those who pass the bar examination are on average 30 years old in the very recent years. Therefore one who passes the bar examination is estimated to spend three to four years there to prepare for it following university graduation and two and half years of compulsory military service. There one is estimated to spend about 800 thousands to 1 million **won** monthly, in case he or she is taking full cram courses offered there with textbooks plus room and board.

Another factor is related to the bar examination itself. Firstly, no formal educational requirement does exist for the examination at all. Thus, no entry barrier appears to be existing to the privileged legal profession, a very appeasing, populist idea for the mass. The opposition to the requirement of one year of college education in the 1950's and three years of college education in the 1960's appealed to the populist sentiment to the effect that "it is regretable to be unable to go to college for the lack of financial resources. It is more so to be unable to take the national examination now for the lack of college education." The same sentiment still exists as a cultural hindrance to the strengthening of educational requirement for the legal profession. The actual barrier exists in the form of quota for the yearly successful applicants to the examination, which the established lawyers

8) See a newspaper report on **kosi** villages, aspirants who are preparing for the bar examination there, and their life, **Chosun ilbo** May 13, 18, and 19, 1999 issues.

enjoy immensely having. It is actually because of the potential threat to the small quota system that the established lawyers in general oppose to the idea of graduate-level professional legal education more than because of anything else, as will be seen.

Secondly, the very nature of the questions asked in the bar examination is such that anyone who has a good memory for what he reads more than an analytic ability or a logical mind can earn good grade points. Consequently, one who has no university education, law or non-law, does not have any particular disadvantage over the other who has university legal education in so far as he has a good memory and conducts an intensive exam preparation like attending cram courses. The bar examination is composed of three rounds at present. The first round consists in multiple choice tests, which function more as a screening stage to make the size of the second rounders a manageable one from over ten thousand applicants to a few thousands. As years pass with the questions asked in the previous first rounds eliminated as required, the questions asked in a simple multiple choice format but in order to make them difficult to answer are full of twists, pitfalls, and equivocal ones, whose quality no right-minded person would call educational or proper for the selection of prospective lawyers, now giving rise to an increasing number of litigation to challenge them against the governmental department in charge.

The second round, the most important among the three, consists in essay style tests for questions like "Explain the freedom of expression!" whose nature is more suitable for a scholarly paper to be written in a short time span like one hour or less than for testing prospective lawyers for their analytic or logical mind. Therefore, one who happens to memorize a particular chapter or sub-chapter bearing the very title of the test question from a textbook and renders his memory well on his test paper is likely to score an excellent grade point. In the recent years with the mounting criticism against the kind of test question, questions asked in a case format have been increasing for the second round, but the dominant is still to ask in the form of simple but abstract theoretical questions like, for instance, "Control of power" for constitutional law test. The third round consists in interviews and oral tests for those who passed the second round. The second round serves actually as the **de facto** final round, however, because one rarely fails in the third round.

With the kind of the bar examination, it is no surprise that not only a few thousands of non-law university students and graduates but law students and graduates also, actually the nation's countless talents, are spending their time for years to conduct their preparatory work for the examination which consists in nothing but memorization of what are likely to be asked in the tests. But only a small percentage of those who did the preparatory work for years make a success in passing the bar examination and becoming the privileged lawyers while a far larger percentage eventually become socially useless or marginal persons. In the process, the goals of both balanced university undergraduate education and legal education are rendered largely as unachievable. Today high school education in Korea is criticized as the failure in terms of humanities education because it is

oriented mainly toward preparatory instructions for highly competitive college entrance, particularly for entrance to prestigious universities, and everything else is neglected. Now, many of those who entered the prestigious universities turn to preparatory work for the bar examination barely after one or two years of university education while neglecting everything else offered or available on campus.

Many who became lawyers in the way described above may become good lawyers, perhaps for criminal and civil litigation, due to their intelligence and talent, but, for the lack of even well-built university undergraduate educational background, would encounter difficult time to become experts and specialists in various specialized areas of law such as international trade, banking, securities, patent law, corporation, environmental law, and negotiation. This explains a shortage of internationally competitive legal specialists in Korea today. In the recent years, moreover, various patterns of unethical practices in the legal profession including the judiciary and the prosecutors offices have been unearthed to the attention of the public, which led to the reform movements underway in the last several years.[9] It is by no means unreasonable to think that those unearthed incidents of unethical practices (such as **Uijongbu** and **Taejon** incidents) are only exposed parts of icebergs whose bigger portions are under water, and that they are in a large measure associated with the way in which lawyers are recruited mainly through the kind of tests rather than through normal university education, not to mention university's professional legal education. Professional ethics is one of the urgent problems to deal with for the legal profession today.

3. Justification for University Graduate-Level Legal Education

In the history of legal education and training, there once was a two year academic and practical training institution called Graduate School of Law (attached to Seoul National University)[10] for those who passed the bar examination in the 1960's. Those who

9) For a discussion on the unearthed unethical practices and related topics, judicial independence and judicial reform, see Choi Dai-Kwon, "The Judicial Functions and Independence in Korea," **Seoul Law Journal,** v. 40, no. 2, pp. 53-66 (1999).

10) For a description of the Graduate School of Law, see Pae Jae-shick, "Bopjokyoyukjaedo: sabopdaehakwon kwa sabopyonsuwon ui bikyokochal" (Legal Professional Education Institution: A Comparative Study of the Graduate School of Law and the Judicial Research and Training Institute), with an English summary titled "The Graduate School of Law including Continuing Education for Lawyers and Role of the Judicial Institute," in **Hankukui bophakkyoyuk** (Seoul: Korean Law Professors Association, 1971), pp. 221-250, esp. 235-248; Yi Sok-son, "Hankukui bopjosilmukyoyuk-jaedo (Institution of Legal Professional Education in Korea), in Kim Tschol-su, et al., **Bophak-kyoyukkwa sabopjaedokyehyok** (Legal Education and Judicial Institution Reform), (Seoul: Seoul National University Press, 1988), pp. 152-3; **Soulbopdae osipnyon:** 1946-1996 (Fifty Years History of Seoul National University College of Law: 1946-1996), (Seoul National University College of Law, 1997), p. 15.

completed the two year program at the school were awarded Master's of Law degree (if they already had a bachelor's degree) plus lawyer's license. The Graduate School was, however, replaced overnight by the Judicial Research and Training Institute, which has been administered by the Supreme Court up to the present time. Prior to the Graduate School of Law system, an one year apprentice institution called **Pansasibo** was the norm for the training of the future career judges following one's passage of the bar examination. In the meantime, serious academic discussions have been incessantly conducted in the law professors circle for legal education institution and pedagogic methodology reforms including a graduate-level legal education idea and case methods since the 1960's. As a result, a five year legal education (two year pre-law and three year law) program was adopted officially by Seoul National University as a part of its 10 year development plan in the 1970's,[11] but it was simply not implemented. And the present four year law program (one year humanities and three years law) has been in its basic pattern unchanged thus far, although there were various individual experiments in instructions with new law courses added in the curricula.

The widely felt popular demand for judicial reforms that arose out of the various forms of irregularities and unethical practices in the legal profession mentioned above have provided a strong impetus to a legal education institution reform effort, this time, toward a graduate-level legal education institution. In 1995 a Presidential Commission initiated an action to reform the present legal education institution toward a graduate-level institution.[12] That action led to a hot debate pro and con on the reform idea between a group of reform-minded professors on the one hand and the established lawyers including judges, prosecutors, and another group of professors on the other. Due to the vehement resistance, however, the reform initiative succeeded only in increasing the size of the quota for those who are to pass the bar examination up to 1,000 by year 2,000 with the yearly increase of 100 from 500 in 1996 whereas the program of graduate-level legal education as such became a casualty.

Another debate pro and con on the reform toward graduate-level legal education has started again with Presidential Commission for New Education Community in 1998. The Commission has finally adopted its recommendation in favor of the reform to that direction in 1999. A final governmental decision has not yet been made, however, by having let another Presidential Commission for Judicial Reform engage in further discussion on the issues related to educating and training of lawyers and made its own proposal. The latter commission eventually in December, 1999, recommended among many other judicial

11) **Souldaehakkyo baljonjangkikyehoek :** 1987-2001 (Seoul National University Long-Term Development Plan: 1987-2001), (Seoul National University, 1987), pp. 51 and 91.

12) See Yang Seung-du, et al., **Bophakjonmundaehakwon sollipbangan** (Study on the Establishment of Graduate-Level Professional Legal Education Institution), Report on Education Policy Study Project (July, 1997).

reform ideas its proposal of non-university-related, practitioner-dominated professional training institution consisting in a two year program plus one year compulsory practical training, administered by the Supreme Court, for those who already passed the bar examination, another version of the present Judicial Research and Training Institute. Now it is up to President whether to adopt a graduate-level professional legal education institution or a changed version of the present judicial training format or to maintain the **status quo.** Thus, the debate on the issue has been kept alive since albeit quiet these days.

Nevertheless, it is strongly believed that a reform toward graduate-level legal education is eventually going to take place sooner or later in Korea. Otherwise, and especially if the present situation continues, Korean society cannot meet the increasing social needs for specialized legal services in various sectors beyond litigation-related ones and cannot survive the world-wide competition in the legal service market in the new millenium. Recently inadequacy of training in concepts and skills of lawyers trained under the present institution for dealing with contemporary business-related legal problems has been noticeably and widely voiced in the business circles. Interesting enough, popular demand for reform toward that direction is as well quite strong as shown in several opinion surveys.[13] The sense of urgency of the sort is one of the reasons why Presidential Commission for New Education Community has adopted its recommendation toward graduate-level legal education among others.

Now, then the questions of why a reform toward graduate-level legal education is needed and how a graduate-level legal education in Korean society can be justified must be answered. Firstly, social demand for legal specialists in various fields of law must be pointed out as a major ground for reform toward graduate-level legal education. Korean society began to feel the increasing need for legal specialists in such diversified fields of law as intellectual property, trade, banking and securities, environmental protection, patent, and legislation including policy-making and analysis beyond simple civil and criminal litigation-related legal services as it became fastly industrialized and globalized. An outstanding fact is that there are very few lawyer-specialists in diversified fields of law other than litigation. Recognition of such need for lawyer-specialists has arrived initially only in the form of shock felt by Korean government's representatives when they met American counterparts like Carla Hills and Mickie Kanto in the Korea-U.S. trade talks a few years ago. Not a single Korean representative unlike their American counterparts was

13) Around 70% of respondents in several public opinion surveys are in favor of the kind of graduate-level professional legal education adopted by the Presidential Commission for New Education Community. **Bophak mit uihak kyoyukjaedo kyesonae kwanhan yoronjosa** (Opinion Survey on Legal and Medical Education Institution Reforms), a Korea Research Center conducted opinion survey at the request of the Presidential Commission for New Education Community, (Seoul: Korea Research Center Ltd., June 1999), pp. 5 and 19; and two TV stations conducted opinion surveys, respectively one conducted by EBS on July 17, 1999 at its **Nansang toron** program, and other conducted by KBS on September 16, 1999 at its **Jaengjom toron** program.

a well-trained lawyer-negotiation expert at that time. A much similar experience was obtained when Korea tried to convert its short-term loans into medium- and long-range ones following the economic crisis in early 1998. Korean interests were represented by American Wall Street lawyer Mark Walker in their negotiation. A dearth of banking, securities, and restructuring lawyer-experts including merger and acquisition specialists was another fact noticed under the IMF regime.

Under the present legal education and training institutions as described above, it is not necessarily impossible but very difficult to train young lawyers into such specialists and experts in Korea because of the inadequacy of their undergraduate education and training thereafter to produce them. Presently, for example, it is almost impossible for one to become a patent lawyer equipped with the global competitiveness: lawyers in general lack understanding of sciences and technologies, and engineers have no legal trainings. Another factor that explains for the dearth of such legal specialists is related to the orientation of lawyers that is geared primarily to civil and criminal litigations.[14] Presently, litigation alone brings to lawyers a large sum of remuneration that cannot begin to compare with what they can earn in other fields. And peoples are prepared to pay a large sum of money to lawyers for their litigation-related services, but not for their services as specialists in other fields of law. In any case, the point is that, even if a society-wide consensus is formed to have a sufficient number of such legal specialists, the present legal education and training method is definitely not adequate to meet the goal.

Secondly, a graduate-level professional legal education turns out to be the only choice for university in Korea, if legal education conducted in university is ever required for one to be a lawyer. For the last ten years or so, the nation-wide university reform movement has been heading toward turning its undergraduate education largely into liberal arts and sciences education. In the new model, students enter university initially without their major and, after two years of liberal arts and sciences, come to determine their major in their third or later years, And graduate studies are for specialized fields and for professional education. Then, no right-minded person would like to have law taught in university's law colleges and departments remain simply as one of liberal arts and sciences subjects. At this point, one can notice that historically law has been one of the major subjects studied at university from its beginning along with medicine and theology in the European Continent and that no non-university-law graduate can ever become a lawyer there. In the Anglo-American world, an apprentice system was originally the norm, not university education, for becoming a lawyer. Now, however, university's legal study became a must for a lawyer there as well. In the U.S., moreover, university's graduate-level professional education is now made a requirement for a lawyer.[15] In today's world

14) Choi Dai-Kwon, **Bopkwa sahoe** (Law and Society), (Seoul National University Press, 192), chap. 7 (Bophakkyoyukui jaedokyeson mit jiknunghwakdae: Legal Education Institution Reform and Expansion of Lawyers' Professional Functions), pp. 189-211.

where industrialization and globalization became the trend with increased societal complexity and specialization and increased international transaction and technological innovation, a requirement of graduate-level legal education has a sufficient ground to justify. With undergraduate legal education alone, one cannot be trained to become a lawyer well-prepared for the coming millenium.

Additionally, a graduate-level legal education is presumed to reduce the unusual heat and keenness generated in the nation-wide college entrance competition considerably. As a matter of fact, law and medical departments are the two most coveted of the prestigious university undergraduate departments so that the competition is the keenest there. In case they both are made a graduate-level professional school, according to the education reform proposal of the Presidential Commission for New Education Community, the heat and keenness in entrance competition to college are expected to be considerably reduced, at least to the extent that undergraduate-level law and medical departments are no longer there, especially in prestigious universities. If admission to a graduate-level professional school is determined on the basis of the results of written test, however, a heated preparatory education for entrance to the school will probably take the place of the envisioned college undergraduate education, which will be a university-level repetition of what happens in high school education. Accordingly, admission to a graduate-level professional school is designed to be made on the basis of one's performance in college and/or in an aptitude test (such as LSAT) while an examination of law topics method is avoided by all means. And, whatever his or her undergraduate major may be, one can enter a graduate-level law or medical school on the basis of his undergraduate and other performance if it is good.

Not all those 80 or so undergraduate-level colleges of law and departments of law are expected to become a graduate-level professional school. Only those which meet the strict standards set by the Commission such as a 1 to 12 professor-student ratio, a law library, and other facilities can be made a graduate-level professional law school. A gradual approach will be the norm here for that matter. Initially a half dozen or so number of professional schools are expected to appear on the scene. Gradually and eventually, however, a few tens will become a graduate-level professional school nation-wide. The rest of the undergraduate law departments will remain as one of the university-wide undergraduate programs. Therefore, university administrators are expected to have a choice of transforming their university law department into a graduate-level professional school or retaining it as an undergraduate program.

Thirdly, a graduate-level legal education has implications for the professional legal ethics. Undergraduate humanities education preceeding to professional legal studies may not guarantee the ethics of the lawyers but will certainly enhance the chance to instill

15) Choi Dai-Kwon, "Undergraduate and Professional Education in America," **American Studies,** no. 18, pp. 79-90 (1995).

humanism, ethics, and morality in them more than the present university education. The widely noticed unethical practices and irregularities in the legal profession are in the main ascribed to the failures in the nation's high school and university education in terms of humanities education. Best high schools are practically no more than a preparatory school for entrance to prestigious universities so that subjects, skills and drillings necessary for entrance examination and aptitude test are given the priority and everything else including humanities, creative thinking, and analytic ability is neglected. Basically the same thing is more or less repeated in university education since an entering student has to determine his major at the time of his entrance, beyond whose confinement he has little chance to explore or develope through his undergraduate education and perhaps his later life as well in terms of his intellectual horizon. The same situation gets more serious for those who aspire to take the national bar examination or higher civil service examination, whether they enter law college or other department of university, since presently they engage in preparatory drillings for the examination as soon as they enter university or following a year or two of university education thereafter. University undergraduate education reform toward liberal arts and sciences education and strengthened graduate programs for specialized and professional studies as described above is designed at least partly to cure the situation.

A theory that gained the plausibility in explaining how possibly two practicing lawyers who were recently caught as having engaged in outrageously unethical and illegal practices came around to become such unscrupulous lawyers has been offered as follows: interesting enough, they both were law graduates of the nation's most prestigious university; they became practising lawyers following a few years of public service respectively as a public prosecutor and a judge following their passage of the bar examination; they were indeed the top students from their elementary school through their bar examination; otherwise, they would not have been able to enter the nation's top university, to pass the bar examination and to became for a few years governmental lawyers whose position was undoubtedly accompanied by the unequal authority and social prestige; once they came to practice, it is only natural for them to aspire also to be quickly one of the most successful practicing lawyers by all means with no bounds to their ambition, because a drive to be on the top position was so deeply ingrained in their personality.

Presumably an undergraduate education would provide high school graduates with more time to learn what life is and to pond over their future in society rather than exam skills and techniques before proceeding to a professional education and training. Equally presumably, then, college graduates would make a much more mature decision for their future than high school graduates, when they enter a graduate-level professional school. And that also would mean that they have the second chance to enter a prestigious university if they are a slow developer in their scholastic achievement so that they are

presently students of less prestigious university. The present undergraduate education and undergraduate legal education combined with the present bar examination definitely deprive students of humanities education, a mature decision making for their career, and the kind of second chance to upgrade their potentiality through university education. It is in these senses that an idea of reforming the present Judicial Research and Training Institute alone with everything else intact, which is proposed by many of those who resist the reform idea of introducing a university graduate-level legal education,[16] is undoubtedly deficient. It would provide no solutions to the problems caused by the present university undergraduate legal education and by the present bar examination. Instructions conducted presently at the Institute consist basically in practical teachings of how to write a judicial opinion, a formal indictment, a pleading, an answer, and things like that by practitioners. Courses offered there in various fields of law are not compulsory so that they are not seriously taken. Further, there is no reason why the practical trainings conducted there should be financed by the government since presently more than a half to two thirds of the graduates of the Institute go to practice upon their graduation.

Another argument waged against the graduate-level professional education in Korea is that it additionally requires three more years of schooling and accompanying extra educational expenses, especially for parents, which amounts to a waste of time and money. One may notice, however, that on average those who pass the bar examination and enter the Judicial Research and Training Institute are 29 to 30 years old, which means that they spend three to four years of preparatory study just to pass, particularly the first round of, the examination, many at one of the "**kosi** villages," as mentioned above. Therefore, fourthly, the graduate-level legal education institution in the Korean social context is in a sense designed to let them have university's formal professional legal education and pay necessary costs for three years for a better trained lawyer instead of self-taught and/or cram course "private" legal education and expenses for three or more years. In a positive thinking, an additional schooling time has to be taken and an additional expense paid, if they are necessary to train better lawyers and legal specialists needed for society. The present legal education and recruiting system for the lawyers takes definitely less years of formal schooling and less formal educational expenses, but not necessarily the less time and money, as seen above. The present system has been churning out perhaps cheaper but less trained and intellectually and ethically less qualified lawyers for society!

Still another argument suggested against the graduate-level legal education is that it is an American model[17] whose legal system is different from the Civil Law family to which

16) This view is taken by the absolute majority of lawyers in practice including judges and public prosecutors. See "Daehanbyonhyop bopjokyehyokae kwanhan kyonhae" (Korean Federation of Bar Associations' Position on Reforms in the Legal Profession), **Bopyulsinmun** (The Law Times), April 3 of 1995 issue.

17) For a discussion of American model of legal education, see Choi Dai-Kwon, "Undergraduate and ↗

the Korean legal system belongs and therefore that an American style law school system does not agree with Korean realities without specifying what that realities are. Some point out that American system is a case law system whereas a Civil law system is a code law system without ever indicating how differently or badly an American style graduate school in a Civil Law country would fare because of such a difference. Needless to add, the code law in the Anglo-American world is today as important a source of law as that in the Civil Law system. And the cases, particularly the appellate court decisions, in the Civil Law are functionally as important as in the Anglo-American law, although jurisprudentially they are not regarded as a source of law as such in the former unlike in the latter world. At this point, one comes to notice that **Übung** in German legal education and bar examination[18] is as important a method of instruction and test as the case method in American legal education and test. A German **Übung** is practically no more than a German style case method, which is designed to teach law students their analytic ability and logical mind with real and imagined cases. Of course, the proposed graduate-level professional legal education in Korea also presupposes a case method designed to meet Korean needs for class room instruction and the bar examination. A case method is going to be an important instruction tool, but how important it is **vis-a-vis** lecture, seminar, and other forms of instruction has to be answered on a serious experimental basis in a due course.

In today's world, interactions and mutual influences between systems and among

↘Professional Education in America," **American Studies,** no. 18, pp. 79-90 (1885); Choi Dai-Kwon, "Mikukui hakpukyoyuk mit jonmunkyoyuk: jonmunbophakkyoyukul jungsimuro" (Professional Legal Education in the U.S.), **Seoul Law Journal,** v. 37, no. 1, pp. 85-100 (1996); Choi Dai-Kwon, "Mikuksahoeae issosoui jijok hurumae kwanhan yonku: bophakkyoyukul jungsimuro" (A Study of the Intellectual Currents in American Society: With a Particular Focus on Legal Education), **American Studies,** no. 20, pp. 159-186 (1997). See also John Henry Merryman, "Legal Education There and Here: A Comparison," **Stanford Law Review,** v. 27, pp. 859-878 (1975); William P. **LaPiana, Logic and Experience: The Origin of Modern American Legal Education,** (New York and Oxford: Oxford University Press, 1994); Robert Stevens, **Law School: Legal Education in America from the 1850s to the 1980s,** (Chapel Hill: University of North Carolina University Press, 1983); Robert MacCrate, ed., **Legal Education and Professional Development—An Educational Continuum, The Profession for Which Lawyers Must Prepare,** student edition, (Chicago: ABA, 1992).

18) For German legal education and bar examination, see Yi Si-u, "Dokilae issosoui bophakkyoyukui hyonhangkwa jonmang," (The Present State of German Legal Education and Its Prospect), **Hankuk kyoyukbop yonku** (Study on Education Law in Korea), (Seoul: Hankuk kyoyukbophakhoe, 1995), pp. 102-122; Choi Kwang-jun, "Dokilui bophakkyoyuk," **Bopkwa sahoe** (Law and Society), v. 9, pp. 63-78; Northrhein-Westfälisches **Handbuch der Juristenausbildung: Hinweise, Gesetzestexte, Anschriften** (Düsseldorf: Justisministerium des Landes Nordrhein-Westfalen, 1994); Alfred Rinken, **Einfuhrung in das juristische Studium: Juristenausbildung und Juristenpraxis im Verfassungsstaat,** 3rd. ed., (München: C. H. Beck, 1996); **Die Reform der Juristenausbildung auch unter dem Aspekt der gesamtdeutschen Juristenausbildung** (Bonn: Varus Verlag, 1992); Wilhelm Karl Geck, "The Reform of Legal Education in the Federal Republic of German," **American Journal of Comparative Law,** v. 25, pp. 86-119 (1977). See also Dietrich Rueschemeyer, **Lawyers and Their Society: A Comparative Study of the Legal Profession in Germany and in the United States** (Cambridge: Harvard University Press, 1973).

cultures and countries are the norm, not the exception. So are in the legal world. Once German scientific and systematic methods to jurisprudence including the **Pandekten** system and historical school much influenced Americans in a formative stage of American law school, jurisprudence, and case method.[19] The German institution of constitutional court is a Germanized form of constitutional litigation learned from American idea. Social science approaches to jurisprudence including policy making analysis have been widely influencing German ways of thinking in legal studies, whether or not one acknowledges the fact. There is absolutely no reason to take alarming an American style graduate-level legal education institution in Korea and perhaps in Japan as well. There is equally no reason for few hundred young judges, public prosecutors, practicing lawyers, and law professors to go to the U.S. to study American law at numerous American law schools each year, if American law schools and legal education conducted there offer nothing good or little to learn from. The present Korean legal education institution and bar examination are of Japanese model, not of the German model, although the legal concepts and system in general are of German origin.

In Germany, it takes 13 years, not 12 years, for one to graduate high school. German high school, **Gymnasium,** is a functional equivalent to a Korean junior college where liberal arts and sciences education is conducted. German law students spend on average 6 and half years to complete their legal education in university before taking the first round of their state bar examination.[20] Successful completion of a certain number of lower and upper level **Übung** classes in the public, private, and criminal laws with good grades are required to take the bar examination, but not lecture classes. And it takes two years of practical training as a **Referendar,** previously three and half years, following passage of the first round test before taking the second, the last round of state bar examination, on whose successful passage plus one year of compulsory military service one becomes a lawyer at the age of 29 on average. In state bar examination as well, an exam taker is required to solve given cases. Therefore, an analytic ability is crucial, not memory power. And in terms of lawyer-population ratio there are several times more lawyers in Germany than in Korea. Consequently, it will be much easier for one to join the legal profession in Germany than in Korea. Overall, finally, it is fair to say that the present Korean model of legal education, bar examination, and practical training is far less close to German model

19) David S. Clark, "Tracing the Roots of American Legal Education: A Nineteenth-Century German Connection," **Rabels Zeitschrift für ausländisches und internationales Privatrecht,** v. 51, pp. 313-333 (1987).

20) The general trend in Germany is to shorten the length of time needed for becoming a lawyer in consideration of the much shorter time spent in other EU countries. One method adopted is an incentive institution of **Freischuss,** according to which one can take the first state examination without the penalty of ever losing one of the two chances allowed for taking the examination if he or she takes it before his or her 8th semester. Various legal education reform proposals have been put forward or tested among others to shorten the length of time for legal education and practical training including one which phases out the practical training stage completely.

than the latter to American one. Therefore, it is not correct to argue that Korea's belongs to the Civil Law system and thus that it is wrong for Korea to introduce an American style law school for lawyers, a false analogy.

4. Concluding Remarks: the Prospect

By a rule of thumb, a reform that is undertaken to benefit a great number but disadvantageous to a minority strategically located in society is likely to fail in the face of the vehement resistance of the strategic minority. A reform that is benefitting a strategically located minority at the expenses of a great number is likely to succeed without much resistance. Examples of the latter proposition include ever increasing allowances paid to members of the National Assembly and state subsidies to political parties in Korean contexts. Restructuring of **Jaebol** reform may be an excellent example of the former proposition. Legal education reform toward a university graduate-level professional school is probably its another example.

Normatively speaking, however, it is very hard to understand why legal education reform toward a graduate-level professional model may have to fail because of the resistance undertaken by a tiny minority, that is, the established legal profession (only 5 thousands out of the population of 43 millions) and by a small group of law professors. They are most likely to worry about losing their life-long political and social privileges, their monopolies in the lawyers service market, and their high income that have been taken for granted and that have been possible only with a very small number of lawyers. They probably in the future have to engage in unaccustomed competition with an increased number of better trained young lawyers produced by proposed graduate-level professional legal education institutions. Or many of them just do not want to adjust themselves to changed new environments brought with new educational institutions. Simply, the **status quo** is a beautiful word for them.

Another dimension may be added to the picture of the established legal profession's vehement resistance to the reform proposal toward a graduate-level professional school. The profession as a privileged group hate to lose the control and power of professional legal education and training over aspiring young persons to professors (most of whom are not lawyers in a technical sense) and universities. Under the proposed reformed scheme, professors and universities are going to play a decisively more important role in educating and training future lawyers. In the present legal education and professional training with no requirement of college education, less university legal education, and with the bar examination and training at the Judicial Research and Training Institute, however, the established lawyers and the judicial department that is in a firm control of training at the Institute play the major role in nurturing future lawyers whereas professors and universities practically no role or a minor one at best. In a sense, therefore, the politics of the

established legal profession's resistance to the reform initiative is no more than that of power between the two elite groups and institutions for the intellectual and professional control of future lawyers who would be strategically located in society.

The proposed graduate-level professional legal education is designed to train the young to the legal profession through education, not through examination, in Korea. It is also to make Korean society better prepared for the challenges posed, among others, by expected influx of foreign trained lawyers when service markets are open to international competition in year 2002. It is definitely a better method to produce legal specialists in various fields of law social demand for whose services began to be recognized in the recent years as Korean society becomes increasingly complex with industrial and information revolution and globalization. It is also to make lawyers better qualified for rendering their service to citizens in terms of knowledge, skills, and ethical standards. It is not intended to increase the size of the legal profession as such, but it probably will lead eventually to an increased number of lawyers so that it will also help to reduce lawyers' fees for the benefit of ordinary citizens. It is also expected somewhat to lessen the extremely keen competition in college entrance that is the case today, since the competition is the keenest at college of law in the nation's prestigious universities (along with medical college). Additionally, it is expected to make university undergraduate education normalized as liberal arts and sciences education, in part since undergraduates who are toiling for the bar examination will disappear and engage in their university-related normal activities.

Some are concerned rightly with Korea's unpreparedness for a university graduate-level professional legal education in case the government adopts its idea for realization. Their concern, however, may not be a reason for opposing the idea as such, since philosophically there is no reform measure in the world which is a hundred percent foolproof for implementation, and since there are a sufficient number of law professors including foreign trained who are well-prepared for providing professional education to students if it starts with a manageable small number of schools. Trial and error will be an inescapable facet of human life even with such a professional school, on the other hand.

Some others are concerned with ways by which to train the young to legal scholars. Still others would naively think that a professional legal education consists of "theoretic instruction" and "practical training" as already indicated above. First of all, a professional legal education purports to train students to "think like a lawyer" who has acquired an analytic ability, logical mind, and creative power as a competent lawyer to become a legal specialist in any field of law and practice. For the kind of professional training, a case method is known as one of the best methods. And yet a university professional legal education is likely to be theoretical even with a case method. Of course, its curriculum will include things practical such as legal writing, professional ethics, and clinical courses necessary for training of lawyers. But a professional legal education does not mean to teach students practical matters like writing a petition, complaint, affidavit, or answer as

such, which practicing lawyers routinely do in their everyday practice. A practical training is so envisioned in the proposal as to take place upon a university professional legal education followed by the bar examination. A post graduate practical training can be provided to a lawyer in a systematic fashion, for example, by the Judicial Research and Training Institute for a newly appointed judge, or on the job as he proceeds to go in practice. And it is expected that eventually the majority of legal scholars will be produced out of those who graduated from a professional law school upon a joint, extra, or separate scholarly training. The proposed idea provides for a joint program of law degree and academic doctoral degree as well as for a regular academic doctoral program for future scholars. And the present facilities of the Judicial Research and Training Institute may be fruitfully utilized perhaps to provide a practical training to newly appointed career judges as just mentioned and/or refreshment courses to old timers who have already been judges for some years.

Success with reform toward a graduate-level legal education institution will depend very much upon the nature of the national bar examination. Such a professional school is likely to encounter difficulty unless graduation from it is made a requirement to take the examination, since not many will be interested in attending it at least in a short period of time. Proposed reform toward a graduate-level professional legal education also includes a proposal for changes to such a requirement for the bar examination to the effect that no one can take the examination unless he is a graduate of law school whether or not the school is of an undergraduate or graduate-level and that the first round test of the examination is exempted for those who graduated from a graduate-level law school so that they take just the second round test alone to become a lawyer. Thus far, the national bar examination has been identified almost as an examination for selecting of highly placed state officials such as judges and public prosecutors. With the proposed changes, the bar examination is going to be definitely an examination for becoming of lawyers, and state officials will be selected preferably from among experienced lawyers, at least from among licensed lawyers for the time being.

In any case, the bar examination is expected to undergo such changes that almost all the graduates of a graduate-level professional law school are going to become a lawyer upon passing it. And, except for those that will be successfully transformed into a graduate-level law school, many other present undergraduate-level law colleges will remain an undergraduate institution whose graduates are qualified to take the bar examination and yet whose character is more that of liberal arts and sciences education institution than professional one. And ways of quizzing for the essay style second round of the bar examination also have to be so changed as to have a close intellectual connection with professional law school education including case method instruction.

One way or the other and sooner or later, university legal education is destined for a serious reform in Korea. A reform toward a graduate-level legal education institution

seems to be one of the best choices known thus far. Some propose an idea of retaining the present educational institution of undergraduate law college whose graduation is made requirement for the bar examination. Some others propose a 6 year university legal education program[21] (4 years of undergraduate legal education and 2 years of graduate legal education) combined with completion of the program being made a requirement for the bar examination. Still others particularly in the judicial department propose reforming the present Judicial Research and Training Institute alone with everything else remaining intact. Reform toward a graduate-level 3 year legal education may be rightly judged as superior to all these three reform ideas above in solving a variety of problems posed by the present legal education and bar examination in Korea.

In the years 1998 and 1999, I thought that we were leading in introducing a university graduate-level professional legal education ahead of Japan. Now, if Ritsumeikan university decides to play the leading role in introducing a graduate-level professional law school to Japan, the rest of us in other parts of Asia definitely including Korea will follow suit because your decision is rightly made.

21) Law professors who openly oppose a graduate-level professional law school include those who have had an advanced legal training mostly in Germany. They agree that a drastic reform is needed in legal education. But generally they tend to be in favor of 5 to 6 year program rather than an American model. See **Bophakkyoyuk kwa bopjoyangsongjaedo kyehyokan** (Reform Ideas for Legal Education and Professional Training Institution), (Seoul: Bophakkyoyukkyehyok kongdongyonkuhoe, October 13, 1999), a study conducted by a group of law professors who oppose a graduate-level professional law school idea. See also Choi Myong-ku's comment as a discussant in **Bophakkyoyukkwa bopjoyangsongjaedoui kyehyokbangan** (June 15, 1999), p. 41; Hyon Byong-chol, et al., **Bophak-kyoyukjaedo kyesonae kwanhan yonku** (December, 1997), p. 94.