

# LAW REFORM IN KOREA AND THE AGENDA OF “GRADUATE LAW SCHOOL”

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## I. INTRODUCTION

Korean legal society is undergoing a grand transformation. Parallel to the general tide of national democratization that began in 1987, legal institutions have become a locus for broader political struggles, and the role of lawyers has expanded incrementally.<sup>1</sup> The Korean judiciary system has been a major target of public criticism and demands for reformation.<sup>2</sup> Continued debates have invited a wide range of public attention, but little change has been made until recently.<sup>3</sup> Piecemeal reforms within the judiciary and the prosecution office have been intermittently implemented.<sup>4</sup> However, the backbone of the judiciary system, namely, the system to produce lawyers, has remained intact. Finally, a new master plan has been prepared by the incumbent government, led by President Roh Moo-Hyun.<sup>5</sup> The most ambitious and equally controversial aspect of the plan is the establishment of graduate professional law schools.<sup>6</sup>

This Article will try to present an overall picture of this project, accompanied by analysis of the major issues, focusing on their implications for Korean society. Part II will briefly state the general features of legal education in Korean society. Part III will feature the current location of law departments within the university and in the minds of the general public. Part IV will explore issues relating to the graduate law school. Part V will conclude the Article with some suggestions.

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<sup>1</sup> LEGAL REFORM IN KOREA 6 (Tom Ginsburg ed., 2004); JAMES WEST, A CRITICAL DISCOURSE ON KOREAN LAW AND ECONOMY 139-239 (2002).

<sup>2</sup> See THOMAS B. GINSBURG, JUDICIAL REVIEWS IN NEW DEMOCRACIES: CONSTITUTIONAL COURTS IN ASIAN CASES (2003).

<sup>3</sup> The Supreme Court Report of the Public Hearing 11-12 (July 25, 2003, in Korean) [hereinafter Supreme Court Report].

<sup>4</sup> See CHONGKO CHOI, LAW AND JUSTICE IN KOREA: SOUTH AND NORTH (2005).

<sup>5</sup> See *infra* notes 61-63 and accompanying text.

<sup>6</sup> See *infra* notes 64-71 and accompanying text.

## II. EDUCATION AS A PUBLIC SECTOR

Traditionally, education in Korea has been regarded as a symbol of public interest.<sup>7</sup> The universities have been subject to strong governmental regulations.<sup>8</sup> Approximately 15 percent of the Korean universities are state-run;<sup>9</sup> however, government regulations apply to private institutions as well.<sup>10</sup> The rapid growth of the Korean economy has been substantially assisted by the workforce trained in the universities.<sup>11</sup> Until the early 1970s, fewer than 30 percent of the college-age Korean population received a university education.<sup>12</sup> Amazingly enough, by 2004, the proportion had surged to 81.4 percent.<sup>13</sup> During this period, the number of universities increased proportionately.<sup>14</sup> The overflowing growth in the number of university graduates necessarily changed Korean life and the patterns of the labor market. Naturally, the prestige and practical utility of a college diploma have been substantially impaired.<sup>15</sup> Still, most university graduates are seeking jobs “worthy” of higher education, leaving menial jobs to imported laborers.<sup>16</sup>

The public aspiration toward law practice has withstood time and changes. Since the colonial period under Japan (1910-1945),

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<sup>7</sup> The Korean Constitution manifests the public nature of education. “Fundamental matters pertaining to the educational system, including schools and lifelong education, administration finance, and the status of teachers are determined by law.” REPUBLIC OF KOREA CONST. art. 31, § 6.

<sup>8</sup> See CHUNG KI-OH ET AL., *JISIK KYONGJE REUL WIHAN GYOYUK HYUKMYUNG* [EDUCATIONAL REVOLUTION FOR KNOWLEDGE-BASED ECONOMY] (1999).

<sup>9</sup> Statistics of 2005, <http://cesi.kedi.re.kr> (26 out of 173 universities are public entities).

<sup>10</sup> Private School Law, art. 52 (Law No. 7354, Jan. 27, 2005). Each department is assigned a fixed number of students. Mobility between departments is limited at best. The government strictly governs entrance exams to universities.

<sup>11</sup> KYONG-WHAN AHN ET AL., *A STUDY ON DEREGULATION AND RESTRUCTURE OF THE UNIVERSITY 184-85* (2005) (27 percent in 1970, 55.1 percent in 1995).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 182 (rising from 142 in 1970 to 411 in 2004).

<sup>15</sup> JoonMan Kang, *Sociology on “High Popularity of Three Kingdoms”*, HANKOOK ILBO, Jan. 12, 2004, available at <http://news.hankooki.com/lpage/opinion/200401/h2004011119091424390.htm>.

<sup>16</sup> *Id.* It is estimated there are around 400,000 foreign workers currently in Korea. The Ministry of Justice announced, as of December 31, 2004, that about half of them are undocumented.

law has been one of the most aspired-to occupations.<sup>17</sup> To this date, legal society remains an arena where Japanese influence persistently holds precedential value.<sup>18</sup> For the agenda of graduate law school, currently under heated debates, the Japanese experience provides important guidelines.<sup>19</sup> In recent years, government policy to semi-privatize the state-run universities by way of converting them to public corporations (法人) has been suggested.<sup>20</sup> Here, again, the incidents of recent institutional transformations are relied on by those who support change.<sup>21</sup> However, this policy seems to have gained little public support thus far.<sup>22</sup>

### III. LEGAL EDUCATION AND THE UNIVERSITY

As is widely known, almost from birth, Korean children fight for footholds in the slippery pyramid of education, striving to reach the top: admission to the major universities, symbolized by Seoul National University (SNU).<sup>23</sup> There are cram schools for all levels of schools, even cram kindergartens to ensure admission to the right elementary schools.<sup>24</sup>

Korean universities are not, however, noted for academic excellence.<sup>25</sup> Once admitted, any student can practically expect to

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<sup>17</sup> Kun Yang, *Law and Society Studies in Korea: Beyond the Hahm Thesis*, 23 *LAW & SOC'Y REV.* 891, 897 (1989).

<sup>18</sup> SANG HYUN SONG, *INTRODUCTION TO THE LAW AND LEGAL SYSTEM OF KOREA* 185-212 (1983).

<sup>19</sup> Supreme Court Report, *supra* note 3, at 113.

<sup>20</sup> MINISTRY OF EDUC. & HUMAN RES., REPUBLIC OF KOREA, *REFORMATION OF NATIONAL UNIVERSITIES* (2005) (briefing material from Oct. 6, 2005).

<sup>21</sup> Japan privatized its national universities as of July, 2003. Simultaneously, graduate law schools have been established.

<sup>22</sup> The Administration has been preparing a bill to be submitted to the National Assembly to this effect. The Major Opposition Party has prepared its own bill with a similar content. The Association of the National and Public Universities has waged a campaign to block the legislation.

<sup>23</sup> Kang, *supra* note 15.

<sup>24</sup> IRIS CHANG, *THE CHINESE IN AMERICA: A NARRATIVE HISTORY* 155 (2001).

<sup>25</sup> No Korean university has ever been ranked within top 100 in any world-level rating. The only exception was the rating of the London Times in 2005, which ranked Seoul National University at 93. *YONHAP NEWS*, Nov. 13, 2005.

graduate with little effort.<sup>26</sup> There exists virtually no exit control; only strict entry control exists.<sup>27</sup> Attrition rates for academic failure are minimal.<sup>28</sup> The consequence is that one's social status is half-decided by entering the university, not by the achievement made in the school.

Under the Korean educational system, the entrance exams must be objectively graded. There exists little room for value judgment; otherwise, the schools would face a flood of lawsuits.<sup>29</sup> Often, law schools are placed on the top of the hierarchical pyramid in the "kingdom of objectivity."<sup>30</sup> Law departments have been conspicuously noted for their high standings within universities.<sup>31</sup> They take a great number of upper-ranked high school graduates through competitive exams. The situation has grown from a new government policy allowing double-majors that was implemented in the late 1990s.<sup>32</sup> As many college students in the university have flocked to law departments, other fields (particularly the humanities and social sciences) have been gravely affected.<sup>33</sup> Naturally, undergraduate legal studies programs have easily become a target of jealousy from the affected areas. Against such backdrops, the idea of moving the law department to the graduate level might be enthusiastically welcomed by other institutions of the university.<sup>34</sup>

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<sup>26</sup> Chang Gyoong Chae, *Unmatching Colleges and Enterprises*, DONGA ILBO, Dec. 6, 2005, available at <http://www.donga.com/fbin/output?sfrm=1&n=200512060139>.

<sup>27</sup> *Id.*

<sup>28</sup> During the 2005 spring semester, 22 SNU undergraduate students were ousted from school for poor performance. It was a record high. The SNU had accepted around 5,000 students annually. DAEHAK-SHINMOON [THE UNIVERSITY PRESS] (Seoul), Aug. 28, 2005 (No. 1660).

<sup>29</sup> Universities are not immune from judiciary intervention any more. Rather, they have been involved in various kinds of lawsuits in recent years. The boundaries of the traditional "freedom of academy" have been significantly curtailed, in the author's opinion.

<sup>30</sup> CHOSUN ILBO, Nov. 26, 2005.

<sup>31</sup> *Id.*

<sup>32</sup> SooJeong Kim, *Students More Likely to Change Major to More Popular Majors. . . . Basic Natural Science Courses Are Drying to Death*, KUKMIN ILBO, Apr. 2, 2002, available at [http://news.naver.com/news/read.php?mode=LSD&office\\_id=005&article\\_id=0000099371&section\\_id=102&menu\\_id=102](http://news.naver.com/news/read.php?mode=LSD&office_id=005&article_id=0000099371&section_id=102&menu_id=102).

<sup>33</sup> *Id.*

<sup>34</sup> The SNU long-term development plans have been regularly discussed since 1985, but rarely reflect the institutional wishes of its law department.

The only practical path to attain a law license in Korea is to pass the National Judiciary Exam and complete a two-year apprenticeship at the Judiciary Training and Research Institute run by the Supreme Court.<sup>35</sup> Successful graduates of this institute attain a bar license, qualifying to be judges, public prosecutors, and private practitioners.<sup>36</sup> For the last ten years, the annual quota for the judiciary exam has steadily increased, from three hundred in 1995 to one thousand in 2005.<sup>37</sup> Rarely in the history of the exam has the passing rate exceeded 5 percent.<sup>38</sup> Little formal education is required for the exam, and it has been an established tradition not to take account of academic standing for the exam. A decided majority of the law graduates (approximately eleven thousand per year) eventually end up with employment outside the legal ballpark.<sup>39</sup>

To the average Korean, this exam has been a symbol of fairness, equality, and most of all, a decisive opportunity to achieve a Korean dream.<sup>40</sup> Incumbent President Roh became a headline figure in the mid-1970s by putting himself among the sixty successful finalists, without any college education at all.<sup>41</sup> To this date, Roh's saga has survived in Korean minds as one which demonstrates the most effective way of achieving a "Korean Dream."<sup>42</sup> Currently, about 25 percent of the Institute graduates are appointed either judges or prosecutors.<sup>43</sup> Three-fourths of the graduates elect (or are forced to enter) private practice.<sup>44</sup>

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<sup>35</sup> Supreme Court Report, *supra* note 3, at 96.

<sup>36</sup> The alternative path is to work ten years as military advocate after passing similarly rigorous exam. Only a small number of lawyers train this way, minimizing this path's impact in a discussion of the overall picture.

<sup>37</sup> See Chang Rok Kim, *The National Bar Examination in Korea*, 24 WIS. INT'L L.J. 243, 257 (2006).

<sup>38</sup> *Id.*

<sup>39</sup> Supreme Court Report, *supra* note 3, at 222-32.

<sup>40</sup> Kyong-Whan Ahn, *The Growth of the Size of the Bar and the Changes in Lawyer's Role: Korea's Dilemma*, in LAW AND TECHNOLOGY IN THE PACIFIC COMMUNITY 119-20 (Philip S.C. Lewis ed., 1994).

<sup>41</sup> Cf. Kim, *supra* note 37, at 256.

<sup>42</sup> Kyong-Whan Ahn, *True Meanings of a Graduate Law School*, DASAN FORUM, Jan. 23, 2005.

<sup>43</sup> Supreme Court Report, *supra* note 3, at 217. Out of the 798 graduates of the 2002 class, 191 were appointed as judges or prosecutors.

<sup>44</sup> *Id.* at 216.

This unique system has generated plentiful episodes in Korean society, providing source material for various satirical works.<sup>45</sup> The major criticism of the system is that the prohibitively low passing rates of the exam, combined with the accumulated repeaters, have hampered social productivity and balanced distribution of the human resources.<sup>46</sup>

Legal education in Korean universities has demonstrated a peculiar feature. While most students strive for the national bar exam in order to become practitioners, the law school curriculum and teaching carry substantial overtones of a general education aiming at nurturing a well-balanced intellectual.<sup>47</sup> This may have originated from the empirical fact that only a few percent of law graduates pass the bar exam.<sup>48</sup> As of 2002, the total number of the universities harboring law schools (or law departments) amounts to 90, with 921 full-time law professors.<sup>49</sup>

#### IV. LAW REFORM AND GRADUATE LAW SCHOOL

The first major drive for judicial reformation was launched in 1995 under the “civilian government” led by President Kim Young-Sam.<sup>50</sup> It was envisaged as a sub-theme of the “globalization policy.”<sup>51</sup> Aiming at an overhaul of the judiciary system, a master plan was developed, based on the initiatives of government bureaucrats.<sup>52</sup> According to the plan, the judiciary system was to be reformed with the introduction of the graduate law school.<sup>53</sup> By combining undergraduate majors with graduate legal studies, the law school would provide adequate legal services to

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<sup>45</sup> MOON RYEOL LEE, *YOU WILL NEVER RETURN TO YOUR HOMETOWN* (1986); Young Hee Rhee, *One Day for Prosecutor D and Professor Rhee* (1979), in *MONOLOGUE IN A CAVE* (1999) (both in Korean).

<sup>46</sup> It is estimated that there are around 100,000 test-preparers. Considering that the intellectual quality of these young Koreans is well above average, the exam system could substantially affect the labor market on national scale.

<sup>47</sup> Supreme Court Report, *supra* note 3, at 14-15.

<sup>48</sup> *Id.* at 99-100.

<sup>49</sup> *Id.* at 222-26.

<sup>50</sup> Korea was ruled by three military-turned-civilian presidents from 1961-1992. The Korean people generally regard this period as an “era of military rule.”

<sup>51</sup> See Kim, *supra* note 37, at 247-48.

<sup>52</sup> Supreme Court Report, *supra* note 3, at 99-100.

<sup>53</sup> *Id.* at 100.

every sector of life. Moreover, under the contemplated system, judges would be recruited from experienced prosecutors or practicing lawyers.<sup>54</sup> This seemingly logical roadmap turned out to be too idealistic for the Korean reality. All three parts of the Judiciary (法曹三輪)<sup>55</sup> waged a defensive war in concerted action.<sup>56</sup> Most law schools were also against the transformation, since it could jeopardize the existing order by inviting undue competition among the schools.<sup>57</sup> The general public was too uneducated about the situation to express any preference. Faced with ferocious resistance and the concurrent wave of the IMF crisis, the government was forced to withdraw most of the plan, securing only a minimal success.<sup>58</sup> The only tangible product was the gradual expansion of the size of the bar by securing reluctant endorsement from the staunch judiciary.<sup>59</sup>

The drive for judicial reformation was revived in 2003, immediately following the inauguration of President Roh Moo-Hyun, who included the agenda on his campaign slate.<sup>60</sup> In late 2003, the Judicial Reformation Committee (司法改革委員會) was established as an interim body to redraw the blueprints of

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<sup>54</sup> 20 Judges Selected among Lawyers and Public Prosecutors in November, SEGYE ILBO, July 13, 2005, available at [http://news.naver.com/news/read.php?mode=LSD&office\\_id=022&article\\_id=0000107308&section\\_id=102&menu\\_id=102](http://news.naver.com/news/read.php?mode=LSD&office_id=022&article_id=0000107308&section_id=102&menu_id=102).

<sup>55</sup> A common term denoting three jobs inclusively (judge, prosecutor, and practicing lawyer). The term carries a connotation for arrogant pride of the legal profession.

<sup>56</sup> Cf. Tae Gyu Kim, *The New President of the Korean Bar Association Says "Deterioration Rather Than Reform of the Judicial"*, HANKYOREH SHINMUN, Feb. 22, 2005, available at <http://www.hani.co.kr/section-005000000/2005/02/005000000200502211837261.html>.

<sup>57</sup> BonYoung Lee, *The Law Faculty Council Calls "Enactment of Law School as Deterioration"*, HANKYOREH SHINMUN, June 28, 2005, available at <http://www.hani.co.kr/section-005000000/2005/06/005000000200506281807228.html>.

<sup>58</sup> See Kim, *supra* note 37, at 248.

<sup>59</sup> *Id.*

<sup>60</sup> TaeGyu Kim, *Government Continues Discussing the Judicial Reform*, HANKYOREH SHINMUN, Feb. 9, 2005, available at [http://www.hani.co.kr/arti/society/society\\_general/101186.html](http://www.hani.co.kr/arti/society/society_general/101186.html).

legal reform.<sup>61</sup> At the last minute (December 2004), the committee adopted its final report in the form of a resolution.<sup>62</sup> It included an ever-controversial topic: implementing the graduate law school program beginning in 2008.<sup>63</sup> According to the report, the present judiciary exam will operate until 2012, when it will be replaced with a new bar exam.<sup>64</sup> Only those who have successfully completed a three-year graduate law program will qualify for the new bar exam.<sup>65</sup> The resolution of the committee carries déjà vu resonance of the aborted reformation of 1995.<sup>66</sup>

In 2005, the Presidential Committee on Judicial Reform (司法改革推進委員會) was established to work out the details of this adventurous project before the end of the same year.<sup>67</sup> Details are to be reflected in special legislation and enforcement regulations.<sup>68</sup> On October 17, 2005, the cabinet meeting led by the Prime Minister passed the resolution on the government bill for the establishment and operation of professional law schools.<sup>69</sup>

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<sup>61</sup> The President authorized the Supreme Court to initiate the reformation project. This Committee was established as an advisory body to the Chief Justice of the Supreme Court.

<sup>62</sup> *The Exclusive Jurisdiction Agrees on Surveillance Plan. . . The Presidential Committee on Judicial Reform Rings Down the Curtain*, YONHAP NEWS, Dec. 29, 2004, available at [http://news.naver.com/news/read.php?mode=LSD&office\\_id=001&article\\_id=0000867323&section\\_id=102&menu\\_id=102](http://news.naver.com/news/read.php?mode=LSD&office_id=001&article_id=0000867323&section_id=102&menu_id=102).

<sup>63</sup> Eun Jung Kwon, *Law School, The First Enrollment in 2008*, MUNHWA ILBO, Oct. 6, 2004, available at <http://www.munhwa.com/society/200410/06/2004100601030227307001.html>.

<sup>64</sup> Gui Soo Kim & Bum Joon Lee, *The Presidential Committee on Judicial Reform Ends a Long March. The Greatest Achievement of the "Law School Introduction Agreement"*, SEGYE ILBO, Dec. 29, 2004, available at <http://www.segye.com/Service5/ShellView.asp?TreeID=1510&PCode=0007&DataID=200412291703000232>.

<sup>65</sup> See Kim, *supra* note 37, at 245.

<sup>66</sup> See *supra* notes 51-59 and accompanying text.

<sup>67</sup> See *The Presidential Committee on Judicial Reform Established . . . Prime Minister Lee HaeChan Supervised the First Meeting*, YONHAP NEWS, Jan. 18, 2005, available at [http://news.naver.com/news/read.php?mode=LSD&office\\_id=001&article\\_id=0000886560&section\\_id=100&menu\\_id=100](http://news.naver.com/news/read.php?mode=LSD&office_id=001&article_id=0000886560&section_id=100&menu_id=100).

<sup>68</sup> Presidential Committee on Judicial Reform, <http://www.pcj.r.go.kr>.

<sup>69</sup> *The Enactment of Law School Passes the State Council*, BOPRYUL SHIMMUN [The Law Times], Oct. 18, 2005, available at [http://news.naver.com/news/read.php?mode=LSD&office\\_id=122&article\\_id=0000000972&section\\_id=119&menu\\_id=119](http://news.naver.com/news/read.php?mode=LSD&office_id=122&article_id=0000000972&section_id=119&menu_id=119).



The bill, which faithfully reflected the 2004 Resolution of the Judicial Reformation Committee, will be submitted to the National Assembly and is likely to pass without significant modification.<sup>70</sup>

As was the case a decade ago, serious opposition has been raised by the institutions and interest groups to be affected.<sup>71</sup> However, the degree and points of opposition vary depending on the specific issue on stake. A barrage of questions and hurdles are waiting for when serious deliberations begin. A few questions include those related to what should be done with the curriculum, budget, composition of faculty and student body, and faculty/student ratio.<sup>72</sup>

Among the various issues involved, three merit in-depth discussion: (a) the number and size of graduate law school, (b) the future of the undergraduate law program, and (c) the identity of law as an academic discipline. Before delving into these points, a brief sketch of the ideological orientations underlying these issues may help in better understanding the recent Korean phenomena.

#### A. IDEOLOGICAL UNDERPINNINGS

Despite the institutionalization of alternation in power, the old pattern of personality-driven politics has remained in place to some degree. Each incoming president since 1987 has continued the pattern of purging associates of the previous regime, most recently under the auspices of generational change.<sup>73</sup> Ever since the inauguration of President Roh, however, the project of purging immediate former regimes has become less attractive.<sup>74</sup> Instead, the new president has invited the entire nation to a quasi-

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<sup>70</sup> See *id.* A public hearing was scheduled for November 3, 2005, to be hosted by the Judiciary Committee of the National Assembly.

<sup>71</sup> One group, mainly composed by the law faculties of smaller schools, is conspicuous. See information, available at <http://www.lawyer3000.or.kr>.

<sup>72</sup> One issue discussed was special admission for students from underprivileged families. On this matter, American experience provides a useful reference. See, e.g., Symposium, *Racial Justice in a New Millennium: From Brown to Grutter—Methods to Achieve Nondiscrimination and Comparable Racial Equality*, 54 J. LEGAL EDUC. 313 (2004).

<sup>73</sup> LEGAL REFORM IN KOREA, *supra* note 1, at 6.

<sup>74</sup> President Roh's political background was rooted in the power-base of his immediate predecessor, Kim Dae-Jung.

ideological battle.<sup>75</sup> A recent incident involving the prosecution of a left-wing university professor over the National Security Act has precipitated the ideological clash between the conservatives and the “progressives” sympathetic toward North Korea.<sup>76</sup>

Presence of another Korea on the northern half of the peninsula makes South Korea a unique county.<sup>77</sup> On the positive side, the presence of a socialist regime within earshot may help South Korea to be mindful of social rights.<sup>78</sup> The aspiration for an egalitarian society in Korea has caused many unintended side-effects.<sup>79</sup> The modern history of political turmoil has transformed the nature of battle from an anti-dictatorship fight to a struggle to build up an equal and just society.<sup>80</sup> In the midst of this confusion, beginning around the early 1980s, socialist sentiment has surged among the younger generation as a serious alternative ideology.<sup>81</sup> A long history of student activism has driven Korea into a very politically sensitive society.<sup>82</sup> Now, for the first time in history, Korean politics has fallen under the control of the now-grown formerly angry youngsters.<sup>83</sup> The egalitarian philosophy of these young leaders and an emerging anti-elitism sentiment

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<sup>75</sup> For example, from the beginning of his presidency, Roh manifested more a lenient attitude toward North Korea, in direct conflict with conservative Korean and U.S. policy.

<sup>76</sup> *Justice Minister's Move Over Professor Ignites Ideological and Political Strife*, KOREA HERALD, Oct. 14, 2005. The Prosecutor General and Minister of Justice (Roh's cabinet member) collided head-on causing the former to resign as a protest against undue interference in the investigation of a specific case.

<sup>77</sup> See BRUCE CUMINGS, *KOREA'S PLACE IN THE SUN: A MODERN HISTORY* (1997).

<sup>78</sup> KYONG-WHAN AHN, *CRITICAL BIOGRAPHY OF CHO, YOUNG-RAE: A LIFE IN REASONED PASSION* 100-22 (forthcoming 2006).

<sup>79</sup> *Id.* at 116-21.

<sup>80</sup> *Id.* at 121-25.

<sup>81</sup> Yong Ho Cho, *There Was Much Dissent Amongst the Revolutionaries*, SEGYE ILBO, Nov. 12, 2005, available at <http://www.segye.com/Service5/ShellView.asp?TreeID=1510&PCode=0007&DataID=20051111150000165>.

<sup>82</sup> Kyong-Whan Ahn, *Student Activism and the Roles of Professor*, HANKYOREH SINMUN, May 26, 2005, available at <http://www.hani.co.kr/section-001000000/2005/05/001000000200505231950039.html>.

<sup>83</sup> Young-Hoon Lee, *Why Re-Evaluation?*, in *RE-EVALUATION OF THE KOREAN HISTORY CIRCA INDEPENDENCE FROM JAPAN* 25, 25-63 (Park Ji-Hyang et al. eds., 2006) (in Korean).

have both imposed a heavy burden on the leading universities in their attempt to compete on a global scale.<sup>84</sup>

Under the current political environment, therefore, a fundamental question must be resolved: why does Korea need graduate law schools? What philosophical underpinnings does this policy harbor in the contemporary Korea?

By its own nature, a graduate, professional law program means an elite-oriented one. Such a program would require a prolonged period of education and extra costs.<sup>85</sup> Financial input would be a key to its success.<sup>86</sup> However, in the activities record of the committee and the public hearings, there was no serious discussion about financial matters.<sup>87</sup> It is commonsensical that an American-style law school system is costly. Compared with other educational branches, the operation of law schools generally is extremely costly.<sup>88</sup> Both student tuition and faculty salaries of law schools are much higher than other educational studies.<sup>89</sup> Such a system is very unrealistic for Korean import. Under the long tradition of egalitarianism on campus, unequal treatment among the university faculties will hardly be enforceable, even after the institutional changes.

Most Korean law schools are extremely under-budgeted.<sup>90</sup> Plagued with chronic problems of low budgets and stagnant management, some schools have ventured to obtain private fundraising.<sup>91</sup> Fundraising has become a new job criterion for Korean law school deans.<sup>92</sup> Their performance, however, seems extremely

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<sup>84</sup> During the campaign for Presidential Election in 2002, the issue of “abolishing SNU” stirred the entire nation. Roh’s party seems to have benefited from such populist sentiment.

<sup>85</sup> Male students who bear the constitutional duty of military service have an extra burden. See REPUBLIC OF KOREA CONST. art. 39.

<sup>86</sup> Ahn, *supra* note 42.

<sup>87</sup> Supreme Court Report, *supra* note 3.

<sup>88</sup> JOONGANG ILBO, Nov. 30, 2005, available at <http://news.joins.com/society/200511/30/200511300453298631300030103011.html>.

<sup>89</sup> Ahn, *supra* note 42.

<sup>90</sup> Dean Ahn as CEO Educator, MONEY TODAY, July 10, 2003 (interview with the author).

<sup>91</sup> Wonsuk Han, SNU Law School Ventures for Reformation towards Global Competitiveness: First Alumni Fundraising Night, DAEHAN NEWS, June 2003, at 7, 7-11, available at <http://www.daehannews.co.kr/2003/index0306.htm>.

<sup>92</sup> *Id.*

poor, under the flimsy tradition of charitable donation to the academy.<sup>93</sup> The situation will hardly improve even after the institutional changes of the law school. Thus, the operation of new schools will have to rely on conventional sources, namely, tuition for the private schools and government revenues for the public schools.

It takes intellectual rigor to combine undergraduate studies with law. Therefore, law as graduate study should be qualitatively distinguished from undergraduate legal studies. A mere deference to the higher (and later) institution will not enhance the quality of legal education. Yet, there is little preparation for the qualitative transformation of legal education. There has been no discussion on the budgetary side of the program, either. It is doubtful whether the proponents of the graduate law program are concerned with the quality of legal education at all.<sup>94</sup>

Most of all, the graduate law school system will be a selective and restrictive program. Under the new system, a very limited number of Korean youths will be given the opportunity to become lawyers.<sup>95</sup> Such a selective program will hardly abide with the basic political philosophy that characterizes Roh's egalitarian government.<sup>96</sup> It is also doubtful that the general public, who have been so accustomed to the unbridled access to the bar exam, the front gate to the Korean dreamland, would willingly accept such a fundamental change.

One major rationale suggested by the program's proponents is that the present system fails to meet global standards.<sup>97</sup> While

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<sup>93</sup> *Id.*

<sup>94</sup> Kyong-Whan Ahn, Dean, Coll. of Law, Seoul Nat'l Univ., Keynote Speech at the Academic Symposium on Graduate Law Schools, DongA University: Ideal and Reality of the Professional Law School (Dec. 9, 2005) (on file with author).

<sup>95</sup> The total number of the graduate law students has not been fixed yet. It is fairly predictable, however, that the ultimate figure will be larger than 1,000, the present annual quota for the Judiciary Exam. A projection was made that it would be somewhere between 1,200 and 2,000. The Korean Bar Association conceives the "adequate" size at 1,200. Yerang Huang, *Korean Bar Association "1200 students a year is the proper number for Law Schools"*, HANKYOREH SHINMUN, Apr. 18, 2005, available at <http://www.hani.co.kr/section-005000000/2005/04/005000000200504182100086.html>.

<sup>96</sup> Roh's government has earned a reputation as the first "progressive" one in Korean history.

<sup>97</sup> Ahn, Kyong-Whan, *Judicial Reform and the Duty of Participation*, HANKYOREH SHINMUN, Jan. 20, 2005 (in Korean).

the lawyer's role in international settings is growing, Korean legal education is almost completely devoid of any global orientation.<sup>98</sup> Many complain that Korean lawyers are not global-minded.<sup>99</sup> Owing to the family-sized bar, Korean lawyers have enjoyed unusual prestige and comfortable lives within their domestic market.<sup>100</sup> The Korean legal market will open gradually, beginning in 2006, and there will be service competition, but the damage to domestic lawyers is expected to be minimal.<sup>101</sup> The Korean government itself seems almost unconscious of the international practice of law.<sup>102</sup>

As such, circumstantial evidence suggests that there might be an ulterior motive, other than globalization or quality enhancement, in the government's drive for the professional graduate law school. The real interest seems to lie in abolishing the undergraduate law schools of the leading universities, which allegedly have been the prime cause of dehumanizing Korea into a class-dominant society.<sup>103</sup> Additionally, the Ministry of Education and Human Resources has repeatedly manifested its observation that hyper-intensive competition for the university entrance exams was partly caused by misplacing law and medical education in the undergraduate program.<sup>104</sup> Recent confrontations between

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<sup>98</sup> Kwang-Shik Hong, *The Virtues that A Lawyer Ought to Possess*, 45 SEOUL L.J., No. 4, at 8-9 (2004).

<sup>99</sup> *Id.*

<sup>100</sup> JOONGANG ILBO, May 4, 2005, available at <http://news.joins.com/money/200505/04/200505040732321701500050105011.html>.

<sup>101</sup> JUDICIAL REFORM AND THE JUDICIAL SYSTEM OF THE WORLD 713-28 (Judicial System Research Committee ed., 2004) (in Korean).

<sup>102</sup> The agenda of Globalization ignited a ferocious ideological battle in Korean society. During the "IMF crisis" in 1997, strong sentiment against "global neo-liberalism" emerged. Law firms specializing in international business transaction were labelled as "anti-patriotic jurists." MAL, Dec. 1999. President Roh once openly insinuated "those who travel abroad and speak fluent English" as lost souls. However, he later recanted this statement. YONHAP NEWS, Dec. 6, 2004.

<sup>103</sup> Ahn, *supra* note 42.

<sup>104</sup> President Roh also opined for a similar position. Bumhyun Kim, *President Roh "The Restructuring of Universities will be reviewed, if necessary"*, YONHAP NEWS, Mar. 25, 2005, available at [http://news.naver.com/news/read.php?mode=LSD&office\\_id=001&article\\_id=0000953770&section\\_id=100&menu\\_id=100](http://news.naver.com/news/read.php?mode=LSD&office_id=001&article_id=0000953770&section_id=100&menu_id=100).

the president's office and SNU involving the university entrance exam signify a tiny tip of the huge iceberg of disharmony.<sup>105</sup>

## B. SIZE AND NUMBER OF LAW SCHOOLS

According to the Report of the Judiciary Reformation Committee, the total number of graduate law schools to be established is left to future decisions.<sup>106</sup> However, many references indicate that the original idea was to limit graduate law schools to ten throughout the nation.<sup>107</sup> This number largely accommodates the position of the Korean Bar Association, whose prime interest lies in keeping their market within adequate control.<sup>108</sup> The bar association has maintained its position to prevent any reformation which would cause the increase of the present annual quota of the exam, one thousand per year.<sup>109</sup>

The Report further provides that each school is limited to an entering class of 150 students; at least one-third of the class should be recruited from those who did not study law as undergraduate major; and at least 20 percent of the faculty must be composed of practitioners.<sup>110</sup>

Many expect that, as is often the case in the United States, a graduate law school will be the showcase of the university itself.<sup>111</sup> Therefore, losing in the competition could mean a critical disgrace to the university. Naturally, all the schools within the

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<sup>105</sup> Here, the President openly criticized SNU's effort to secure more autonomy in the entrance exam as an "anachronistic," "egoistic" ploy. The President's overt bias towards SNU and "the Kangnam [wealthy area of Seoul] Residents" is repeatedly uttered on various occasions. See, e.g., DONGA ILBO, Sept. 9, 2005.

<sup>106</sup> Yisuk Oh, *Number of Law Schools around 10, no more than 150 Students per Law School*, BOPRYUL SHINMUN [Law Times], Apr. 25, 2005, available at [http://news.naver.com/news/read.php?mode=LSD&office\\_id=122&article\\_id=0000000344&section\\_id=119&menu\\_id=119](http://news.naver.com/news/read.php?mode=LSD&office_id=122&article_id=0000000344&section_id=119&menu_id=119).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* For the position of the Korean Bar Association, see *supra* note 95.

<sup>109</sup> The rapid growth of the bar has brought out many positive changes in Korean society. See Ahn, *supra* note 40, at 119-34.

<sup>110</sup> See Kim, *supra* note 37.

<sup>111</sup> "For the Local schools, the situation is desperate as the issue is directly linked to the university restructure policy of the Administration." Minhyuk Kwon, *Competitiveness of Local Universities and Law School*, MAEIL KYUNGJE SHINMUN, Dec. 8, 2005, available at [http://news.naver.com/news/read.php?mode=LSD&office\\_id=009&article\\_id=0000475212&section\\_id=110&menu\\_id=110](http://news.naver.com/news/read.php?mode=LSD&office_id=009&article_id=0000475212&section_id=110&menu_id=110).

zone of reasonable expectation are trying to gain inclusion.<sup>112</sup> While academics are in unanimous accord to advocate for the increase of the total size, some schools are more interested in enlarging the size of their own institution.<sup>113</sup>

Two special committees, the Legal Education Committee (LEC) and the Law School Evaluation Committee (LSEC), will be established to deal with the matters.<sup>114</sup> The LEC, to be located in the Ministry of Education and Human Resources, has jurisdiction matters of accreditation and the size of each law school.<sup>115</sup> The LSEC shall be established within the Korean Bar Association and will deal with matters related to evaluation and curriculum.<sup>116</sup> It is expected that selection of schools will be a political matter as much as an academic competition.<sup>117</sup> Seoul, the national capital, is packed with high-ranked law schools, but provincial schools have a stronger voice.<sup>118</sup> While the government describes its primary policy as “balanced development of the regions,”<sup>119</sup> provincial governments have political stakes in having at least a few graduate law schools within their own constituencies.<sup>120</sup> A fair distribution between public schools and private

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<sup>112</sup> Seungechan Baek, *Worry about the Aftermath of Battle for Law School Tickets*, KYUNGHYANG SHINMUN, Dec. 13, 2005, available at [http://news.khan.co.kr/kh\\_news/khan\\_art\\_view.html?artid=200512132227041&code=940100](http://news.khan.co.kr/kh_news/khan_art_view.html?artid=200512132227041&code=940100).

<sup>113</sup> For example, the SNU announced its position demanding that minimum size of the class should be no smaller than 300.

<sup>114</sup> See Kim, *supra* note 37, at 250-51.

<sup>115</sup> *Id.*

<sup>116</sup> The Committee will be under the joint-supervision of the Ministry of Education and Human Resources and the Korean Bar Association.

<sup>117</sup> Zunki Kim, *Difficulty in Enforcement of Law School System Owing to Interest Conflicts*, KYUNGHYANG SHINMUN, May 17, 2005, available at [http://news.khan.co.kr/kh\\_news/khan\\_art\\_view.html?artid=200505172330551&code=940301](http://news.khan.co.kr/kh_news/khan_art_view.html?artid=200505172330551&code=940301).

<sup>118</sup> See Baek, *supra* note 112.

<sup>119</sup> In order to implement “the policy of regional balance” Roh’s Administration attempted to relocate the national capital from Seoul to a newly developed place in the mid-land area. “The Special Act for the New Executive Capital” was enacted for this purpose. The Constitutional Court, by an eight to one vote, declared this law unconstitutional. Judgment of Oct. 21, 2004, 103 HONMA 554. A new, modified legislation was passed. This time, The Constitutional Court, by seven to two decision, endorsed its constitutionality. Judgment of Nov. 24, 2005, 104 HONMA 579, 763 (consolidated).

<sup>120</sup> See Kim, *supra* note 117.

schools is also sought. Against such a backdrop, it is fairly predictable that the final outcome will reflect the general kaleidoscope of Korean politics.

### C. THE FUTURE OF THE UNDERGRADUATE LAW PROGRAM

The second pivotal issue is no less acute than the first: should the undergraduate law program be abolished *in toto*, and if not, to what extent should it be preserved?

Those who advocate for the former argue that law basically provides intellectual tools for social engineering; thus, it should be able to accommodate all other academic disciplines within its own intellectual scheme.<sup>121</sup> Teaching law at premature ages would hardly contribute to the achievement of such a goal, they argue.<sup>122</sup> They have a special attachment to the “original” plan of graduate law school as attempted in 1995.<sup>123</sup> This “American-style” law school plan, however, seems to have gained little support from the general public.<sup>124</sup> As ideal as the plan might be, it is simply unrealistic. A great majority of law departments will be forced to remain at the undergraduate level.<sup>125</sup> What role will these undergraduate law professors be expected to play? What utility will the four-year law program hold when its completion does not qualify students for the bar exam? The idea of teaching law as “general education” will be very foreign to most Korean jurists.<sup>126</sup> For a bar license, the graduates of the law department have to advance to a graduate law school.<sup>127</sup> What portion of the class would be allotted for the undergraduate law majors? Once admitted, will they be treated differently from their classmates

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<sup>121</sup> Ahn, *supra* note 42.

<sup>122</sup> *Id.*

<sup>123</sup> Supreme Court Report, *supra* note 3, at 22-23.

<sup>124</sup> *Id.*

<sup>125</sup> Yunhyung Kil, *Narrow Gate to Law School*, HANKYOREH SINMUN, Oct. 5, 2005, available at <http://www.hani.co.kr/section-005000000/2004/10/005000000200410051816319.html>. Korean professor positions are so secure that sometimes they are sarcastically called “iron bowls.”

<sup>126</sup> Jeong Hoon Park, Vice Dean for Academic Affairs, College of Law, Seoul Nat’l Univ., *Why Am I Opposed to the Graduate Law School?*, SNU Law Faculty Forum (May 10, 2005).

<sup>127</sup> Supreme Court Report, *supra* note 3, at 102.



with different undergraduate backgrounds? Many questions remain up in the air.

According to the Commission Report, a basic principle prohibits universities from running multiple levels of programs.<sup>128</sup> Those universities that elect to begin a graduate program should abolish their existing undergraduate law program *in toto*. This manifested principle, however, has not attracted broad support.<sup>129</sup> Most major schools prefer a dual system.<sup>130</sup> Here, Japanese precedent works as a strong authority for those who vie for a dual system.<sup>131</sup> In every sense, undergraduate bodies are core components of the Korean universities. Many law professors fear that “professional graduate school” without the support of a farming house, would mean an institutional demotion within the university. Therefore, they would prefer to keep their present undergraduate body.<sup>132</sup> Alumni members of the law departments are pledging for the defense of their alma maters in original form.<sup>133</sup>

#### D. LAW AS AN ACADEMIC DISCIPLINE

As is often the case elsewhere, Korean legal society experiences a tension between academic and practical ends. A growing gulf stretches between legal scholarship and the practitioners, who regularly decry the inadequacy of legal scholarship for their work.<sup>134</sup> This seems to be the case in America as

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<sup>128</sup> See Kim, *supra* note 37, at 249.

<sup>129</sup> Yongsik Kim, *Widespread Challenge to the Law School Project Suggested by Presidential Committee on Judicial Reform*, HANKOOK ILBO, May 18, 2005, available at <http://news.hankooki.com/lpage/society/200505/h2005051818591522000.htm>.

<sup>130</sup> Position Paper of SNU Law School, (June 20, 2001).

<sup>131</sup> Supreme Court Report, *supra* note 3, at 117.

<sup>132</sup> On February 14, 659 law professors signed a declaration opposing the Government Bill as it would limit the maximum number of law schools and students. See SeungHwan Ryu, *Law Professors on the Street “Total Resistance to the Law School Bill”*, BREAK NEW, Feb. 14, 2006, available at <http://www.lawyer3000.or.kr>.

<sup>133</sup> SNU Law School Alumni Newsletter (February 20, 2002); KYONG-WHAN AHN, BETWEEN LOVE AND IDEOLOGY 230 (2003) (in Korean) (“Korean people in general have almost blind attachment to their hometown and schools.”).

<sup>134</sup> Hong, *supra* note 98.

well.<sup>135</sup> However, in Korea, most law professors do not hold a bar license,<sup>136</sup> while a decided majority of law students make their primary (and in most cases, only) goal one of entering into legal practice after obtaining a bar license.<sup>137</sup> Many do so under pressure from their parents, to whose minds a bar license means a ticket to the Dreamland.<sup>138</sup>

In most schools, the graduate law programs are larger than what is actually needed.<sup>139</sup> Graduate programs were originally designed as a farmhouse for prospective scholars, but the reality is that they are primarily used as a temporary shelter for those students who want to defer military service until they pass the bar exam.<sup>140</sup> As has always been the case, there are only a small group of graduate students who pursue careers as scholars.<sup>141</sup> As a consequence, the quality of graduate education has been gravely affected. To outsiders, graduate law schools have never been prestigious institutions; rather, they have been regarded as minor, subsidiary institutions.<sup>142</sup> However, the situation seems to have changed dramatically in recent years. Many judges seem willing to leave their positions to teach at a law school. This might be a temporary phenomenon, when every law school is in serious contention to develop a graduate school.<sup>143</sup>

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<sup>135</sup> Stephen M. Feldman, *The Transformation of an Academic Discipline: Law Professors in the Past and Future (or Toy Story Too)*, 54 J. LEGAL EDUC. 471, 487-90 (2004).

<sup>136</sup> Traditionally the routes towards academian and practitioner have been distinctively separated in Korea.

<sup>137</sup> See *supra* notes 14-17 and accompanying text.

<sup>138</sup> See Kim, *supra* note 37, at 247.

<sup>139</sup> SNU has a two-year program LL.M., and a three-year program Ph.D. in Law. The School takes 124 LL.M. and 36 Ph.D. candidates every year, though less than 20 percent of them eventually obtain degrees.

<sup>140</sup> For male students, the constitutional duty of military service is a substantial obstacle in career planning. See REPUBLIC OF KOREA CONST. art. 39 (duty of military service). Those who have served as enlisted men should expect an extra burden.

<sup>141</sup> See *supra* note 139.

<sup>142</sup> One interesting survey shows that a male graduate student in humanities and social sciences falls into one of the least popular categories as a prospective groom, according to women in one survey. DIGITAL TIMES, Dec. 24, 2005, available at <http://www.dt.co.kr>.

<sup>143</sup> At least twenty percent of the faculty must be practitioners. See Kim, *supra* note 37.

The most critical flaw in the government plan is that it contains no serious discussion on the graduate program for prospective scholars. To this date, no serious thought has been put to the issue of how to train future scholars.<sup>144</sup> The American experience on this matter cannot serve as precedential value in Korea. Legal scholarship in America is largely a product of open competition and a unique tradition that law has been born in the field, not within the ivory towers. In America, the Juris Doctor program is usually both the first and final degree in law. Post-J.D. degrees (such as the LL.M., S.J.D., and their equivalents) are supplementary programs, where foreign jurists can capitalize on their own backgrounds in the study of American law.<sup>145</sup> Korea is different. Traditionally, the route to become a legal scholar has been independent of the field. In any event, the identity of a law professor at a “professional” graduate school will be in serious jeopardy.

What and how will the education of graduate law school change? Some might expect that graduate law schools will provide more interdisciplinary programs; however, even in American law schools, interdisciplinary studies are generally limited to major law schools.<sup>146</sup> Some argue that “interdisciplinary scholarship is now is an expected part of . . . serious scholarship.”<sup>147</sup> However, this is not likely to be the case in Korea, at least in the near future, where a great majority of law professors are “pure” jurists.

## V. CONCLUDING REMARKS

As one prominent interdisciplinary scholar has put it, education is the constant modification of expectation by experience.<sup>148</sup> The process is a serial of hope and disappointment, for at every

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<sup>144</sup> While an advanced degree (at least Master, but typically Ph.D.) is required for a university teacher, the Government Bill on law schools has no provision on the degrees required for law faculty. It has no provision on what will be done with existing graduate programs in law.

<sup>145</sup> Only a limited number of American law schools offer such “graduate law programs.”

<sup>146</sup> Feldman, *supra* note 135, at 489 (quoting J.M. Balkin, *Interdisciplinary as Colonization*, 53 WASH. & LEE L. REV. 949, 950 (1996)).

<sup>147</sup> *Id.*

<sup>148</sup> JAMES BOYD WHITE, FROM EXPECTATION TO EXPERIENCE: ESSAYS ON LAW AND LEGAL EDUCATION ix (1999).

juncture we bring to the world a set of expectations that are by nature incomplete or imperfect. Often, we are betrayed by our own excessive expectations.

The future verdict on graduate law programs may vary. For some, these changes may mean the best of the times, while for others, the worst of times.<sup>149</sup> Whatever the future judgment may be, it is the territory of the next generation. The task given to the present generation is to seriously question the validity and utility of the status quo. Legal education in Korea is much overdue for an overhaul. For too long a period, Korean society has clung to an old system under the false belief that it guarantees fairness, equality, and justice. Public indifference and professional inertia have aggravated the predicament.<sup>150</sup> No single cause could justify the prevention of any new experiment on legal education and reform of the judiciary. Still, some caveats should be noted. Education is a long-term investment, and educational experiments should be undertaken on a long-term basis. With the implementation of the graduate law schools, the kaleidoscope of the Korean legal society will dramatically change. However, the agenda of graduate law school has been distorted by the political ambitions of President Roh to make Korean society a better “balanced” and “egalitarian” society.<sup>151</sup> While the president’s lofty ambition deserves recognition, the means he chose seem to match poorly with his goal. Furthermore, the project of graduate law school should be carried out so as to accomplish international competitiveness, along with domestic justice. The project should be reconsidered to the extent that it undermines the very nature of professional graduate school. It is high time that Korean legal society formulated a reasoned road map for future prosperity and stability.

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<sup>149</sup> “It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity. . . .” CHARLES DICKENS, *A TALE OF TWO CITIES* (Harold Bloom ed., Chelsea House Publishers 1987) (1859).

<sup>150</sup> See *supra* notes 37-43 and accompanying text.

<sup>151</sup> Kyong-Whan Ahn, *A Half Century of Constitutionalism and the Ideologies of Freedom and Equality*, 39 SEOUL L.J., No. 4, at 15, 15-40 (in Korean).