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The Importance of U.S. Law and Teaching Methods to Korean Undergraduates

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THE IMPORTANCE OF U.S. LAW AND TEACHING METHODS
TO KOREAN UNDERGRADUATE LAW STUDENTS
– EDITED VERSION OF A SPEECH GIVEN AT THE FIRST GODANG
INTERNATIONAL CONFERENCE ON LAW
THE PROSPECT FOR LEGAL EDUCATION:
INCORPORATING AMERICAN LEGAL TEACHING METHODS,
COLLEGE OF LAW & INSTITUTE FOR LEGAL STUDIES,
SOONGSIL UNIVERSITY
MAY 28, 2011

Helen H. Kang¹

INTRODUCTION

Good afternoon, and greetings from San Francisco and from Golden Gate University. Thank you, Dean Oh Si Young, Professor Lee Sang Hyun, Professor Ihm Sahng Hyeog, and other organizers of this conference for this invitation. I am very honored to be here. I am also delighted for the relationship between Soongsil University's School of Law and Golden Gate University, which I am confident will bring many meaningful opportunities for exchanging ideas and resources as I hope this conference will begin to do.

I also have a personal reason for being delighted. I attended Sangdo Yeojung (Sangdo Girls' Middle School) for a short time before I immigrated to the United States with my parents. During those happy times, when I wasn't thinking about globalization of U.S. law, global warming, or global anything, I would walk by this very campus every school day. I would walk expectantly to school, wondering about what I would learn and do with my friends that day. I would walk with a bounce in my steps, thinking about all of the exciting things that might happen.

¹ Director, Environmental Law and Justice Clinic, and Associate Professor, Golden Gate University School of Law. B.A., Yale University; J.D., Berkeley School of Law. Environmental Law and Justice Clinic was established in 1994 to provide legal representation and advocacy to environmental groups and communities fighting disproportionate environmental health hazards, with a special focus on communities of color and low-income neighborhoods.

I thank Soongsil University, which hosted my stay and held the conference in Seoul, Korea; Golden Gate University School of Law who provided financial assistance to the Clinic to enable me to write; and my colleagues Professor Jon Sylvester, Fe Gonzalez, Ken Kloc, Lucas Williams, Associate Professor Deborah Behles, and Professor Marci Seville who have supported my writing efforts. Professor Sylvester, Associate Dean for Graduate Programs at my school, provided generous help in shaping the talk I gave at the conference and provided some of the references cited here.

I tell this story because, in a similar fashion, I am excited for Soongsil's students who I expect will greatly benefit from the establishment of the International Legal Affairs Department within the law college. This Department has the promise of contributing significantly to the understanding of American law in Korea and to adapting from – and not simply adopting – the teaching methods that are utilized and evolving in American law schools.

And that leads to the subjects of my talk today. I will talk about three aspects of teaching American law outside of the U.S. and incorporating U.S. legal teaching methods or pedagogies in teaching American law. First, I will briefly discuss international *trends* as they relate to adoption of the American legal education system – in form, substance, and in delivery. Second, I will talk about the *reasons* for these trends and what they may signify for teaching American law here in Korea. And, finally, I will talk about the *future* of teaching American law to Korean students and using American teaching methods.

I. INSTITUTIONAL CHANGES: INTERNATIONAL MOVEMENT TOWARD ADOPTION OF THE U.S. POST-GRADUATE SYSTEM OF LEGAL EDUCATION AND THE J.D. DEGREE DESIGNATION

As most of you know, American law schools are postgraduate programs and have been for about the last 150 years. In college, these students have majored in disciplines as diverse as Philosophy, Psychology, and Engineering. Many law school students have also had prior careers and are older and mature. In law school, students receive both academic and skills training, which I would describe as extremely rigorous. Students receive training in theory of law and policy; legal reasoning; application of the law to facts – both as they appear in appellate cases and hypothetical problems; professional responsibility; research; writing; oral advocacy; and, increasingly these days, in practical skills and professional identity and values.²

By professional identity and values, I mean that students study what it means to be a lawyer in our society. Students, for example, think about and deal with issues such as responsibilities lawyers have as privileged and educated professionals. Students explore and practice ways of identifying with clients from economic, social, and racial backgrounds different from their own. Differently stated in the words of Professors Stefan Krieger and Richard Neumann, it means thinking about integrity maintaining a moral compass – “having an honesty so thorough that anyone who knows you trusts you;

² BEST PRACTICES FOR LEGAL EDUCATION 51-54 (Roy Stuckey, *et al.* eds. 2007) published by the Clinical Legal Education Association in the U.S., contains numerous statements of legal education outcomes that are desirable. These outcomes are based on factors that ultimately produce competent lawyers. The one I like best that is cited in the book is from the Law Society of England and Wales describing the attributes a competent solicitor should possess, *id.* at 54, which is recited later in the article.

The BEST PRACTICES book is an excellent source of information for law school administrators and teachers to consult in shaping programs and courses.

a sense for what is right and fair so unerring that others respect your moral voice; and an understanding of appropriateness that prevents you from crossing over into questionable conduct.”³

By practical skills, I mean skills that entry-level lawyers ought to have to be effective professionals – skills involved in client interviewing, fact gathering and analysis, problem solving, brief writing, and direct representation of clients in court and in negotiations. Let’s say that a client walks in and says that he is the principal of an elementary school. A construction company is stirring up asbestos dust by drilling into serpentine rock, which naturally contains asbestos. In class, students may explore a basis for a lawsuit. In practicing how to be a lawyer, students may learn that the best advice to the client is to move the school immediately to avoid exposing the students. That’s what I mean by practical skills.

Reduced to a list, practical skills may encompass the following indicia of competence developed by the Law Society of England and Wales:

- Demonstrate appropriate behaviour and integrity in a range of situations.
- Demonstrate the capacity to deal sensitively and effectively with clients, colleagues and others from a range of social, economic and ethnic backgrounds, identify and respond positively and appropriately to issues of culture and disability that might affect communication techniques and influence a client’s objectives.
- Apply techniques to communicate effectively with clients, colleagues and members of other professions.
- Recognise clients’ financial, commercial and personal constraints and priorities.
- Effectively approach problem solving.
- Effectively use current technologies and strategies to store, retrieve and analyse information and to undertake factual and legal research.
- Demonstrate an appreciation of the commercial environment of legal practice, including the market for legal services.
- Recognise and resolve ethical dilemmas.
- Use risk management skills.

³ Stefan H. Krieger and Richard K. Neumann, *ESSENTIAL LAWYERING SKILLS* 18 (2011) (footnote and citation omitted).

- Recognise personal and professional strengths and weaknesses, to identify the limits of personal knowledge and skills and develop strategies that will enhance their personal performance.
- Manage their personal workload and manage efficiently and concurrently a number of client matters.
- Work as part of a team.⁴

After receiving training in academic and some of these practical skills, graduates of law schools are awarded the degree of Juris Doctorate (J.D.); and those who want to practice law must take and pass the bar examination administered by the state where they want to practice.⁵ Law graduates generally take a two-month bar preparation course; and the bar passage rate is generally high, except in California. But even in California, the bar passage rate is much higher than here in Korea, and the lower passage rate is generally attributed to California's system of allowing graduates of schools that are not accredited by the American Bar Association to take the bar examination.⁶ I should also mention that there are some individuals who bypass law school and become lawyers,⁷ but those cases remain interesting curiosities and exceptions to the general path that students take to become lawyers.⁸

⁴ Law Society of England and Wales, A New Framework for Work Based Learning: A Consultation Paper 14 (Aug. 2006); *see also* Stuckey, *supra* note 2, at 54.

⁵ *See generally* Matthew J. Wilson, *U.S. Legal Education Methods and Ideals: Application to the Japanese and Korean Systems*, 18 CARDOZO J. INT'L & COMP. L. 295, 300-02 (2010). This informative article was extremely helpful in preparing this talk. The article examines potential benefits and pitfalls of adopting American-style legal education and strategies to maximize the benefits. A Korean law school considering adopting clinical education may also find worthy of examination articles by Professors Brian Lansberg, Elliot Milstein, Pamela Phan, and Leah Wortham cited in this article. *See infra* notes 17, 27, and 28.

⁶ *See* Rule 4.26, Cal. Rules of the State Bar (allowing applicants graduating from "fixed-facility," distance-learning, or correspondence law schools that are registered with the Committee of Bar Examiners even if the schools are unaccredited by the American Bar Association).

⁷ In California, for example, applicants may qualify to take the bar examination after having apprenticed at a law firm or with a judge. *Id.*; *see also* Qualifying for Admission to Practice Law in California through Study in a Law Office or Judge's Chamber, State Bar of California, *available at* <http://admissions.calbar.ca.gov/Education/LegalEducation/LawOfficeorJudgesChamber.aspx>.

⁸ In all of my years of practice, I have met numerous lawyers, and among those only one lawyer qualified for the bar examination through apprenticeship.

Unlike the U.S. system, most law programs in the rest of the world are undergraduate programs, as it is here at Soongsil. Since about three years ago, however, developments have been afoot that may signal a trend: South Korea became one of the first countries – along with China, Japan, and Australia – to begin establishing a postgraduate system of legal education in a number of universities without abolishing the undergraduate law college programs in place either at those institutions themselves or elsewhere.⁹ Like the American system, these new law schools are three-year programs. In Korea, twenty-five law schools are now postgraduate programs.¹⁰

In addition, some Canadian law schools are switching over from awarding the degree of Bachelor of Laws (Legum Baccalaureus or LL.B.) to J.D.'s. Mostly, these changes have not been substantive; they have been in name only.¹¹

II. SUBSTANTIVE CHANGES: MOVEMENT TOWARD ADOPTION OF THE AMERICAN CURRICULUM AND INSTRUCTION IN ENGLISH

What are the trends in teaching the substance of U.S. law? Outside of the United States, as here at Soongsil, law programs are beginning to teach U.S. law, although with some additional international content.¹² (By the way, in the U.S., too, as at law programs elsewhere worldwide, the trend has been toward internationalization of the curricula. This trend is reflected even in some traditional first year law classes that are incorporating some elements of international law.¹³)

⁹ Wilson, *supra* note 5, at 298 & n.2; *see also* Seoul National University website, which lists both the undergraduate and graduate programs in law, *available at* <http://www.useoul.edu/academic/aca0101.jsp>.

¹⁰ Leigh Jones, *Foreign Law Schools Follow the U.S. Playbook*, Nat'l L. J. (Sept. 9, 2008); *see also* Peking University School of Transnational Law J.D. Curriculum, *available at* <http://stl.szpku.edu.cn/en/current/detailsforCur.aspx?Id=539&&MenuId=02030101&&FirstNo=020301>.

¹¹ Vesna Jaksic, *Canadian Law Schools Begin Switching to J.D.s - Changing from LL.B. in a Bid to Become More Globally Marketable*, Nat'l L. J. (Mar. 31, 2008).

¹² Jones, *supra* note 10.

¹³ Back when I went to law school in the early 1980s, my first-year contracts class did not include any international law element. Now, a course in contracts will typically cover not only the common law of contracts and the Uniform Commercial Code, but also the United Nations Convention on Contracts for the International Sale of Goods. (Note that this Convention was adopted in 1980, but I do not recall it being taught in the introductory contracts course that I took in 1983.) Contracts professors now teach the Convention because, as the United Nations Commission on International Trade Law notes, “[t]he contract of sale is the backbone of international trade in all countries,

Instruction is also being offered in English. In China, at the Peking University School of Transnational Law, which was established in 2008, an American, trained and experienced in deanship in the U.S., is heading that postgraduate law school, and the curriculum is in English.¹⁴

III. DELIVERY: INTRODUCTION OF AMERICAN TEACHING METHODS IN LAW SCHOOLS WORLDWIDE

So far, I've talked about the internationalization of U.S. legal education in institutional and curricular changes. I'll now talk about the third aspect of the internationalization of U.S. legal education: the method of delivery. There are at least two pedagogical methods that are unique to American legal education: the Socratic method and the clinical method. As you know, the Socratic method, as used in American law schools, is the teaching method of using professor-guided discussions in class to derive legal principles from cases that are excerpted in textbooks. Professor Brian Kalt will talk about this teaching method.¹⁵

The second pedagogical method that is unique to American legal education is the clinical method. The clinical method refers to providing students with practical experience by having students directly represent clients – most of them indigent or disadvantaged and non-governmental groups – under the direct and close supervision of law faculty.¹⁶ The theory behind clinical teaching is that adult learners acquire

irrespective of their legal tradition or level of economic development.” *Id.* In addition to changes in the course content, U.S. schools now variously offer master of laws degrees (LL.M.) in international law, clinical programs that allow students to practice in international tribunals, and journal opportunities, and some may even allow credit for study abroad.

¹⁴ *An American Law School in China*, News, Inside Higher Ed, available at <http://www.insidehighered.com/news/2008/05/22/china>.

¹⁵ For an excellent demonstration of the use of the Socratic method in a classroom, see Professor Michael Sandel's lectures at Harvard University in his undergraduate class entitled, "Justice," available at <http://www.justiceharvard.org/watch/>. His book, *JUSTICE*, which is also available in a Korean edition, recites some of the Socratic-style dialogues between himself and his students. See Michael J. Sandel, *JUSTICE* (Korean ed. 2010). I also commend Professor David Cruz's clear, engaging constitutional law lectures, which demonstrate the use of the method in a law classroom. These lectures are available on Youtube. At the conference at Soongsil, Professor Kalt mentioned that some law lectures demonstrating the use of the method were available on the Internet. I watched some of them, and, of the ones I sampled, I thought Professor Cruz's lectures demonstrated the use of the method illustrated the modified Socratic method the best.

¹⁶ Some clinics represent individuals who are not indigent. For example, our sister clinic at Golden Gate University School of Law represents "clients in a variety of employment-

knowledge better when they apply theory to real cases involving real clients; and that adult learners can learn to do things better when they reflect on their practice.

Of course, the other advantage of learning to practice law in a clinical setting is that real cases are not packaged. Students have to obtain or uncover facts. Students have to do legal research. Clients don't come to you saying that they have a "formation of contracts" problem. In dealing with this raw material, students learn what it means to practice law. Students learn that researching the law doesn't always give you definitive answers, and that they must advise clients in the face of uncertainty.

Moreover, while students are benefiting by learning how to practice law, society benefits by providing indigent clients or nonprofit groups with free legal services that they would not otherwise receive. And, I have to tell you that clinic clients get excellent representation. Free doesn't at all mean substandard.

The clinical method generally utilizes three modes of teaching: in-seminar instruction; clinical rounds – akin to medical rounds; and supervision meetings.¹⁷ In clinic seminars, students typically learn the substantive laws necessary for client representation. "Typically, seminars are built around a syllabus that has clear, teacher-defined learning goals for each session."¹⁸ In our environmental clinic, for example, we work with clients who are working on a campaign to phase out fossil fuel use, and so students learn the federal clean air laws and state energy laws in the seminar.

Clinical rounds are case rounds are a central forum where members of the law clinic – students, faculty, staff attorneys, and other professionals essential to the clinic, such as staff scientists and social workers – interact and make the clinic an entity in itself. Rounds take various forms. Some rounds are "law firm meetings" where the firm exchanges information about the projects on which they are working. These rounds typically capitalize on teachable moments that naturally occur during the informational exchange. Yet others explore specific themes that recur in law or clinic practice – such as case planning, outcome prediction, legal and factual analysis, analyses of relationships

related matters including wage and hour violations, discrimination, workplace harassment, unemployment benefits, pregnancy and family/medical leave, and employment rights of the formerly incarcerated." See About the Clinic, Women's Employment Rights Clinic, available at http://www.ggu.edu/school_of_law/academic_law_programs/practical_legal_training/clinical_programs/women_employment_rights_clinic. Some of these clients may not be indigent but may not be able to obtain legal services in the legal market because of the size of their claims.

¹⁷ Elliot S. Milstein, *Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations*, 51 J. Legal Educ. 375, 377-79 (2001).

¹⁸ Susan Bryant & Elliot S. Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education?* 14 CLINICAL L. REV. 195, 201 (2007).

and interactions with clients and other actors involved in the cases, and issues relating to social justice lawyering.¹⁹ In addition, there are rounds that are called “case presentations,” which are presentations made by students about their cases as the name suggests and provides a forum for the presenting student to practice their presentation skills and to seek their colleagues’ advice.²⁰ There’s a lot of collaboration that goes on in those sessions. A student might ask another student, “Have you thought of making this or that argument?”²¹

Students also meet with their faculty individually and frequently to discuss case planning and to receive one-on-one feedback on writing and oral presentations, “strategic choices, and reflections on what has been learned.”²² These meetings can be intense: when our clinic student argued a big case in court, we clinical professors mooted her seven times in supervision meetings before her argument.²³ Professor Milstein explains that “[t]he best supervision deals with the particular problems in the pending case and also uses that case or student experience as a metaphor for larger recurring issues that the students will face in their careers. Helping students extract theory from experience, apply theory to solve real-world problems, and revise theory in light of experience is the supervisory ideal.”²⁴ Thus, in the moot sessions that we had with our student, we talked not simply about the case, but about what it means to be a female advocate, what she would learn from the answers she gave to questions that her professors posed, how we might have written the brief differently, and what lessons she drew from the experience.

As you can see, this method of teaching requires a low student to faculty ratio. Professors and other lawyers working at clinics typically supervise no more than ten students.²⁵ Even so, the clinical method is becoming internationalized. When I attended an international conference of environmental law clinic professors several years ago, there were professors and practitioners from numerous countries, including from Chile, China, the Czech Republic, Israel, Japan, and Nigeria. There are clinical law programs in

¹⁹ *See id.* at 231-37.

²⁰ *See generally* Bryant & Elliot, *supra* note 18.

²¹ *See id.* at 208-13.

²² Milstein, *supra* note 17, at 377.

²³ She won the case for our client. *See Center for Biological Diversity and Helphinkley.org v. County of San Bernardino*, Case No. BCV 09950 (San Bernardino County Superior Court).

²⁴ Milstein, *supra* note 17, at 377.

²⁵ The student to faculty ratio is indeed low at the clinics at my law school. *See also* James H. Backman, *Law School Externships: Reevaluating Compensation Policies to Permit Paid Externships*, 17 CLINICAL L. REV. 21, 35 & n.21 (2010).

all of those countries now.²⁶ Professors Leah Wortham and Richard Wilson, American professors with a deep commitment to global clinical education, also write about clinical programs in Argentina, Mexico, Poland, and Russia.²⁷

But I suspect that an undergraduate law program in Korea may be reluctant to implement in-house clinical education at this juncture. This information may therefore be of more interest to those with graduate law schools. It is important to remember, however, that many, if not all, of the countries that have clinics outside of the U.S. have undergraduate law programs, and therefore Korean institutions should investigate seriously the application of the clinical method and to begin faculty training in clinical education. In China, for example, clinical electives are available in 87 law schools.²⁸ In many of these schools, valuable legal services are being provided to promote social justice.²⁹

IV. REASONS FOR THE TREND TOWARD INTERNATIONALIZATION OF U.S. LAW AND TEACHING METHODS

²⁶ 2007 Ward Kershaw Environmental Law Conference Addresses Issues of Global Clinical Education, Environmental Law at Maryland, University of Maryland School of Law (Summer-Fall 2007), available at <http://search.japantimes.co.jp/cgi-bin/nn20061104f1.html>; Network of University Legal Aid Institutions, http://nulainigeria.com/law_clinics.html.

²⁷ Leah Wortham, *Aiding Clinical Education Abroad: What Can Be Gained and the Learning Curve on How to Do So Effectively*, 12 CLINICAL L. REV. 615, 619, 624 (2006) (describing law school clinics in Poland and Russia); Richard J. Wilson, *Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education*, 10 GERMAN L.J. 823, 826 (2009) (mentioning law school clinics in Argentina and Mexico and noting that Chilean law school clinics had a parallel evolution to those in the U.S., both institutions being rooted in the countries' respective social movements of the 1960's and 1970's).

²⁸ Xiangshun Ding, *Teaching Common Law in a Country Without Common Law Tradition: Its Necessity and Approach*, First Godang International Conference on Law, The Prospect for Legal Education: Incorporating American Legal Teaching Methods 27, 34 (Conference Proceedings, May 28, 2011); see also Pamela Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 YALE HUM. RTS. & DEV. L.J. 117, 126 (2005) (describing development of clinical legal education in China and examining its public interest benefits and challenges); Brian K. Landsberg, *Strategies to Increase the Availability of Skills Education in China*, 22 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 45, 54 (2009) (factors internal and external to the law school to examine in adopting experiential education).

²⁹ See, e.g., Note, *Adopting and Adapting: Clinical Legal Education and Access to Justice in China*, 120 Harv. L. Rev. 2134, 2149-54 (2007) (describing litigation, legislative, and other problem solving approaches employed at several Chinese law schools);

Speaking broadly first beyond the internationalization of U.S. laws, we have seen globalization of commerce, communication, ideas, and institutions such as law. Some of the reasons are political such as the decreasing barriers to international trade and foreign investments and the privatization of industries in the western communist bloc since the fall of the Berlin Wall.³⁰ The advent of the Internet and other advances in communication and technology have also made the global interchange of goods and ideas easier³¹ and sometimes even mandatory. The Internet is today's Silk Road, except that it reaches farther, and you can travel the world in microseconds. Global companies also mean that markets, including the market for labor, have become global.³²

Here's an example of the world's interconnectedness: First Solar is a U.S. company that is the world's largest supplier of thin-film photovoltaic solar panels. It topped Fortune's 100 Fastest Growing Companies list in 2010 by providing solar panels to markets in Germany, Japan and Italy, and now China, as well as utility-scale projects in the U.S.³³ First Solar just announced a few weeks ago that it signed an agreement with a wholly owned subsidiary of China Power New Energy Development Company Limited to collaborate on projects in China, the U.S., and other international markets.³⁴ The company's manufacturing plants are located in the U.S., Germany, and Malaysia.³⁵

Closer to Seoul, Samsung Group's activities illustrate the global nature of today's business world. Samsung Group, the largest Korean chaebol, has a global business with joint ventures and partnerships with companies outside of Korea, including the U.S. and Japan, to share technology and to gain strategic market advantage.³⁶

³⁰ Joan Marques, *The Influence of the Global Business Environment in Realizing the Millennium Development Goals*, 1/1/07 J. GLOBAL BUS. ISSUES 17, 2007 WLNR 27317908 (Jan. 1, 2007).

³¹ *Id.*

³² *Id.*

³³ 100 Fastest Growing Companies – First Solar, CNN Money, *available at* <http://money.cnn.com/magazines/fortune/fortunefastestgrowing/2010/snapshots/7.html>.

³⁴ News Release, First Solar & China Power International New Energy Announce International Cooperation Framework Agreement (May 10, 2011), *available at* <http://investor.firstsolar.com/phoenix.zhtml?c=201491&p=irol-newsArticle&ID=1561695&highlight=>.

³⁵ Hoovers Company In-Depth Records, First Solar, 2011 WLNR 9336895 (May 11, 2011).

³⁶ Hoovers Company In-Depth Records, Samsung Electronics Co., Ltd., 2011 WLNR 8656605 (May 4, 2011); Hoovers Company In-Depth Records, Samsung Group, 2011 WLNR 4655813 (Mar. 9, 2011).

Now, let's talk more specifically: why should we be interested in American law here in Seoul, Korea? But before I answer that question, let's engage in backward design. For Korea to continue on its incredible path of economic success – and the Miracle of Han River has been nothing if not remarkable³⁷ – Korea will have to continue to embrace its role as an exporter and increasingly as an exporter of intellectual property, not manufactured goods.³⁸ What if, for example, Korea became the first country that did not have to rely on fossil fuels for its energy needs because it invented a way to create energy from laver (gim) or kimchi for that matter?

In that scenario, the nature of the global market would matter. Thus, in posing questions about the relevance of studying U.S. law, it is important to ask how important the U.S. is in the world economy. The answer is that the U.S. is undoubtedly a significant global player. It has the world's largest economy, despite developments in the rest of the world, especially in China, which recently overtook Japan as the second largest economy.³⁹ On the latest Global 500 list from Fortune magazine, 139 companies are U.S. companies.⁴⁰ That is almost double the number of companies that Japan, the country next on the list, boasts. In addition to the number of large companies, the U.S. also provides a market because it has a sizeable population at about 310 million.⁴¹ It's the third most populous country in the world.⁴²

It would also not be an exaggeration to say that U.S. law is important to doing business with the world. Hyundai Motor America last year was hit with an \$8 million

³⁷ “Since the 1960s, South Korea has achieved an incredible record of growth and global integration to become a high-tech industrialized economy. Four decades ago, GDP per capita was comparable with levels in the poorer countries of Africa and Asia. In 2004, South Korea joined the trillion dollar club of world economies, and currently is among the world's 20 largest economies.” U.S. Central Intelligence Agency, World Factbook, South Korea, Economy, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ks.html>.

³⁸ See generally Lee Hyeonjeong, DAEHAN MINGUK JINWHA RON (Donga Ilbo Pub. 2007).

³⁹ The U.S. gross domestic product is \$15 trillion, almost three times that of China, which is ranked second after U.S. See Wolfram|Alpha knowledgebase, 2011, available at www.wolframalpha.com.

⁴⁰ See Countries, Global 500, available at <http://money.cnn.com/magazines/fortune/global500/2010/countries/US.html>

⁴¹ See Wolfram|Alpha knowledgebase, 2011, available at www.wolframalpha.com.

⁴² *Id.*

judgment based on pretrial discovery violations in a personal injury case.⁴³ Competing with U.S. companies also implicates U.S. laws. Take the example of Samsung again. Samsung has had to address significant civil and criminal litigation in the U.S. for charges of price fixing.⁴⁴

Aside from the U.S.' role as a global economic player, there are additional reasons for teaching U.S. laws here in Korea. For graduates of Korean college law programs intending to continue studies in the U.S., not studying U.S. law in English would be a serious impediment. The law curriculum in the U.S. is rigorous and is intended to ground future lawyers not merely on theory but also practice. After completion of the first year of law school, law students are expected in their summer internships to provide competent legal analysis in a practice setting – whether it be a large law firm, government agency, or a non-profit group. Many law students in the U.S. in fact begin to provide legal representation to clients through state bar-approved programs, such as the Practical Training of Law Students program in California. Learning U.S. law in English as an undergraduate would better prepare graduates of Korean law programs for study abroad.

Finally, there is a comparative law aspect for studying U.S. law: Korea may look to U.S.'s successes and failures in law reform to find potential solutions to its legal and policy challenges. Several areas of law come to mind as relevant. Korea will need a way to meet the challenges posed by its growing immigrant population and migrant labor force. Korea is no longer a *danilminjok*.⁴⁵ These new participants in Korea's economic success will need to be treated with the dignity and fairness that all human beings deserve. In addition, with a growing number of mixed race children in Korea from unions between Southeast Asians and Koreans, Korea will need to look to international examples, including the U.S. antidiscrimination laws, to find its own solutions in creating a just society. Korea has an exciting opportunity to design its laws to benefit from the American experience, both positive and negative.

In short, there are many reasons that teaching U.S. law in Korea may be important. The U.S. has a gargantuan economic role globally. The U.S. has experimented socially, legally, politically on issues that are now relevant to Korea. And, there are students who want to continue law studies in the U.S.

⁴³ *Magana v. Hyundai Motor America*, 167 Wash. 2d 570, 220 P.3d 191 (Wash. 2009) (en banc).

⁴⁴ Hoovers Company In-Depth Records, Samsung Electronics Co., Ltd., 2011 WLNR 8656605 (May 4, 2011).

⁴⁵ See Timothy C. Lim, *Will South Korea Follow the German Experience? Democracy, the Migratory Process, and the Prospects for Permanent Immigration in Korea*, 28 KOREA STUDIES 28 (2008) (arguing that immigration to Korea will continue and noting the number of undocumented migrant workers had reached a peak of over 306,000 in 2002).

V. THE FUTURE OF TEACHING U.S. LAW AND USING U.S. PEDAGOGIES TO KOREAN UNDERGRADUATE LAW STUDENTS

So, I finally come to the part that you may be the most interested in: the future of teaching U.S. law and using U.S. pedagogies to Korean undergraduates. There is a saying that there are two things that lawyers get paid for: talking and writing about the law.⁴⁶ In the U.S. law classrooms, there are several other skills that are necessary for doing well: analytical skills and the ability to think on one's feet.

Will training Korean undergraduate students to learn U.S. law in English prepare them to attend American law schools, where in-class student participation is valued? Will the training here prepare students to write legal documents in English? Those are the questions I would pose to both the educators and students here.

And, I would suspect, based on my own experience as a law student who spoke English as a second language, that the preparation would have to be extremely rigorous to ready Korean law college students to “talk and write” about the law – as I said earlier, the two things that practicing lawyers get paid for.

I would guess that, given the tough standards that law college students have to meet in Korea to earn admission to the program, understanding the theory of law and learning the law will not be so challenging. That is, book learning and memorization will not be new to these students. But talking and writing about the law will be challenging.

I believe that this is where American law teaching methods may be recruited to help. Whether it be through Socratic or some other method that elicits classroom participation, students who become accustomed to talking in the classroom will be less daunted in American classrooms and, later in their career, meetings with clients with complex problems. And although clinical education may not be employed in an undergraduate setting, some of the methods that clinics use could be adapted.

In the clinic seminar, I use documents from real cases to construct in-class exercises. I use real documents for many reasons. Many students after their first year of law school have not seen many examples of actual legal documents. Although this is changing, it was not rare several years ago for students in my clinic who are second or third year law students never to have seen a complaint, answer, or a brief from an actual case.⁴⁷ I also use real documents because they contain complexities that all real cases entail.

⁴⁶ Sarah E. Ricks, *Some Strategies to Teach Reluctant Talkers to Talk About Law*, 54 J. LEGAL EDUC. 570, 572 (2004).

⁴⁷ At the Soongsil conference, I asked the many students in attendance whether they had seen an actual legal document. No hands went up. My Korean was really bad, the students were shy, or they actually had not seen such a document. I don't know which is the case.

One exercise that I do requires students to read three sets of briefs in an environmental case that our clinic litigated. The briefs are from a citizens group, a government agency (the U.S. Environmental Protection Agency), and a company. The briefs contain a complex set of facts about a power plant that was built based on a very old air pollution permit. Each brief presents the facts from a very different perspective in a case where the parties asked the court to determine whether a settlement that the government had reached with the power plant was in the public interest, fair, and adequate.

I also require the students to read the affidavits of engineering experts that the Environmental Protection Agency and the citizens group submitted to the court. In the government's affidavit, the government's expert opines that the settlement is adequate because the pollution reduction measures required by the settlement reflect the best available control technology. The citizens group's expert declares in her affidavit that the pollution reduction measures are inadequate, citing to evidence from other power plants which were required to meet lower pollution limits.

Before class, I divide the students into three groups corresponding to the parties from the real case. Some of the students are assigned to be the company president, and others, the company's lawyers. I also distribute instructions ahead of time to students about each party's motivations and interests. I ask the students to prepare for an in-class mediation by analyzing their bottom line (that is, the worst deal they would take), opening offer, and the basis for their positions. In class, I play a mediator, and we do a mock mediation.

The students and I have a great time with this exercise. Not a single mediation turns out the same. And often times, to my great delight, my students think of solutions that I have not even thought of. What do they learn besides having fun? They learn only a little about mediation, but they learn a tremendous amount about the subject matter – that is, private enforcement of environmental laws and the value of citizen group participation – the nature of persuasion and rhetoric, the importance of considering the audience and purpose in preparing for such endeavors, and the importance of preparation. Primarily, they learn to articulate what they want and why they want it. That's what lawyers have to do – to clients, peers, and to the court.

I believe that this kind of exercise can be adapted to teaching Korean law students not only to talk, but also to write in English, using legal and factual analysis. For example, actual appellate briefs from real cases can be used to ask students to draft U.S. Supreme Court briefs, or at least a portion of the brief, in a matter pending before that Court. These appellate briefs are readily available from fee-charging databases like Westlaw and Scotusblog (<http://www.scotusblog.com/>), a Supreme Court of the United States blog, for free. The students can then edit each other's brief and can even select a brief to edit in class.

At our clinic, we have done group editing of the students' written work products, and students report that they benefit tremendously from these group sessions. I find that it is a way to show that everyone's writing, even the professors' and even those of students that their peers view as excellent students, improves through better legal analysis, organization, challenging of assumptions, editing and reediting, and feedback from others. Group sessions are also a way to address problems that most commonly recur in student writing.

I would imagine that incorporating these kinds of exercises would come at the cost of covering substantive law. After teaching in the clinic for over a decade, however, I have come to believe that some sacrifices of breadth of coverage is worth it if we can cover some material in depth.

I am a gardener. We gardeners dig a very deep and wide hole even for planting a tiny sapling. That's that I would compare in-depth learning to. Once I saw a tee shirt for the California Native Plant Society. The plant itself was tiny. Below, however, the root ball was enormous. The lessons that students learn in in-depth exercises are like that gigantic root ball. The root ball gives students a grounding that enables them to take on challenges that they may not have encountered before.

VI. CHALLENGES

Challenges remain. One challenge that comes readily to mind is that of resources. Problems have to be devised carefully – whether in Korea or the U.S. – for our students to learn the skills we want to teach them. Oral exercises may not take much resource once they are constructed and refined. But written assignments take tremendous resources if we want to provide our students with timely and effective feedback. It can also be frustrating for the students. My students may rewrite up to four times before they submit a document to court or to an agency.

Another challenge is to engage in a realistic assessment of the job market.⁴⁸ The global economic crisis is expected to persist. The number of legal jobs may not be increasing and may in fact be decreasing. If a program is preparing its graduates to fill jobs at international law firms, how many such jobs are in fact available, and what is the likelihood of obtaining them?

Lastly, what is the prospect of competing with graduate law programs? As to this issue, the economic downturn may actually provide an advantage to undergraduate programs because of the cost of graduate programs.

CONCLUSION

⁴⁸ See Wilson, *supra* note *, at 343 (discussing the profession's expression of concern over oversupply of lawyers).

Despite these challenges, it is an exciting time to institute a U.S. law program in English in an undergraduate setting. I can only expect that such a program will enhance the education that undergraduates will receive because of the rigorous nature of the U.S. law program. To remain rigorous, however, the program cannot be limited to teaching the law. It must teach how the law works in practice by requiring students to write and talk about the law.

With much excitement for the students of Soongsil and the continued cooperation and exchange of information between Soongsil and Golden Gate University, I thank you for giving me this opportunity to share my views.