

Socrates v. Confucius:  
An Analysis of South Korea’s Implementation of the  
American Law School Model

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I. INTRODUCTION .....	322
II. THE BIRTH OF THE KOREAN CONFUCIAN LAWYER .....	326
III. JAPAN’S 2004 LAW SCHOOL REFORMS AS A CASE STUDY .....	328
A. <i>Brief History of Japan’s Legal Education</i> .....	328
B. <i>Japan’s Tradition Legal Education System</i> .....	329
C. <i>Introduction of Japanese Graduate Law Schools</i> .....	331
D. <i>Challenges Facing Japan’s Graduate Law Schools</i> .....	333
IV. THE KOREAN BAR EXAMINATION – THEN AND NOW .....	334
A. <i>The Korean Bar Examination in Historical Perspective</i> .....	334
B. <i>GLSA Provisions</i> .....	338
C. <i>GLSA Controversy</i> .....	342
D. <i>Clash or Conformity</i> .....	346
1. Variable One: Confucian Cultural Constraint .....	347
2. Variable Two: Legal Language Constraint .....	349
E. <i>Possible Solutions</i> .....	351
V. CONCLUSION .....	352

I. INTRODUCTION

“Socratic Method” is a technique of philosophical discussion—and of law school instruction—by which the questioner (a law professor) questions one or more followers (the law students), building on each answer with another question . . . . This method takes its name from the Greek philosopher Socrates, who lived in Athens about 469-399 B.C. His method is a traditional one in law schools, primarily because it forces law students to think

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through issues rationally and deductively—a skill required in the practice of law.

BLACK'S LAW DICTIONARY<sup>1</sup>

Confucianism, which takes its tenets from the teachings of Confucius, the Eternal Teacher of humankind, believes in the main purport to establish a healthy, sound society based on humanism and ethics . . . . During [South Korea's] *Joseon* dynasty [1392-1910], it became an ideology based on govern[ance by] the state . . . and enhancing the scholar spirit.

The Confucian Constitution (*Jeongheon*)<sup>2</sup>

Socrates versus Confucius, clash or co-existence? This paper's objective is to resolve this specific issue as it relates to the incorporation of a Socratic legal educational approach into South Korea's<sup>3</sup> relatively "hierarchical" Confucian-based law school educational structure through the recent passage of the Graduate Law School Act ("GLSA").<sup>4</sup>

On July 27, 2007, South Korea passed the GLSA, which introduced a new legal educational system from its traditional four-year undergraduate bachelor's in letters-in-law ("LLB") system to the U.S.-style three-year graduate law school program.<sup>5</sup> Separate from the shift from legal education to the graduate level (from the undergraduate level),

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<sup>1</sup> See BLACK'S LAW DICTIONARY 1425 (8th ed. 2004).

<sup>2</sup> Adopted on November 28, 1995 by the *Seonggyungwan* Confucian General Assembly, as translated in CHONGKO CHOI, LAW AND JUSTICE IN KOREA: SOUTH AND NORTH 190 (2005).

<sup>3</sup> For purposes of this article, "South Korea," "Republic of Korea," "ROK," and "Korea" shall all denote the same term.

<sup>4</sup> See Graduate Law School Implementation Act (*Buhb-Hak Junmun-Dehakwon Sulchi Unyoungeh Gwanhan* Bub-ruhl), Law no. 8544, passed on July 27, 2007, amended Feb. 29, 2008 as Law No. 8852 (collectively, the "Graduate Law School Act" or "GLSA"); see also Korean National Assembly of the Republic of Korea website, [http://likms.assembly.go.kr/law/jsp/Law.jsp?WORK\\_TYPE=LAW\\_BON&LAW\\_ID=A2068&PROM\\_NO=08544&PROM\\_DT=20070727](http://likms.assembly.go.kr/law/jsp/Law.jsp?WORK_TYPE=LAW_BON&LAW_ID=A2068&PROM_NO=08544&PROM_DT=20070727) (last visited Aug. 12, 2008); Korean National Assembly of the Republic of Korea website, <http://www.klaw.go.kr/CNT2/LawContent/MCNT2Right.jsp?lawseq=83586&keyword=> (last visited Aug. 28, 2008). For GLSA-related legislative history, see the National Assembly of the Republic of Korea website, [http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill\\_id=032355](http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=032355) (last visited Aug. 12, 2008).

<sup>5</sup> See GLSA, *supra* note 4, at art. 22 (emphasizing the need for an undergraduate degree or its equivalent prior to admissions).

the new South Korean graduate law schools are substantially distinguishable from the former system in several ways.

First, under the GLSA, to sit for the revised Korean bar exam (“Revised Bar Exam”) to become a qualified lawyer<sup>6</sup> one must be a graduate of one of the new Korean graduate law schools, which open their doors in 2009 (“Korean Law Schools”).<sup>7</sup> Second, to be accepted into a Korean Law School, a law school entrance exam, known as the Law School Education Entrance Test (“LEET”) is required,<sup>8</sup> compared to no such exam under the currently existing Korean bar examination (“Traditional Bar Exam”). Third, the Revised Bar Exam will generally only be given to graduates from one of the 25 government-approved Korean Law Schools,<sup>9</sup> in which the bar passage rate is expected to be significantly higher<sup>10</sup> than the Traditional Bar Exam passage rate of less than five percent (previously, no such exam was required to sit for the Traditional Bar Exam). Fourth, the Korean Law School faculty composition under the GLSA will now consist of a minimum number of former legal practitioners (compared to no such requirement for Korean university law departments prior to the GLSA).<sup>11</sup> Fifth, in terms of

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<sup>6</sup> The first revised Korean bar examination pursuant to the GLSA is expected to occur on or about 2011.

<sup>7</sup> The current Korean bar examination does not contain any express requirement for an undergraduate degree or higher to sit for the Korean bar examination, known as the *sahbuhp-goshi*. See Korean Ministry of Justice website, [http://www.moj.go.kr/HP/BAR/bar\\_10/bar\\_1030/bar\\_103010.jsp](http://www.moj.go.kr/HP/BAR/bar_10/bar_1030/bar_103010.jsp) (last visited Aug. 28, 2008). A requirement does exist, however, for 35 credits of “law-related” courses to sit for the Traditional Bar Examination. *Id.*

<sup>8</sup> See GLSA, *supra* note 4, at art. 24 relating to the discussion of a new Korean Law School entrance examination.

<sup>9</sup> The 25 selected law schools along with the number of students allowed for such law school are: Seoul National University (150), Korea University (120), Yonsei University (120), Sungkyunkwan University (120), Hanyang University (100), Ewha Womans University (100), Kyunghee University (60), Chungang University (50), Hankuk University of Foreign Studies (50), University of Seoul (50), Ajou University (50), Inha University (50), Konkuk University (40), Sogang University (40), Gangwon University (40), Pusan National University (120), Dong-A University (80), Kyungpook National University (120), Yeungnam University (70), Chonnam University (80), Chonbuk University (80), Wonkwang University (60), Cheju National University (40), Chungnam National University (100), and Chungbuk National University (70). The total number of students expected to be enrolled in all the above 25 law schools is 2000. See Korean Ministry of Education and Human Resources Development website, [http://www.mest.go.kr/ms\\_kor/news/notice/broadcast/\\_\\_\\_icsFiles/afieldfile/2008/05/20/1199535\\_01.hwp](http://www.mest.go.kr/ms_kor/news/notice/broadcast/___icsFiles/afieldfile/2008/05/20/1199535_01.hwp) (last visited Aug. 25, 2008).

<sup>10</sup> Because the U.S. legal system represents the main benchmark under the GLSA, bar passage rates in U.S. state bar associations may represent a targeted Revised Bar Exam passage rate.

<sup>11</sup> See GLSA, *supra* note 4, at art. 16(3) (requiring that at least 20 percent of the Korean Law School faculty to consist of former practitioners, who have five years or

admissions into the Korean Law Schools, the English language (separate from other possible foreign languages) will now be emphasized in the admissions process in terms of demonstrated evidence of English ability, such as the TOEIC/TOEFL (compared to no such formal emphasis in the current system).<sup>12</sup> Sixth, the number of newly-admitted Korean lawyers will presumably increase significantly (from approximately 1,000 in 2008 to a figure ranging anywhere from 1,500 to 2,000 newly-admitted Korean lawyers from 2012, the first graduating class year under the new system).<sup>13</sup>

Prior to the passage of the Graduate Law School Act, the Korean legal education system was composed of primarily academic (rather than professionally-focused) graduate and undergraduate programs. The undergraduate degree was effectively the equivalent of a four-year Bachelor's in the LLB degree. At the graduate level, two primary options exist: the two-year Master's in Law degree (LLM), and the Doctor of Philosophy in Law (PhD) degree. Throughout all levels, both graduate and undergraduate, South Korea's legal education system<sup>14</sup> was based on the Confucian-based top-down lecture and rote-memorization teaching method as opposed to the relatively flatter and more confrontational Socratic method applied in American law schools.<sup>15</sup>

This paper is divided into three parts. First, it will provide an overview of the current Korean law education and training environment from a legal, historical, and socio-cultural perspective. Second, it will provide, as a case study, an overview of Japan's 2004 law school reform efforts, with the purpose of ascertaining what lessons, if any, can be

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more of relevant legal experience).

<sup>12</sup> Although subject to the admissions criteria of each institution, it is generally expected that many, if not all, of the Korean Law Schools will require the submission of a TOEFL/TOEIC English proficiency examination.

<sup>13</sup> See Korean Ministry of Education, Science, and Technology website, [http://www.mest.go.kr/ms\\_kor/intro/publicrelation/recent/1201048\\_8180.jsp](http://www.mest.go.kr/ms_kor/intro/publicrelation/recent/1201048_8180.jsp) (last visited Aug. 25, 2008).

<sup>14</sup> As background, Northeast Asia, which includes South Korea, China, and Japan, is a region of rapid and sweeping change. Until the 1997-98 Asian financial crisis, Northeast Asian economies were heralded for their remarkable growth, which was then followed by subsequent critiques of why the Asian Tiger model of growth were destined to have failed, such as crony capitalism. See generally DAVID C. KANG, CRONY CAPITALISM: CORRUPTION AND DEVELOPMENT IN SOUTH KOREA AND THE PHILIPPINES (CAMBRIDGE STUDIES IN COMPARATIVE POLITICS) (2002). From a legal perspective, one positive result was that such economic crises linked to the institution of a wide array of various legal liberalization initiatives for the stated purposes of increasing transparency and global competitiveness. See JASPER KIM, CRISIS AND CHANGE: SOUTH KOREA IN A POST-1997 NEW ERA 78-99 (2005).

<sup>15</sup> However, very few of the graduates from any of these Korean law programs, albeit at the graduate or undergraduate level, become Korean lawyers as a result of South Korea's low Traditional Bar Exam passage rate.

learned from such experience. Third, the GLSA will be analyzed in terms of its substantive provisions, objectives, and arguments for and against, noting in particular that two specific constraints may exist in terms of the Confucian culture and Korean language, which are inherently embedded within South Korea's law education and training infrastructure.

## II. THE BIRTH OF THE KOREAN CONFUCIAN LAWYER

Unlike in the U.S., in South Korea the number of people who are eligible to become lawyers is capped at a predetermined level (currently at approximately 1,000)<sup>16</sup> Generally, most individuals can sit for the Korean bar examination at present, with the overall standards to sit for the Korean bar examination much less restrictive than for many U.S. state bar examinations.<sup>17</sup> Moreover, passing the Korean Traditional Bar Exam, due in part to such limited supply, has historically led to relatively secure employment and entry into an exclusive social class caste from the perspective of many South Koreans.<sup>18</sup>

On the one hand, the "open admissions" process (in which not even an undergraduate degree is a requirement) for sitting for the Korean bar examination can be seen as "equaling the playing field" and creating "low barriers to entry."<sup>19</sup> On the other hand, due to the extremely low passage rate of the Traditional Bar Exam, it can be viewed as not creating a so-called "audacity of hope,"<sup>20</sup> but rather, an audacity of false hope for

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<sup>16</sup> Therefore, approximately 0.00002% of the total South Korean population are Korean lawyers. This percentage was computed by dividing 1,000 (the number of newly-admitted lawyers per year) by 48,000,000 (the approximate current South Korean total population). See U.S. Department of State, *Background Note: South Korea*, <http://www.state.gov/r/pa/ei/bgn/2800.htm> (last visited Mar. 27, 2009).

<sup>17</sup> See Korean Ministry of Justice website, [www.moj.go.kr/HP/BAR/bar\\_10/bar\\_1030/bar\\_103010.jsp](http://www.moj.go.kr/HP/BAR/bar_10/bar_1030/bar_103010.jsp) (last visited Aug. 25, 2008). That is, no formal educational requirements, such as an undergraduate degree (law or otherwise, from an accredited institution as proscribed by any Korean bar organization), certain GPA, or previous courses in law are proscribed. *Id.*

<sup>18</sup> Such positive benefits have led a large number of people sitting for the Korean Traditional Bar Exam every year, the vast majority of whom do not pass the exam. Thus, it is not unusual for a successful exam taker to have taken the same examination two or three times prior to such successful passage, with many others never passing the Traditional Bar Exam. And many, in preparation, effectively make studying for the Korean bar examination a full-time occupation by quitting or not taking employment opportunities for the express purpose of creating time to study for this one examination.

<sup>19</sup> See Jun-Hee Kim, *Route to the Top: Gwageo, Korea's traditional civil service examination*, NVEST KOREA JOURNAL, Sept.-Oct. 2007, at 70-73.

<sup>20</sup> This reference is taken from Barack Obama's book of the same title. See BARACK OBAMA, *THE AUDACITY OF HOPE: THOUGHTS ON RECLAIMING THE AMERICAN DREAM* (2008).

those who took the risk of taking (yet ultimately failing) Korea's Traditional Bar Exam.<sup>21</sup>

In contrast, as many Koreans may now know, the U.S. legal education is primarily taught as a graduate professional program. Thus, to become a U.S. lawyer, and to sit for most state bar examinations, generally one must, among other things, be a graduate from an ABA-approved law school.<sup>22</sup> There are now approximately 200 ABA-approved law schools in the United States,<sup>23</sup> compared to the 25 Korean Law Schools that were recently approved in 2009.<sup>24</sup> Applicants to such law schools generally require an undergraduate degree (such as a Bachelor of Arts or Bachelor of Science) or higher, along with the submission of the applicant's Law School Admissions Test (LSAT), academic transcripts, personal statement, letters of recommendations, and English proficiency examination results (as applicable). One main objective of the U.S. law school system is to have students "think like a lawyer."<sup>25</sup> This includes such skill sets as legal research and writing, formation of legal arguments, and a firm understanding of "black letter law."<sup>26</sup>

What is generally not a focus of U.S. law schools are methods and strategies of how to take and pass the various state bar examinations.<sup>27</sup>

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<sup>21</sup> That is, factoring in opportunity costs for taking the bar examination, such as foregone income and other academic pursuits, the barriers to entry in reality might be notably higher than if a U.S. law school style format was implemented, which creates a more direct path towards becoming a licensed attorney.

<sup>22</sup> For overall standards, criteria, and factors relating to ABA-approval for a U.S. law school, see generally American Bar Association website, Section of Legal Education and Admissions to the Bar, <http://www.abanet.org/legaled/standards/standards.html> (last visited July 23, 2008).

<sup>23</sup> For a current alphabetical list of ABA-approved law schools, see generally American Bar Association website, Section of Legal Education and Admissions to the Bar, <http://www.abanet.org/legaled/approvedlawschools/alpha.html> (last visited Aug. 12, 2008).

<sup>24</sup> See Korean Ministry of Education and Human Resources Development website, [http://www.mest.go.kr/ms\\_kor/news/notice/broadcast/\\_icsFiles/afieldfile/2008/05/20/1199535\\_01.hwp](http://www.mest.go.kr/ms_kor/news/notice/broadcast/_icsFiles/afieldfile/2008/05/20/1199535_01.hwp) (last visited Aug. 25, 2008); see also LAW SCHOOL TIMES, Apr. 22, 2008, at 4 (quoting a Korea Ministry of Education statistics).

<sup>25</sup> For an overview on the U.S. law school process from the perspective of the pedagogical process behind teaching law students to "think like a lawyer," in addition to suggestions on how to reform such approach, see generally Kurt M. Saunders and Linda Levine, *Learning to Think Like a Lawyer*, 29 U.S.F. L. REV. 121 (1994), available at <http://ssrn.com/abstract=870504>.

<sup>26</sup> *Id.*

<sup>27</sup> For a discussion on how to better train law students to "think outside the box" involving a more "integrated approach," see Kathryn Stanchi, *Step Away from the Case Book: A Call for Balance and Integration in Law School Pedagogy*, 43 HARV. C.R.-C.L. L. REV. 611 (2008), available at <http://ssrn.com/abstract=1104772>.

Typically, most U.S. law schools view this as a service that is separate to their mandate of training future lawyers. Thus, this gap has been filled by outside educational providers, such as Barbri (a dominant state bar examination prep course), which often focuses on providing the black letter law rather than the various academic and philosophical debates surrounding such black letter law. Thus, a notable amount of time in the U.S. law school curriculum can instead be spent on developing or reconstituting the students' thinking process through the exchange of both real and hypothetical legally-related questions between the law professor and student in front of his or her peers, with the professor at times purposely playing the role of devil's advocate to spur intellectual thought, discourse, and arguments.<sup>28</sup>

The next section will broadly overview, as a case study, Japan's legal educational structure, which represents the most relevant benchmark for Korea with regards to a traditional Confucian-based law school educational structure attempting to reconstitute itself towards the American graduate law school model.<sup>29</sup>

### III. JAPAN'S 2004 LAW SCHOOL REFORMS AS A CASE STUDY

#### A. *Brief History of Japan's Legal Education*

The creation and development of Japanese law and legal education can be traced to Japan's Meiji restoration period beginning in the 1860s.<sup>30</sup> In 1872, a school of law was first established by Boissade and Bosquet, in which French law was taught in the French language, and five years later

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<sup>28</sup> Although the American legal learning environment may seem confrontational on its face, it mirrors the adversarial legal system that exists in the United States. In this process, both in theory and in practice, two opposing counsel make their relevant arguments on behalf of their clients to an impartial third-party magistrate in the spirit of strong client advocacy. The legal system in South Korea is on paper also a legal system in which plaintiff and defendant argue in front of an impartial magistrate on behalf of their client's interest. In practice, however, such arguments are based mostly on legal memoranda with relatively little time spent on listening to oral arguments. With the recent introduction of the jury system in South Korea (on an experimental non-binding basis), the relative importance of oral arguments is likely to increase. See Korea Ministry of Justice website, [http://moj.korea.kr/moj/jsp/moj1\\_branch.jsp?action=news\\_view&\\_property=add\\_sec\\_2&\\_id=155284424](http://moj.korea.kr/moj/jsp/moj1_branch.jsp?action=news_view&_property=add_sec_2&_id=155284424) (last visited Aug. 25, 2008). Further, the apparent existence of a traditionally litigation-adverse population in South Korea is increasingly diminishing due to trends towards greater overseas educational exposure and so-called Western influences both inside and outside the country.

<sup>29</sup> Although many papers have discussed Japan's legal education reforms of 2004, the purpose of this section is to provide the rationale, process, and analysis relating to such law school reform efforts as it relates to the South Korean case pursuant to the GLSA.

<sup>30</sup> See Charles P. Sherman, *The Debt of Modern Japanese Law to French Law*, 6 CAL. L. REV. 3, 198 (1918).

in 1877, the Japanese government established another law school—the Tokyo University Law School, followed thereafter by other private non-official law schools.<sup>31</sup>

Another significant change occurred with the promulgation of a new constitution in 1946. Because the judiciary was separated from the executive branch, a single qualifying examination (National Bar Examination) managed by the Ministry of Justice was introduced for those who wanted to pursue a career as a judge, public prosecutor, or private practitioner. A single apprenticeship training institute, the Legal Training and Research Institute (LTRI), managed by the Supreme Court was also introduced.<sup>32</sup>

This “traditional” legal education system was the system that prevailed until 2004, which was when Japan’s most recent law school reforms occurred.<sup>33</sup> Under the “traditional” system, much like South Korea until 2009, Japan’s legal education was based on the undergraduate level, with no educational requirements to sit for the Japanese National Bar Examination. Japan’s most recent law school reforms in 2004 effectively extended its legal education structure to the graduate level, in which only graduates of such new graduate law schools were allowed to sit for the new bar exam.

In the following section, I will summarize and compare in depth the traditional legal education and the new institutional arrangements made during Japan’s 2004 graduate law school reforms. Furthermore, I will note some of the major challenges relating to the new Japanese graduate law schools since their 2004 implementation.

#### B. *Japan’s Tradition Legal Education System*

Prior to Japan’s 2004 law school reforms (which were implemented five years before South Korea’s related reforms), approximately 93 universities with faculties of law existed with approximately 45,000 students. Some universities also offered graduate programs in law, both at the master’s and doctoral levels, but were

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<sup>31</sup> *Id.* at 199. During this time, Japan was notably influenced by the French due to, among other things, Napoleon III and his policies affecting international relations, including in Asia (in addition to Germanic influence due to Otto van Bismark’s rule). The French Model had been introduced to re-organize the Japanese military, and its influence continued to direct the reformation of the Japanese legal system. *See id.*

<sup>32</sup> The structure of South Korea’s Judicial Research and Training Institute (“JRTI”), which is a two-year lawyer training program following the successful passage of the Korean Traditional Bar Exam, also is managed by the South Korean Supreme Court, much like Japan’s LTRI. *See* Korean Judicial Research and Training (JRTI) website, [http://jrta.scourt.go.kr/intro/business\\_structure.asp?flag=4&sfalg=2](http://jrta.scourt.go.kr/intro/business_structure.asp?flag=4&sfalg=2) (last visited Aug. 25, 2008).

<sup>33</sup> *See* Hisashi Aizawa, *Japanese Legal Education in Transition*, 24 WIS. INT’L L.J. 131 (2006).

primarily designed to train prospective academic researchers and teachers rather than future legal practitioners.<sup>34</sup>

Confucian-based lecture methods, which were academically oriented and tend to have little or no use outside the academic world, dominated the traditional undergraduate legal education.<sup>35</sup> A student's actual legal training effectively began after passing the National Bar Examination, and then entering the Legal Training and Research Institute, a sub-division of the Supreme Court.<sup>36</sup>

However, the examination is so competitive that most successful test-takers have had to take the National Bar Examination multiple times, similar to South Korea. The passage rate is approximately 2% to 4% (also similar to South Korea), with the average age of successful applicants in 2005 standing at 29.03.<sup>37</sup> The proportion of applicants who successfully passed the examination within three years from their first entry was 38.4%.<sup>38</sup> One reason for Japan's low bar passage rate is because successful candidates were limited to 500 for nearly thirty years. Later, numbers had gradually increased to 1,000 in 1999, approximately 1,200 in 2002, and approximately 1,500 in 2004.<sup>39</sup>

Japan's legal education reforms arose in the 1990s due to the perception that the nation suffered from a potential scarcity of lawyers, especially when doing business in the global setting, similar to the case of Korea.<sup>40</sup> According to Professor James Jolly, other reasons also existed for the transformation, such as the demand for greater legal services and a shrinking student population.<sup>41</sup> In 2004, there were 18.91 lawyers per 100,000 people.<sup>42</sup> By comparison, there were 372.05 in the U.S (2001-04),

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<sup>34</sup> *Id.* at 137.

<sup>35</sup> *Id.* at 141.

<sup>36</sup> At the LTRI, lawyer trainees receive approximately one and a half years of legal training, including legal writing.

<sup>37</sup> *Id.* at 145.

<sup>38</sup> See Masahiro Tanaka, *Ideals and Realities in Japanese Law Schools: Artificial Obstacles to the Development of Legal Education*, 20 HIGHER EDUC. POL'Y 195 (2007).

<sup>39</sup> *Id.* at 145.

<sup>40</sup> See Setsuo Miyazawa, *Reform in Japanese Legal Education: The Politics of Judicial Reform in Japan: The Rule of Law at Last?*, 2 ASIAN-PAC. L. & POL'Y J. 89 (2001). For an interesting related article on the scarcity of Japanese *bengoshi* in rural Japan, see Norimitsu Onishi, *Lawyers in Rural Japan: Low Supply, Iffy Demand*, N.Y. TIMES, July 29, 2008, available at <http://www.nytimes.com/2008/07/29/world/asia/29japan.html?scp=1&sq=rural%20japan%20lawyers&st=cse>.

<sup>41</sup> See James Jolly, *Where are the Japanese going with their new law schools?*, 10 HAW. B.J. 9 (2006).

<sup>42</sup> See Hanrei Chosa Kai [Case Research Society], SAIBANSHO COURTS DATA

195.09 in England and Wales (2002-04), 185.23 in Germany (2002-04), and 79.09 in France (2003-04).<sup>43</sup>

### C. Introduction of Japanese Graduate Law Schools

In June 2001,<sup>44</sup> the Japanese government responded to such concerns by creating the Justice System Reform Council, whose research culminated with several recommendations.<sup>45</sup> Much like with Korea's new law schools, the duration of Japan's new graduate law program is three years, although the program can be completed in two years with the prior completion of an undergraduate law degree, however, students are not typically expected to have had undergraduate legal education.<sup>46</sup> In the traditional system, no prior educational accreditation was needed to sit for the bar examination, however under the new system, only those who have completed the new graduate law programs are eligible to sit for the new bar exam.<sup>47</sup> The LRTI program for legal practice will be maintained, but the term will be shortened to one year, taking into consideration the time spent in the restructured law schools.<sup>48</sup>

Japan's revised National Bar Examination was first given to test-takers in 2006 (i.e., three academic years following the 2004 reforms) and will have a five-year transition period; the final traditional bar exam would remain until 2010, in the interest of those already committed to the present examination, and thereafter only the revised bar exam will be offered.<sup>49</sup> During the transition period, each applicant would be allowed to take either of the two bar exams. In 2011, the Preliminary Examination will also be introduced, which represents an alternative route to becoming a Japanese attorney (*bengoshi*). Those who pass this exam may take the

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BOOK 25 (2004). East Asian countries also experience similar situations to Japan; there were 27.6 in Taiwan (2001) and 15.2 in South Korea (2000 to 2001). *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> See The Justice System Reform Council, *Recommendations of the Justice System Reform Council—For a Justice System to Support Japan in the 21st Century*, translated in ST. LOUIS-WARSAW TRANSATLANTIC L.J. 119 (2001).

<sup>45</sup> Such recommendations included the following: standards for the chartering of new Korean Law Schools, the system and standards for pre-existing law school accreditation, a newly-reconstituted national bar examination, and a new apprenticeship system. See Setsuo Miyazawa, *Law Reform, Lawyers, and Access to Justice*, JAPANESE BUSINESS LAW 63 (2007).

<sup>46</sup> *Id.*

<sup>47</sup> However, the bar examination may be taken up to three times within five years of graduation pursuant to Article 4 of Japan's Bar Examination Act.

<sup>48</sup> See Justice System Reform Council, *supra* note 44, at ch.III, pt.2, 4.

<sup>49</sup> See *Shiho Shiken Ho* [Bar Examination Act], Supplementary Provision, Law No. 138 of 2002, art 7.

new bar exam without graduating from a law school, in consideration of those who cannot afford to go to a law school, or for those who do not need to go to a law school because of their practical experience in law-related jobs.<sup>50</sup> Applicants may sit for the new bar exam up to three times within five years of graduating from a law school or passing the Preliminary Examination.<sup>51</sup>

By 2010, 3,000 people are projected to pass the revised bar examination. Further, the new structural approach ensures a greater diversity of applicants, in which every law school should select more than 30% of new entrants who possess a non-law related undergraduate degree (paralleling a similar requirement found in Korea's GLSA).<sup>52</sup>

Because training future lawyers is the central part of Japan's restructured approach, "bi-directional" and "multidirectional" methods—the American-style Socratic method—with small class sizes<sup>53</sup> are to be used for teaching, rather than the traditional Confucian-based lecture method.<sup>54</sup> The accreditation regulation also requires that, in principle, each instructor must have both more than five years of teaching experience and certain academic qualifications.<sup>55</sup> Also, a student-faculty ratio of fifteen-to-one is required; a similar requirement can also be found in the GLSA.<sup>56</sup>

The implementation of graduate law schools, therefore, represents a major change in Japanese higher education; it introduced the concept of professional schools as a new category of graduate program at Japanese universities and the concept of accreditation.<sup>57</sup> Graduate professional law schools opened its doors as of April 2004.<sup>58</sup>

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<sup>50</sup> See Miyazawa, *supra* note 45, at 69.

<sup>51</sup> *Id.*

<sup>52</sup> See Ministry of Education, Culture, Sports, Science, and Technology (MEXT) website, *Senmonshoku Daigakuin Setchinkiyun Yokoan*, [http://www.mext.go.jp/b\\_menu/public/2002/021205a.htm](http://www.mext.go.jp/b_menu/public/2002/021205a.htm) (last visited May 25, 2008).

<sup>53</sup> There should be at least twelve instructors in a law school, and the student/faculty ratio should be less than fifteen to one pursuant to Japan's *Chuo Kyoiku Shingikai* [National Education Council], *Hokadaigakuin no Secchi Kijun To ni tsuite* [On Accreditation Standards of Law Schools] at sec. 2(2)(1) (Aug. 5, 2002), available at [http://www.mext.go.jp/b\\_menu/shingi/chukyo0/toushin/020803.htm](http://www.mext.go.jp/b_menu/shingi/chukyo0/toushin/020803.htm) (last visited on May 25, 2008).

<sup>54</sup> See Justice System Reform Council, *supra* note 44, at ch.III, sec. 2, 2.(2)d.

<sup>55</sup> See James R. Maxeiner & Keiichi Yamanka, *The New Japanese Law Schools: Putting the Professional into Legal Education*, 13 PAC. RIM L. & POL'Y J. 303, 324-25 (2004).

<sup>56</sup> See Miyazawa, *supra* note 45, at 70

<sup>57</sup> *Id.* at 68.

<sup>58</sup> Tuition at private law schools ranges between JPY ¥1-2 million (USD \$10-20,000), with some additional expenses, while tuition at public law schools is

#### D. Challenges Facing Japan's Graduate Law Schools

Four years since its establishment, Japan's graduate law school program is mainly criticized because there are no constraints on the number of established law schools.<sup>59</sup> Upon invitation by Japan's Ministry of Education, Culture, Sports, Science and Technology (MEXT), 72 institutions applied to establish such programs.<sup>60</sup> Sixty-eight were accredited, 4 were rejected.<sup>61</sup> Later, six more universities applied and were accredited.<sup>62</sup> By 2005, 74 law schools had a capacity to enroll up to 5,825 students each year while the actual number of enrollment was 5,444.<sup>63</sup> If these law schools produce a total of 5,000 graduates per year, and if 70%

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approximately JPY ¥800,000 (USD \$8,000), noting that tuition rates of each university will vary. Thus, in order to alleviate the financial burden, financial aid to private schools and expanded students loans up to JPY ¥16 billion (USD \$1.6 billion) would be provided by the Ministry of Education. See Miyazawa, *supra* note 45, at 70.

<sup>59</sup> The result of the first reconstituted bar examination was published on September 21, 2006, which stated that of the total 2,087 graduates who took the exam, 1,009 passed, with the passing rate of 48.3%. See Miyazawa, *supra* note 45, at 73. According to Hisaya Kamei, the ideal success rate should be fixed at approximately 20%, however, such level raised protests from students and law school lecturers alike who anticipated that more than 70% of law school graduates would pass the new bar examination. See Tanaka, *supra* note 38, at 203. The passage rate sought a compromise to approximately 30%, yet the fundamental problem remains unsolved. *Id.* Taking out student loans is viewed as risky from the perspective of a conservative Confucian-based society, both in Japan and South Korea, especially for adult students who have to resign their jobs in order to attend the new Korean Law Schools. Moreover, those academic institutions that spent a large amount of money in establishing their law schools may suffer financial disadvantage since attracting students is more difficult. *Id.*

<sup>60</sup> See Ministry of Education, Culture, Sports, Science, and Technology (MEXT) website, *Heisei-16-nendo Kaisetsu Yotei no Hokodaigakuin no Secchi Ninka Shinsei (Keikaku) Ichiran* [List of Applications for Accreditation of Law Schools Expected to Open in 2004], [http://www.mext.go.jp/a\\_menu/koutou/houka/03091701.htm](http://www.mext.go.jp/a_menu/koutou/houka/03091701.htm) (last visited Feb. 7, 2006).

<sup>61</sup> See Ministry of Education, Culture, Sports, Science, and Technology (MEXT) website, *Daigaku Secchi, Gakko-hojin Shingikai* [University Accreditation Council], *Heisei-16-nendo Kaisetsu-yotei Hokodaigakuin Ichiran* [List of Law Schools Expected to Open in 2004] (Nov. 2003), [http://www.mext.go.jp/b\\_menu/shingi/daigaku/toushin/03112104.htm](http://www.mext.go.jp/b_menu/shingi/daigaku/toushin/03112104.htm) (last visited Feb. 7, 2006).

<sup>62</sup> See Ministry of Education, Culture, Sports, Science, and Technology (MEXT) website, *Heisei-17-nendo Kaisetsu-yotei no Hokodaigakuin no Secchi Ninka Shinsei (Keikaku) Ichiran* [List of Applications for Accreditation of Law Schools Expected to Open in 2005], [http://www.mext.go.jp/a\\_menu/koutou/houka/05012603.htm](http://www.mext.go.jp/a_menu/koutou/houka/05012603.htm) (last visited Feb. 7, 2006).

<sup>63</sup> See Ministry of Education, Culture, Sports, Science, and Technology (MEXT) website, *Heise-17-nendo Hokodaigakuin Nyugakusha Senbatsu Jisshi Jokyo no Gaiyo* [Overview of Law School Admission in 2005], [http://www.mext.go.jp/b\\_menu/houdou/17/05/05052002.htm](http://www.mext.go.jp/b_menu/houdou/17/05/05052002.htm) (last visited July 30, 2008).

of them pass the new bar examination, the number of successful applicants would amount to 3,500 (with these numbers already surpassing the Reform Council's initial plan recommending a gradual increase in numbers to 3,000 by year 2010).<sup>64</sup>

While the 2004 Japanese law school reforms were intended to implement the Socratic teaching method as seen in the American law school system, the attempt to incorporate such a Socratic system into Japan's heavily-embedded Confucian teaching structure has still not met all expectations. Namely, the revised bar examination continues to be competitive and be favorable to only few prestigious universities, students are narrow in breadth and depth in various fields, and the perception still exists that the overall quality of legal professionals may not have significantly improved.<sup>65</sup> For these reasons, based on this case study (although some arguable differences may exist between Japan's reforms and South Korea's current attempts), notable reasons exist for at least partial skepticism of the GLSA's ability to reach its objectives for the South Korean case, at least for the short-term.

The next section will discuss both the historical and modern day structure of the Korean bar examination and legal education system.

#### IV. THE KOREAN BAR EXAMINATION—THEN AND NOW

##### A. *The Korean Bar Examination in Historical Perspective*

Korea's bar examination structure has undergone a variety of changes since its original foundation.<sup>66</sup> In 1895, the first law professional institute, "*Bupkwanyangseongso*" (Judiciary Training School) was established. During the Joseon dynasty (1392-1910), according to the "Court of Justice Constitution Act," executive officers higher than royal inspectors were appointed as a judge. However, for purposes of cultivating judiciaries for the administration of justice, the "*Bupkwanyangseongso*" was established. After six months of education, those who passed the graduate examination were qualified to be members of the judiciary.<sup>67</sup> Students were taught subjects like civil law, civil

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<sup>64</sup> See Tanaka, *supra* note 38, at 203.

<sup>65</sup> Re-examining the Council Reform and implementing practical measures would solve such unexpected barriers. Yet, before pointing out the core problems of the Japanese legal system, it is also important to consider Japan's Confucian-based society. The underlying assumption for such reforms was due to a perceived shortage of Japanese lawyers. It is also possibly worthwhile to question whether Japanese society, in addition to many law-related institutes and organizations, are in fact ready to embrace a notable increase in the number of lawyers.

<sup>66</sup> This section will therefore focus on some (but not all) of the notable changes that have occurred to the Korean bar examination since the late nineteenth century.

<sup>67</sup> Gil Jun Park. "*Hankukui Buphakkyoyuksa*" (韓國 ▪ 法學教育史) [Korean history of legal education] *Yonsei University Law Research Institute Journal*, vol. 7 (October 1997), at 15-41.

procedure, criminal law, and criminal procedure, upon successful completion of such courses, earned a “*seongbuphaksa*” (LLB equivalent). In 1905, the “*Boseong*” professional school (which is Korea University today) was established for the purpose of providing further legal education and for stressing the importance of the rule of law in Korea.

In the same year, the nation’s first formal bar examination system began, with the promulgation of the “Lawyers Act” in 1905. Two years later on June 24, 1907, the first bar examination<sup>68</sup> was held by the Justice Department.<sup>69</sup> On April 10, 1909, according to the “Judiciary Appointment Act,” a person could become a prosecutor or judge if any of the following were attained: successful bar examination passage, graduation from “*bupkwanyangseongso*,” graduates of a foreign law department, and certain members of the judiciary according to the “Court of Justice Constitution Act.”<sup>70</sup> In terms of content, the bar examination was divided into written and oral exam sections. The written exam subjects included Korean civil law, commercial law, criminal law, criminal procedure, administrative law, and international law. An oral exam portion also existed, which was composed of three subjects from among the above subject areas. This relatively open structure was in part due to apparent practical needs during this period.<sup>71</sup>

In 1911, the “*bupkwanyangseongso*” changed its name to the “*Kyungseong* law professional school,” which despite existing during Japan’s colonialization period (1910-1945), did allow for the matriculation of Korean students; however, one view is that the main purpose of such open admissions to Korean students was to enforce strict allegiance of Japan’s occupational rule of Korea.<sup>72</sup> The school was a three-year course

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<sup>68</sup> See Korean Bar Association website, [http://www.koreanbar.or.kr/eng/01\\_01.asp](http://www.koreanbar.or.kr/eng/01_01.asp) (last visited Aug. 26, 2008). Hong JaeGi Hong, MyunWoo Lee, and MyungSub Jung were registered as the first three lawyers in Korea. *Id.*

<sup>69</sup> See generally Korean Bar Association website, <http://www.koreanbar.or.kr/> (last visited Aug. 26, 2008).

<sup>70</sup> One relevant question is whether those who acquired legal education could become high officials for the Korean government. Since those who studied at the “*Bupkwanyangseongso*” were mainly middle class citizens, it was not easy for them to attain a judiciary position and thus be a high-ranking official. This was due to Korea’s strict Confucian-based social order and the difficulty in abolishing the “*yangban*” (elite Korean central government officials). Moreover, in contrast to Japan, Korea’s system did not guarantee a judicial position only to those who studied law. The government bureaucrats rather than the graduates of the “*Bupkwanyangseongso*” often assumed judicial roles. See Park, *supra* note 67, at 15-41; see also Jong Go Choi, *HanKukBupHakSa* (韓國法學史) [The History of Korean Legal Education] PakYoungSa (博英社) 81 (1990).

<sup>71</sup> *Id.* at 106.

<sup>72</sup> *Id.*

with most of the faculty consisting of Japanese professors.<sup>73</sup> The “*boseong*” school, with a similar system in terms of subject and course year, had 300 students at that time. Moreover, another institution, “*YeonHui* Professional School” (currently, Yonsei University), consisted of a law faculty with some Korean professors. Notably, on March 1, 1962, Seoul National University established a graduate law school for a short period of time, until its abolishment in 1970.<sup>74</sup> In October 1970, a new “Bar Examination Act” was passed, which abolished the prior educational restrictions.<sup>75</sup> Under article seven of the Bar Examination Act, the Korean bar examination consisted of three sections: 1) basic subject review, 2) thesis paper, and 3) interview.<sup>76</sup>

The current Traditional Bar Exam, which mirrors somewhat the previous structure of the Korean bar examination under the “Bar Examination Act,” is still generally structured in the same three basic test components of multiple choice, essay, and interview sections.<sup>77</sup> Below are relevant figures relating to the Korean bar examination from 1981 to 2000.

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<sup>73</sup> See Park, *supra* note 67 (citing *SeoulDaehak Obaeknyeonsa JaRyoJip (KwangBokHu 50Nyun)* (▪ ▪ 法大五百年史 資料集 (光復後 50 年)) [Seoul Law School 100 Year History Source Book (50 years before Independence)]).

<sup>74</sup> It would not be until another 47 years in 2009 when a similar attempt would occur in South Korea.

<sup>75</sup> This effectively created an “equal opportunity” for any citizen, regardless of having prior legal education or not, to have the opportunity to sit for the Korean bar examination.

<sup>76</sup> The interview subjects, very interestingly, consisted of subjects like moral awareness, nationalism, courtesy, and sense of duty (separate from the other more conventional areas like clear and logical presentation and professional knowledge). See Bar Examination Act, art. 7.

<sup>77</sup> Part one of the Traditional Bar Exam consists of a multiple-choice exam section, followed by a written exam and then an interview, with the requirement that the exam taker must pass the first exam section to thereafter be qualified to sit for the second, and subsequently, the third (and final) bar exam section.

Traditional Bar Examination Figures<sup>78</sup>

Year	Bar Exam No.	Total Exam Takers	Total Exam Passers	Competition Ratio
2000	42	23,249	801	29 : 1
1999	41	22,964	709	32 : 1
1998	40	20,755	700	30 : 1
1997	39	20,551	604	34 : 1
1996	38	22,771	502	45 : 1
1995	37	20,737	308	67 : 1
1994	36	19,736	290	68 : 1
1993	35	18,991	288	66 : 1
1992	34	17,131	288	59 : 1
1991	33	16,311	287	57 : 1
1990	32	15,041	298	50 : 1
1989	31	14,201	300	47 : 1
1988	30	14,245	300	47 : 1
1987	29	14,963	300	50 : 1
1986	28	14,303	300	48 : 1
1985	27	12,449	298	42 : 1
1984	26	12,221	303	40 : 1
1983	25	8,450	300	28 : 1
1982	24	7,386	300	25 : 1
1981	23	6,173	289	21 : 1
1980	22	4,868	141	35 : 1
1979	21	4,506	120	38 : 1
1978	20	4,153	100	42 : 1
1977	19	4,011	80	50 : 1
1976	18	3,625	60	60 : 1

<sup>78</sup> See Korean Institute of Public Administration (KIPA) website, [http://www.kipa.re.kr:8081/statistics/common\\_view.jsp?menu=5&path=http://www.kipa.re.kr:150/kipasvc/ex01003d.asp](http://www.kipa.re.kr:8081/statistics/common_view.jsp?menu=5&path=http://www.kipa.re.kr:150/kipasvc/ex01003d.asp) (last visited on Aug. 28, 2008).

1975	17	3,344	59	57 : 1
1974	16	3,311	60	55 : 1
1973	15	3,614	60	60 : 1
1972	14	3,215	80	40 : 1
1971	13	2,629	81	32 : 1
1970	12	2,531	49	52 : 1
1970	11	2,326	33	70 : 1
1969	10	2,363	34	70 : 1
1968	9	2,070	37	56 : 1
1967	8	1,837	83	22 : 1
1967	7	2,304	5	461 : 1
1966	6	1,858	19	98 : 1
1965	5	2,141	16	134 : 1
1964	4	3,251	22	148 : 1
1964	3	3,770	10	377 : 1
1963	1	3,450	41	84 : 1
1963	2	2,318	45	52 : 1

The next section will discuss the more relevant provisions of the GLSA in the following order: instructors, students, admission criteria, degree requirements, entrance requirements, and school facilities.

#### B. *GLSA Provisions*

The GLSA objectives are set forth in Article 1. It states that the purpose of the Korean Law Schools is to create an “excellent” system in which to educate future lawyers.<sup>79</sup> GLSA Article 2 sets forth the “educational philosophy” of the new law schools, which includes the

<sup>79</sup> See GLSA, *supra* note 4, at art. 1.

mission to educate people of “various ideologies” who can then as lawyers “provide a wealth of quality legal services . . . to resolve disputes efficiently, professionally, and with the knowledge, skills, and training of such a lawyer.”<sup>80</sup> The degree conferred upon graduation from the Korean Law Schools is effectively a professional master’s degree,<sup>81</sup> unlike the Juris Doctor degree issued by U.S. law schools, which is effectively a professional doctorate degree.<sup>82</sup>

GLSA Article 2 is notable for several reasons. First, the “various ideologies” language when seeking future legal professional candidates links to GLSA Article 26, the latter requiring that at least one-third of new entrants not be law majors.<sup>83</sup> The presumptive intent is to have a majority of new law school students who already possess a non-law undergraduate

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<sup>80</sup> See GLSA, *supra* note 4, at art 2.

<sup>81</sup> The Korean approach is similar to the current JM degree (Master’s of Jurisprudence) found in China. The professionally focused Master of Law degree program was approved by the Academic Degrees Committee of the Chinese State Council in 1996, which was aimed to train students to become senior specialists for legislative, judicial, administrative, and legal service institutions. The three-year education in the LL.M. degree program can be classified into two subsections. The first is similar to the JD program in the United States. The program aims at research and teaching on laws to non-law degree graduates at the university level. The second kind of program is referred to as the J.M. degree. Its objective is to provide professionally-focused legal skills training to part-time graduate students working in courts, organs of civil affairs, public safety, and judicial administration and supervision. Some 20,600 people are studying in J.M. programs in China. According to the National J.M. Education Steering Committee, there are 39 law schools in China that offer the program. Last year, more than 2,800 people were enrolled, up from 425 in 1996, from among 37,000 examinees. See Zhejiang University website, “China to See More Juris Masters in Coming Decade,” [http://www.zju.edu.cn/english/news/2004\(4-6\)/news040617b.htm](http://www.zju.edu.cn/english/news/2004(4-6)/news040617b.htm) (last visited Aug. 13, 2008) (quoting a Xinhua news story dated June 17, 2004). With the increasing importance of laws, much like South Korea and Japan, modern day China also has a relative shortage of lawyers and judges. There are a total of 102,000 certified lawyers with 8,000 of who have master’s degrees in China for its population of 1.3 billion. *Id.*

Overall, the legal academic degrees in China include the LLB (Bachelor of Law), LLM (Master of Law) and JSD (Doctor of Law). See R. Randle Edwards, “An Overview of Chinese Law and Legal Education,” <http://www.jstor.org/stable/1043934> (last visited Aug. 13, 2008). In addition to undergraduate concentrations in law, there are three-year graduate programs in law, three-year programs at night school, two- and three-year courses at correspondence schools, individual study and examination programs, television legal study courses, one-year intensive courses for senior legal personnel, shorter specialized legal study programs, and a general course in law required for high school students. *Id.*; see also Huang Jin, “The Structure of Legal Education in China,” <http://www.aals.org/2000international/english/china.htm> (last visited Aug. 13, 2008).

<sup>82</sup> See GLSA, *supra* note 4, at art. 19.

<sup>83</sup> See GLSA, *supra* note 4, at art. 26.

academic degree,<sup>84</sup> similar to the American law school model.<sup>85</sup> This language also exists to help create Korean lawyers who can assist in their “specialty areas” as based in part on their undergraduate major, in areas such as intellectual property, banking, business, and trade, which is arguably lacking with today’s current supply of Korean practitioner lawyers.<sup>86</sup>

Another notable aspect is the focus to create “practical” Korean lawyers. For example, GLSA Article 4 states the need for “professional training” and both “theory and practice” as it relates to Korea’s new legal education.<sup>87</sup> Related to this is the requirement that any approved Korean graduate law schools must “abolish” its undergraduate law major (i.e., a university must either have a government-approved graduate or

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<sup>84</sup> This is also quite different from the Traditional Korean Bar Exam in which undergraduate law majors from the top-tier Korean universities often had relatively high bar exam passage rates.

<sup>85</sup> GLSA article 26’s requirement is also distinguishable from the U.S. law school model in that in a typical ABA-accredited law school, most if not all of such U.S. law students have not majored in law as an undergraduate.

<sup>86</sup> In comparison, Australia has approximately 30 law schools. Professional legal education consists of a minimum of three year degree for those holding a prior university degree, or a four year degree for those without a prior university degree, of which both qualify as Bachelor of Law degree (LLB equivalent). In some universities, the Juris Doctor degree is also offered, which is usually a 3-year graduate program, similar to the American law school system.

The recent trends demonstrate that the Juris Doctor degree is becoming increasingly more popular. Radically restructured by the University of Melbourne in 2008, the “Melbourne model” no longer accepts undergraduate law students, but requires students to complete a different undergraduate degree before gaining a Melbourne Juris Doctor. *See* D. Pearce et al., *AUSTRALIAN LAW SCHOOLS: A DISCIPLINE ASSESSMENT FOR THE CTRC* (1987). Furthermore, the name change from LLB to JD reflects the growing market demand for Juris Doctor degrees since it is recognized more internationally. So far, the University of Technology, Sydney and University of Notre Dame have also introduced Juris Doctor programs. To practice law in Australia, one must have a graduate level law degree and experience in practical legal training at a practicing solicitor’s office or at Practical Legal Training Institutions (PLT) following the completion of one’s legal studies. *Id.* Otherwise, one may spend an additional year for a graduate diploma, which aims to supplement the participant’s knowledge of law in a particular specialty area (similar to the attempt made in South Korea with the GLSA). However, more than one-third of graduates with law degrees do not practice law following graduation from law school. This may be the case because, in Australia (unlike South Korea), law is sometimes seen as a good general education for working in non-legal fields, such as business, banking, property market, public administration and many other occupations. *Id.* Conversely, some knowledge of other disciplines is considered essential in the practice law. *Id.* For such reasons, almost all law graduates have a second degree, which is undertaken at the same time as they study law or prior to their law studies. *Id.* Thus, a notable amount of students studying law in Australia complete a five-year course and receive two degrees. *Id.*

<sup>87</sup> *See* GLSA, *supra* note 4, at art. 4.

undergraduate law program, but not both).<sup>88</sup> Further, there is an explicit requirement of a bachelor's degree<sup>89</sup> or its equivalent to enter the Korean Law Schools, which is distinguishable from no such requirement of any undergraduate degree for the traditional Korean bar examination.<sup>90</sup>

Article 16(1) of the GLSA relates to faculty requirements of the Korean Law Schools. Under this provision, the student-to-faculty ratio should be approximately fifteen-to-one.<sup>91</sup> Such a relatively low faculty to student ratio is extremely noteworthy since it signals a direct attempt to create a small class setting in which greater attention can be spent on the law student's learning process.<sup>92</sup> Moreover, under the GLSA, at least one-fifth of all Korean Law School faculty must be qualified lawyers,<sup>93</sup> either in Korea or elsewhere, who have at least five years of professional experience in a law-related field.<sup>94</sup> As a result, the approach to law teaching in Korea has been very academic rather than practical prior to the GLSA, which Article 16(3) attempts to resolve. Second, the 20% or greater practitioner-faculty requirement is progressive in that either Korean or non-Korean practitioners may qualify, which indicates an acute awareness that practitioners with international experience is needed to increase the likelihood of achieving the GLSA objectives.

Articles 22 and 23 of the GLSA relate to student selection. Article 22 states that applicants must possess an undergraduate bachelor's degree or its equivalent.<sup>95</sup> Pursuant to Article 23, the criteria that the Korean Law Schools can use to select students are as follows: (a) undergraduate GPA,

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<sup>88</sup> See GLSA, *supra* note 4, at art. 8.

<sup>89</sup> Further, under GLSA articles one to three, one-third or more of new law school entrants should already possess a bachelor's degree from a different university from that being matriculating into. This is to avoid academic over-representation among a cluster of the top-tiered Korean universities, especially within Korea's so-called elite "SKY" universities (Seoul National University, Korea University, and Yonsei University).

<sup>90</sup> See GLSA, *supra* note 4, at art. 22.

<sup>91</sup> See GLSA, *supra* note 4, at art. 16(1).

<sup>92</sup> In comparison, in many U.S. law schools, a law professor who teaches a first-year (1L) required law course, such as contracts or torts, could have several hundred students enrolled in such course.

<sup>93</sup> This is also noteworthy for two reasons. First, since most law professors in Korea, even at the most "elite" universities, have a majority law faculty who not Korean lawyers. For instance, at Seoul National University (the so-called "Harvard of Korea") approximately 41% (18 out of 44) of its faculty have passed the Korean bar examination, while Kyunghee University, just 32% (11 out of 34) of its law faculty have passed the Korean bar examination.

<sup>94</sup> See GLSA, *supra* note 4, at art. 16(3).

<sup>95</sup> *Id.* at art. 22.

(b) LEET score,<sup>96</sup> (c) language abilities, and (d) social or volunteer activities.<sup>97</sup>

Both articles are significant. First, an undergraduate degree, although quite normal in common law jurisdictions as the United States and United Kingdom, has not been a requirement under the current Korean bar examination. Thus, because the Korean bar examination effectively allows anyone to sit for the exam, the Korean bar exam passage rate is extremely low (usually at or below 5%).<sup>98</sup> Second, the LEET Korean Law School entrance exam does not test law-related subjects, similar to the LSAT in the United States. This is in stark contrast to Korea's Traditional Bar Exam, in which all or nearly all related questions are based on very technical, rote recitations of Korean laws and codes. Third, the focus on language abilities, most notably English,<sup>99</sup> is another attempt to create globally-competitive Korean lawyers, based on the underlying assumption that English is the world's international language. Fourth, the consideration of extracurricular activities is also new for Korea, although not uncommon in the United States.<sup>100</sup> This can be seen as a direct attempt by the Korean government to seek out well-rounded law school applicants, which is also in contrast to the previous approach, in which exam scores were heavily-weighted primary factors considered for admission.

### C. *GLSA Controversy*

Given such dramatic shifts<sup>101</sup> in Korea's legal education pursuant to the 2007 GLSA, one relevant question is why such a dramatic shift, and

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<sup>96</sup> The first LEET exam was offered in Korea on August 24, 2008 in the following seven South Korean cities: Seoul, Busan, Daegu, Gwangju, Daejeon, Chuncheon, and Jeju. See Korea Ministry of Education, Science, and Technology website, [http://www.mest.go.kr/ms\\_kor/news/notice/broadcast/\\_icsFiles/afieldfile/2008/06/02/1205400\\_01.hwp](http://www.mest.go.kr/ms_kor/news/notice/broadcast/_icsFiles/afieldfile/2008/06/02/1205400_01.hwp) (last visited Aug. 25, 2008); see also LEET website, <http://www.leet.or.kr> (last visited Aug. 26, 2008).

<sup>97</sup> *Id.* at art. 23, cl. (1)-(3).

<sup>98</sup> See Korean Institute of Public Administration (KIPA) website, [http://www.kipa.re.kr:8081/statistics/common\\_view.jsp?menu=5&path=http://www.kipa.re.kr:150/kipasvc/ex01003d.asp](http://www.kipa.re.kr:8081/statistics/common_view.jsp?menu=5&path=http://www.kipa.re.kr:150/kipasvc/ex01003d.asp) (last visited Aug. 28, 2008).

<sup>99</sup> Such requirements exist in the form of requiring TOEFL/TOEIC scores for application to the new Korean Law Schools. See *LAW SCHOOL TIMES*, Apr. 22, 2008, at 5-7.

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

<sup>101</sup> In South Korea, the concept of globalization (*seghewhe*) has been part of the nation's implicit policy since the 1990s under then Korean president Kim Young-sam. This may have led some to believe that such globalization effort was linked to the rapid growth periods of South Korea, as well as the other "Asian Tiger" economies, throughout much of the 1990s. See generally *THE FOUR ASIAN TIGERS: ECONOMIC DEVELOPMENT AND THE GLOBAL POLITICAL ECONOMY*, (Eun Mee Kim ed., 1998). However, with the 1997-98 Korean currency crisis, which is still felt today over a decade late, a shift in

why use the American graduate law school model?<sup>102</sup> Another relevant question is, given the apparent convergence towards the U.S. graduate law school model, will such a Socratic-based approach prove to be effective in the South Korean Confucian-based law school structure? Such questions have led to much GLSA-related controversy, dividing the arguments between those for and against the new Korean Law Schools.

The opponents against the Korean Law Schools (and the GLSA) will argue that this broad-sweeping shift has already been done in nearby Japan, and that such attempt was a clear and foreseeable failure.<sup>103</sup> Further, in Japan most students enrolled in such law schools were perhaps also so overly-focused on passing the bar examination to actually care much about learning how to “think like a lawyer” or to feel any urgency in taking courses not directly related to improving the probability of passing the Japanese bar examination.

The opponents, especially those from the various local bar associations, may also likely argue that the GLSA will severely damage the reputation of the current members of the current Korean judiciary for

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sentiment occurred in the opposite direction, namely against the International Monetary Fund (IMF). See KYEONG-WON KIM, *POST-CRISIS TRANSFORMATION OF THE KOREAN ECONOMY: A REVIEW FROM 1998 TO 2002* 213 (2003).

However, by this time, the wealth effect of globalization was so pronounced by 1997-98, that it arguably was to a point of no return. By then, Korean firms were highly dependent on foreign consumption of its exports. And with such rising domestic wealth came the rapid focus on learning the English language, which was thus believed to be a determining factor in being accepted into a prominent foreign (namely, first-tier U.S. universities) or a top-tier domestic universities, which in turn, was believed to be the most highly correlated various linked to success, at least from the South Korean perspective then and now. See Sam Dillon, *Elite Korean Schools, Forging Ivy League Skills*, N.Y. TIMES, Apr. 27, 2008, available at <http://www.nytimes.com/2008/04/27/world/asia/27seoul.html?scp=1&sq=elite%20korean%20schools&st=cse>; see also Jasper Kim, *English as a superficial language?*, KOREA HERALD, Mar. 22, 2006, at 17.

<sup>102</sup> Although the American JD system has been viewed as the appropriate benchmark for legal education by not only South Korea, but also Japan, some view a need to “re-engineer the JD.” See Jill Schachner Chanen, *Re-engineering the JD: Schools across the country are teaching less about the law and more about lawyer*, ABA J., July 2007, 42-45, available at [http://abajournal.com/magazine/re\\_engineering\\_the\\_jd/](http://abajournal.com/magazine/re_engineering_the_jd/). For example, Harvard Law School’s 1L “Langdellian” curriculum, which as existed relatively untouched for over a 100 years, will be reconstituted such that 1L students will be offered three new classes, one of them being problem-solving skills.” *Id.* Further, Stanford Law School has also doubled its elective offerings, while the University of Pennsylvania Law School is taking a more interdisciplinary approach. *Id.*

<sup>103</sup> Specifically, opponents will cite the perceived failure by many in the Korean legal community of the Japan law school reforms, in part due to the large number of new law schools and law school student population, that the filtering of students to become Japanese lawyers (*bengoshi*) was effectively at the time of the Japanese bar examination—exactly the problem that the legal reforms were meant to abolish.

several reasons. First, the GLSA is linked to increasing the number of Korean lawyers substantially above the approximately 1,000 new members allowed per year now, resulting in a dramatic increase. This, according to such opponents, will lead to an oversupply of lawyers into the labor markets, which will in turn lead to a decrease in lawyers' average wages and possible reputational standing.<sup>104</sup>

Opponents also come from within the Korean law school constituency for several reasons. First, the GLSA mandates that a total of no more than 25 Korean Law Schools be selected (out of many more law schools which requested to be selected as a designated Korean Law School). However, the administration which drafted the GLSA also mandated that at least one-half of the 25 new Korean Law Schools designated exist outside the Seoul metropolitan area.<sup>105</sup> This may not seem controversial from the U.S. perspective, since many, if not most, law schools are located outside of large metropolitan areas like New York, Chicago, and Los Angeles; however, in Korea, universities and their law school departments located outside of Seoul are generally considered as de facto second-tier universities.<sup>106</sup> Second, such a unique local de facto law school ranking process links to the fact that many Seoul-area universities, which have historically been ranked higher than many universities outside of Seoul (colloquially referred to as *jibang dehs*), were being treated unfairly due to the liberal-progressive political policies of former Korean President Roh Moo-hyun (2002-08).<sup>107</sup>

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<sup>104</sup> It is also believed by some that such effect will also lead to a diminishment of the traditionally high reputation for South Korean lawyers, and will also lead to the end of the historically protected labor markets for Korean lawyers. In other words, that some Korean lawyers, as a result of the GLSA, may actually be forced to actively look for jobs, rather than jobs coming to newly-minted lawyers. Or even worse, some lawyers may actually not have a job after passing the Korean bar examination, at least in the short-term, which is a concept that up to this point is viewed as nearly unimaginable.

<sup>105</sup> See Korean Ministry of Education and Human Resources Development website, [http://www.mest.go.kr/ms\\_kor/news/notice/broadcast/\\_icsFiles/afieldfile/2008/05/20/1199535\\_01.hwp](http://www.mest.go.kr/ms_kor/news/notice/broadcast/_icsFiles/afieldfile/2008/05/20/1199535_01.hwp) (last visited Aug. 25, 2008); see also Korean Ministry of Education, Education, and Science website, [http://www.mest.go.kr/ms\\_kor/news/notice/broadcast/1199498\\_8083.jsp](http://www.mest.go.kr/ms_kor/news/notice/broadcast/1199498_8083.jsp) (last visited Aug. 26, 2008).

<sup>106</sup> Further, opponents may also argue that despite the apparent efforts to benchmark the U.S. law school model, the end-result may still be Korean Law Schools that are still quite distinguishable from its U.S. law school counterpart in which students were relatively less concerned with passing the state bar examination, although still viewed as important, enough so to not serve as a strong enough disincentive to take other courses that were not linked to the state bar examination.

<sup>107</sup> See Yon-se Kim, *Roh to Keep Balance in Law School Quota*, KOREA TIMES, Oct. 24, 2007, available at [http://www.koreatimes.co.kr/www/news/nation/2007/10/113\\_12473.html](http://www.koreatimes.co.kr/www/news/nation/2007/10/113_12473.html) (quoting the former Korean President Roh as stating, "The government will mainly focus on balanced

Conversely, GLSA proponents may argue that the South Korean legal market, whether related to free trade agreements (FTAs) or other reasons, will eventually be opened, which will in turn lead to greater competition from foreign law firms in South Korea which currently are restricted from opening branches, unlike those in Japan and China.<sup>108</sup> Currently, the domestic Korean legal market is effectively ruled by several large and dominant Korean law firms, a virtual oligopoly of legal services.<sup>109</sup> Other proponents<sup>110</sup> also come from the business sector, which

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regional development in the selection of the law schools.”). Top-tier law school departments in Seoul, such as Seoul National University, Sogang University, and Hankuk University of Foreign Studies, have protested the initial amount of Korean Law School enrollment quota given to them by the Korean government. See Ji-sook Bae, *Universities to Refuse Law School Applications*, KOREA TIMES, Oct. 18, 2007, available at [http://www.koreatimes.co.kr/www/news/nation/2007/10/117\\_12115.html](http://www.koreatimes.co.kr/www/news/nation/2007/10/117_12115.html).

<sup>108</sup> Regarding the implementation of a possible “phased” opening of the Korean legal market relating to the passage of the U.S.-Korea Free Trade Agreement, see Tonghyung Kim, *“US Invasion” Not Likely in Korean Law Market*, KOREA TIMES, Apr. 15, 2007, available at [http://www.koreatimes.co.kr/www/news/special/2008/07/206\\_837.html](http://www.koreatimes.co.kr/www/news/special/2008/07/206_837.html).

<sup>109</sup> Such oligopolistic structure also mirrors the economic landscape of a few large corporate conglomerates constituting a large percentage of total economic output with firms such as Samsung, Hyundai, and LG. Further, although one might assume that lawyers in foreign law firms may opine only on matters of law not directly pertaining to South Korea, the apprehension is stemmed from the fact that such foreign law firm branches in South Korea may siphon off some of the best Korean legal minds, who in the past, may have automatically gone to work for one of the large Korean law firms, if for anything else, lack of outside competition, as in Japan with foreign law firms. This is also linked to the fact that such foreign law firm branches may offer higher compensation relative to many Korean law firms. This is based on the working assumption that such foreign law firms would offer wage rates comparable to those paid by law firms located in large U.S. metropolitan areas. Thus, by instituting the GLSA, the South Korean legal market is taking a pre-emptive strike in terms of preparing now for possible future competition to its domestic legal market in the future.

<sup>110</sup> Another proponent group that would benefit from the GLSA would be the Korean law schools selected for such legislation. This is because being chosen by the Korean government for one of the new Korean Law Schools, especially in the Seoul metropolitan area, will be interpreted as a de facto first-tier law school ranking. Further, even those law schools not selected (thereby having to continue their LLB undergraduate legal educational system structure) also may have benefited since many such universities may have received notable funding from their institutions to make the case to the Korean government that their law school department should be one of the 25 chosen law schools. This phenomenon has led to the sudden funding for things like new law school buildings and the hiring of substantial numbers of new law school faculty.

One more sector that would benefit from the GLSA are the private institutes, known as *hagwons* that are nearly omnipresent in South Korea. From a local cultural perspective, South Korea places a strong emphasis, some would argue too much so, on education, which has become so severe that the catchphrase “education fever” was created to encapsulate this phenomenon. Such high demand has led to a commensurate supply of private institutions in Korea that prepares students from things like college

views the increased supply of Korean lawyers as a net benefit.<sup>111</sup> This is because a greater supply of Korean lawyers than before means that competition would bring about the highest quality (of Korean lawyers) for the lowest price.<sup>112</sup>

#### D. *Clash or Conformity*

Under the GLSA, for both the Socratic and Confucian-based teaching models to co-exist, at least four levels of such synchronicity must occur simultaneously. First, the educational infrastructure in the form of law school buildings, law libraries, research facilities, and related structural elements must exist (which can be referred to as the Korean Law School “hardware”).<sup>113</sup> Second, the Korean Law School academic curriculum must also achieve the objective of educating future professional lawyers (which can be viewed as the law school’s “software”).<sup>114</sup> Third, the transfer of knowledge in the Korean (rather than English) language will have to work efficiently within the hardware and software of the Korean Law Schools (which I see as the Korean law school “operating system language”). Fourth, and finally, the culture embedded within Korean society, and thus the students attending the Korean Law Schools, will also have to work in a similar way and for a

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entrance examinations to becoming air flight attendants. And because the new Korean law schools will have its own law school admissions test (the LEET), this will undoubtedly lead to the creation of a new sub-sector of private institutes that will focus all its resources and attention on gaining the highest score on the LEET.

<sup>111</sup> According to Lexis/Nexis and the Korean Economic Daily, 97.3% of Korea’s business sector view local law firms as “below the world standard.” See Sean Hayes, *Dismal Legal Education*, KOREA TIMES, Nov. 20, 2007, available at [http://www.koreatimes.co.kr/www/news/opinion/2007/11/137\\_14065.html](http://www.koreatimes.co.kr/www/news/opinion/2007/11/137_14065.html).

<sup>112</sup> Thus, the working assumption under this argument is that the South Korean markets do not have enough Korean lawyers, most notably, specialized lawyers. This is in part due to the fact that Korean lawyers historically had undergraduate concentrations in law (rather than non-law fields such as economics, politics, and so forth, under the U.S. system) since no professional graduate legal training existed until 2009. The GLSA’s mandate also means that such Korean lawyers will effectively have two skill sets, the legal skillset (from the Korean law school) and the undergraduate skill set (presuming that the undergraduate degree will in most cases be unrelated to law), similar to the case with U.S. lawyers. This, in effect, would lead to a group of relatively specialized Korean lawyers in areas, such as intellectual property (copyrights, trademarks, and patents), finance, business, and human rights, to name a few. See Jasper Kim, *Wanted: Value-added lawyers*, KOREA HERALD, Oct. 23, 2007, at 7.

<sup>113</sup> Professor Pyung Shin of Kyungbook University argues that the new Korean law schools may have put relatively greater attention and resources towards the “hardware” of professors and facilities) rather than the “software” (practical curriculum and teaching style). See Pyung Shin, *How Will the Law Schools Teach Their Students?*, CHOSUN ILBO, Apr. 17, 2008, available at [http://news.chosun.com/site/data/html\\_dir/2008/04/17/2008041701606.html](http://news.chosun.com/site/data/html_dir/2008/04/17/2008041701606.html).

<sup>114</sup> *Id.*

similar purpose as that of its U.S. law school counterparts (which I see as the Korean law school “operating system functions”).

Of the four above elements, the latter two elements—culture and language—represent known-unknown variables that are critical in determining whether synchronicity or a “clash of civilizations” may arise between the Socratic- and Confucian-based pedagogical methods.<sup>115</sup> These two variables, discussed in the context of possible law school learning constraints, are discussed in the next section.

### 1. Variable One: Confucian Cultural Constraint

The American legal system, based on the Socratic teaching method, is relatively non-hierarchical and flat because each of the various parties in the typical legal process (i.e., the judge, plaintiff, and defendant, along with the latter two’s respective clients) are expected to challenge and rebut the counterparty’s arguments. Thus, from the perspective of the actors functioning within the American legal system, such a confrontation is not considered unusual; on the contrary, it is considered in many respects as a duty to make various arguments to the best of one’s ability in the spirit of client advocacy.<sup>116</sup>

Compared to South Korean culture, which is predicated on conservative and hierarchical Confucian ideals and includes things like the innate desire to “. . . seek harmonious relationships . . . [whereby] individuals should respect and follow tradition and social hierarchy (rules, status, and authorities).”<sup>117</sup> From the purview of the average South Korean, including law students, the Korean language is based on the working assumption of inequality, not equality.<sup>118</sup> Determining social rank is also a function of things such as age, professional position, educational affiliation, and family background.<sup>119</sup>

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<sup>115</sup> The main rationale for not focusing on the Korean law school “software” and “hardware” is based on my assumption that such two variables can be relatively controlled by funding (i.e., using academic budgets to hire new faculty, and construct law school buildings and libraries) and benchmarking (i.e., reviewing and selecting which courses, if any, from U.S. law school programs, should be imported, either in part or in whole, to a particular Korean Law School’s curriculum).

<sup>116</sup> In fact, not providing such client advocacy can at times lead to condemnation in various forms from the judiciary.

<sup>117</sup> See Yan Bing Zhang et al., *Harmony, Hierarchy and Conservatism: A Cross-Cultural Comparison of Confucian Values in China, Korea, Japan, and Taiwan*, COMMUNICATION RESEARCH REPORTS, Dec. 2005, at 110.

<sup>118</sup> Zhang also notes that while some scholars, such as Hogstede, have identified many Asian cultures as “high context and collectivist,” each society has undergone various socio-political, and arguably economic, changes due to “technological innovations and modernization.” *Id.*

<sup>119</sup> Regarding age, generally, the older person is considered as the “senior” person, thus, a greater level of language formality may have to be used when communicating with that person, depending on such things as how much older that

Also within the context of the Korean academic environment is the highly vertical, and arguably unequal, professor-student relationship.<sup>120</sup> Although law professors in the United States also have a higher status relative to law students, such a gap is remarkably more pronounced within Korean universities, which includes Korean law school departments (often one of the most conservative departments in most major Korean universities).<sup>121</sup>

A foreseeable result may, in the short-term, exist in the form of courses taught in pure lecture (rather than Socratic) method, which may be acceptable for non-professional academic disciplines, but not when trying to conform the Korean law school system towards the U.S. law school method that heavily emphasizes the use of the Socratic method.<sup>122</sup> Further, even if the new Korean Law Schools explicitly try to implement the use of the Socratic method, because of the Confucian cultural constraints embedded into the teaching styles of Korean law professors, the use of the Socratic method will abate and likely create a short-term convergence towards Korea's traditional Confucian teaching model of the pure top-down, command-and-control lecture method, in which the law professor

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particular person is in relation to the speaker. Age can also overlap with a person's educational affiliation, which adds yet another dimension in terms of language communication. For example, in Korea, seniority is determined by the year that a person enters university, referred to as *hakbun* (which roughly translates into "university entrance year"). Thus a person who begins their university freshman year in 2008 has a 2008 *hakbun*, which means that any person with a lower numbered *hakbun* (i.e., 2007 and below) is considered a "*sunbae*" ("senior classmate"), and conversely, anyone with a higher numbered *hakbun* (i.e., 2009 and above) is considered as a "*hubae*" ("junior classmate").

<sup>120</sup> For a broad overview discussing the traditional influence on Korean higher education, arguing that such higher education structure has a "rigid and closed organizational structure, the heritage of traditional values," see Jeong-Kyu Lee, *The Administrative Structure and Systems of Korean Higher Education*, HIGHER EDUCATION MANAGEMENT, vol. 12, no. 2 (2000).

<sup>121</sup> This is also fundamentally based on the Confucian relationship between teacher and student, which makes sense when taking into account that Confucius himself was a teacher. Thus, within most university lectures, including those in Korean law schools, students rarely ask questions directly to the professor because this is viewed as challenging and thus disrespecting the highly-respected teacher-student hierarchical relationship.

<sup>122</sup> For purposes of this section, "Socratic Method" is defined as "A technique of philosophical discussion—and of law school instruction—by which the questioner (a law professor) questions one or more followers (the law students), building on each answer with another question. . . . This method takes its name from the Greek philosopher Socrates, who lived in Athens about 469-399 B.C. His method is a traditional one in law schools, primarily because it forces law students to think through issues rationally and deductively—a skill required in the practice of law." See BLACK'S LAW DICTIONARY 1425 (8th ed. 2004).

(and to a much lesser extent, the law student) may feel more comfortable.<sup>123</sup>

Korean culture is predominantly predicated on social inequality while American culture is predicated on equality,<sup>124</sup> and accordingly the American law school system is largely predicated on the use of the Socratic method rather than the South Korean Confucian-based, top-down lecture method. Thus, a fundamental mismatch may exist in the short-run when applying the American law school model to the Korean case.<sup>125</sup>

## 2. Variable Two: Legal Language Constraint

The previous section discussed the cultural impact of a possible Confucian cultural constraint relating to the GLSA.<sup>126</sup> The English language, which is the working language used by most if not all U.S. graduate law schools, is effectively based on equality, which is distinguishable from the Korean language. Put another way, the English language, which acts as a communication bridge between persons, is relatively non-hierarchical and flat relative to the Korean language. In effect, the Korean language structure wraps around the Korean customs and culture, which is why both are vertical, top-down, command-and-

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<sup>123</sup> Such lack of change will, in my view, be largely driven by the law professors, than students, based on the defensively-postured nature of the conservative law faculty in Korea.

<sup>124</sup> For an interesting paper relating to the cultural gaps that may exist between older Korean graduate students in American higher education, which represents a separate but related issue to this paper, see generally Seonjin Seo, *A Hermeneutical Study of Older Korean Graduate Students' Experiences in American Higher Education: From Confucianism to Western Educational Values*, 9 J. STUD INT'L EDUC. 2, 164-87 (2005).

<sup>125</sup> Implicit in this analysis is also the challenges of developing critical thinking and problem-solving thinking processes in Asian and Korean students, which Professors Freeland, Li, and Young discuss in a teaching note relating to Asian students studying in Australian universities (both in Australia and Australian branches in China). See Steve Freeland, Grace Li, & Angus Young, *The Crossing the Language and Cultural Divide-The Challenges of Educating Asian Law Students in a Globalising World*, available at <http://ssrn.com/abstract=897420>.

<sup>126</sup> As mentioned, there is generally inequality rather than equality amongst the Korean ranks, including within the typical Korean university setting. This is especially evident within members who attended the same academic institution. Generally, a *sunbae* (senior classmate) does not use honorifics when talking with a *hubae* (junior classmate) from the same university, which reflects the working assumption of inequality within the Korean language. In fact, one of the rare instances in which equality exists from a linguistic perspective is between two persons with the same *hakbun* (college entrance year) in the same academic institution, referred to as “*dong-gahp*” (“same age” person). Here, the relatively more comfortable non-honorific form of Korean, known as “*bahn-mahl*” is used (which roughly translates into “half-speak”). Thus, from a big picture purview, anything outside this small bandwidth of equality (namely among those in *dong-gahp* groups) is essentially based on inequality.

control operating systems.<sup>127</sup> For this reason, the Korean language is not particularly well-suited to a U.S.-based flat legal approach,<sup>128</sup> including things like legal negotiations, which are by their nature potentially very confrontational.<sup>129</sup>

Further, another linguistic barrier in terms of molding the American graduate law school model around the South Korean structure is that Korea's legal language actually is a hybrid of the Korean language (*hangeul*), along with Chinese (*hanjah*), and to a lesser extent, Japanese characters.<sup>130</sup> In other words, the U.S. law school model, which is based on one language, English, must somehow work with a Korean legal language structure, which incorporates at least three languages (Korean, Chinese, and Japanese, each heavily influenced by Confucius),<sup>131</sup> separate from the subtle multi-layered nuances embedded within the customs and ideologies relating to such languages.

From the Korean perspective, English can be viewed as effectively a *ban-mahl* (flat and non-hierarchical) language in which everyone is generally addressed in the same manner, irrespective of age, status, and corporate affiliation.<sup>132</sup> For this reason, most Americans are referred to by

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<sup>127</sup> For an interesting discussion on issues of foreign law's "accessibility" when comparatists are not fluent in the relevant foreign language relating to the relevant challenges of reviewing a legal text in any language other than its original, see Curran, Vivian Grosswald, *Comparative Law and Language*, in OXFORD HANDBOOK OF COMPARATIVE LAW (Reinhard Zimmermann & Mathias Reimann, eds., forthcoming), available at <http://ssrn.com/abstract=851506>; see generally Simone Glanert, *Speaking Language to Law: The Case of Europe*, LEGAL STUDIES, Mar. 31, 2008, at 161-71 (noting the importance of language, which should be an important consideration in addition to the lawyer's primary agenda).

<sup>128</sup> In terms of the Korean language, there is not an exact translation for the term "negotiation." What the Koreans have done as a linguistic solution is to incorporate English with Korean terms, in what is colloquially referred to as "Konglish." See Jasper Kim, *Konglish as a second language?*, KOREA HERALD, Aug. 24, 2006, at 4. Thus, the Konglish term for negotiation is *nego*, which can be thought of as the first two syllables of the full English term, negotiation. *Id.* In this sense, the Koreans have essentially streamlined and made the English language more efficient in terms of syllables needed to communicate the same term. *Id.* I believe that part of this post twenty-first century linguistic tendency to shorten words vis-à-vis Konglish is derived from the prevalent use of the internet, which includes such things as use of emails, chatrooms, and blogs, especially given that South Korea has one of the world's highest internet broadband penetration rate.

<sup>129</sup> For a editorial piece discussing the challenges faced by many Koreans when negotiating against non-Koreans, due to cultural and linguistic issues, see Jasper Kim, *Are Koreans trained to negotiate?*, KOREA HERALD, June 29, 2008, at 7.

<sup>130</sup> What this means is that, in Korea, to understand Korean law, the Korean lawyer must be not only a native or near-native speaker of the Korean language, but also must be aware of the Chinese, Japanese, and English languages.

<sup>131</sup> See Chongko Choi, LAW AND JUSTICE IN KOREA 108-09 (2005).

<sup>132</sup> For a paper discussing hierarchical Korean linguistic issues, see Juho Lee et

their first name, rather than last name or title.<sup>133</sup> In the U.S., this tradition is generally reserved for certain industries in which hierarchy is a necessary component, such as politics and the military, when referring to high status officials by “Senator,” “General,” and “President.”<sup>134</sup> The Korean language, not too dissimilar from Chinese and Japanese, has various ways of how to address other individuals, based on such things as verb conjugations and word choice.<sup>135</sup>

#### E. Possible Solutions

Given such challenges, what, if any, solutions exist to the language and cultural barriers relating to the GLSA?

Regarding the language issue, I believe this will be cured in the medium- to long-run, beginning in approximately four to five years. A new generation of young Korean students who are increasingly comfortable in the U.S. educational model will begin to matriculate into the Korean Law Schools and cure the language barrier problem. In the short-run, however, Korean students will not have such capabilities. However, in the medium- to long-term, a greater number of students will study at academic institutions outside Korea<sup>136</sup> and a greater number of Korean high schools (and institutions)<sup>137</sup> will use English language

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al., *A Korean Noun Semantic Hierarchy (Wordnet) Construction*, <http://dSPACE.wul.waseda.ac.jp/dSPACE/bitstream/2065/12236/1/PACLIC16-290-295.pdf>; Sanghoun Song & Jae-Woong Choe, *Automatic Construction of Korean Verbal Type Hierarchy using Treebank*, <http://www2.nict.go.jp/x/x161/en/member/bond/hpsg-2008/abs/song-choe.pdf>; *see generally* Type Hierarchies for Passive Forms in Korean, [http://hpsg.stanford.edu/HPSG07/Abstracts/submission\\_23.pdf](http://hpsg.stanford.edu/HPSG07/Abstracts/submission_23.pdf) (relating to passive tenses in the Korean language).

<sup>133</sup> In stark contrast, in the Korean language, a person’s first name is almost never used. Rather, the person’s last name, accompanied by an honorific, such as *shi* or *sunsengnim*, the latter literally translating into “teacher,” which is, per Confucian norms, considered one of the highest social status to exist. Alternatively, in a work setting, which includes legal work settings, such as litigation, legal negotiation, and contract discussions, the person’s last name may be followed by his or her title. For example, if a person is a division head in a corporation, that person is usually referred to simply as *teemjang* (team head or leader).

<sup>134</sup> Because Korean society and its language wraps around Korean traditional society, it often resembles a top-down operating system, even in the twenty-first century.

<sup>135</sup> Specifically, the Korean language has traditionally had six specific levels of formality, known as *noppeun mahl* (which roughly translates into “high-form speaking”). Thus, the selection of which exact type of *noppeun mahl* used is often a delicate, exact, and tedious process based on, among other things, determining whether the person in question is senior, junior, or of the same level as the speaker.

<sup>136</sup> The main target countries for Korean students studying overseas are namely the United States, Canada, Australia, New Zealand, and the Philippines.

<sup>137</sup> *See* Yoo-chul Kim, *Foreign Samsung, LG CEOs Clash in N. America*, KOREA TIMES, available at

instruction within a “flatter” learning environment. Thus, Koreans will gradually become more comfortable in both the Socratic as well as Confucian-based legal learning methods.

Implicit in receiving such English language instruction will be the understanding that it is acceptable and even expected of students to ask questions and express personal opinions regarding academic subject matters, not typically deemed as acceptable in a traditional Korean educational setting. Therefore, once at the graduate law level, such students will be better able to adapt to the relatively Darwinian environment of a professionally geared graduate law school structure. Such Korean students will further acquire the ability to think critically and in doing so be able to better embrace the Socratic method teaching methods.

More potentially problematic issues exist relating to the Korean Law School faculty composition. While Korean students will be undergoing fundamental changes in their perspective, the repackaged Korean law school faculty will face a challenge in terms of reconstituting themselves into a proactive law faculty that in substance reflects the spirit of the Socratic law teaching method.<sup>138</sup> Although the academic infrastructure may change (from undergraduate to graduate level), the main thinking process of the faculty in the short-run within such academic infrastructure will still largely remain as a seniority-based lecture style (but well-entrenched) constituency.<sup>139</sup>

## V. CONCLUSION

With the passage of the GLSA, which introduces the American-style graduate law school system, South Korea is entering a new era relating to both its legal education system and the training of its future lawyers. Despite the GLSA’s admirable objectives, challenges exist, as

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[http://www.koreatimes.co.kr/www/news/biz/2008/08/127\\_29422.html](http://www.koreatimes.co.kr/www/news/biz/2008/08/127_29422.html) (noting that the head of LG operations for North America and the senior vice president of Samsung Electronics America are both non-Koreans).

<sup>138</sup> One factor contributing to this is that such practitioner faculty will have spent most or all of their time studying and working in a top-down vertical Confucian-based structure, which runs counter to the flat structure aimed for in the GLSA. This will also apply for any Korean faculty members who have acquired an undergraduate degree from a Korean university followed by a LLM or even a JD from a U.S. law school, that is, they have spent most of their time in a vertical rather than flat academic and societal structure. Thus, Korean faculty who have studied overseas from their undergraduate years or before, or alternatively, foreign faculty, may represent the most viable solution. But at the same time, such persons are also in demand from local law firms, which tend to pay notably more in terms of economic remuneration.

<sup>139</sup> In other words, the expectation of a fundamental teaching approach change between spring term 2009 and fall term 2009 (when the new law schools open their doors), is unlikely to be met, irrespective of the additional new faculty (both practitioner and non-practitioner faculty) hired by many of the new law schools.

seen in Japan's attempts to restructure its own law schools to the American model, which include the potential barriers of language and culture. Due to such challenges, in the short-run, I believe such constraints will lead to more clash than conformity as it relates to the GLSA. Thereafter, in the medium- to long-run, due to future Korean Law School students' greater exposure to overseas education and culture, greater conformity and less clash will occur within the hallways of the new graduate-level Korean Law Schools over the incorporation of the relatively "flat," Socratic-based American law school model into South Korea's relatively "hierarchical," Confucian-based legal education infrastructure.