

When Confucius Greet Socrates: *Teaching American Law in an Asian University**

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Abstract

The teachings of Confucius substantially formed the Eastern tradition of learning. The Greek philosopher Socrates stands in a similar position of influence in the formation of the Western tradition of education, especially legal education. When Western law, particularly American Law, is taught within the context of an Asian university by a professor from the Western tradition there is significant potential for conflict between the two traditions of teaching and learning. Instead of conflict, however, this paper argues from both principle and practice that there is an even greater potential for cooperative integration and mutual benefit as professors and students from both cultural traditions listen to and learn from one another. The Confucian and Socratic traditions may benefit from one another in at least three important dimensions of the learning experience. First, an integration of the two may provide a foundation for enriching deeper and more respectful professor-student relationships. Second, drawing upon the best practices of each, professors may engage their students through more active pedagogy, and finally, a balance between the value of intellectual achievement and internal character formation may produce enhanced holistic learning outcomes. The integration of the Confucian and Socratic approaches thus has the potential to foster a thriving formative experience within the legal teaching and learning environment.

Key Words: legal education; Confucius; Socrates; pedagogy; learning outcomes

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I. Introduction

Nearly ten years ago I presented a paper in the United States at an academic symposium. I was addressing a group of legal scholars on the subject of recent US Supreme Court decisions in cases involving capital punishment. I was not aware, however, that in my audience were two professors from the faculty of Handong University located in Korea. After my talk, those Korean professors introduced themselves and invited me to their university's recently established graduate law school to serve as a visiting professor for a short term teaching U.S. Antitrust law the following summer. I accepted their invitation and traveled to East Asia for the first time in July, 2004. That experience led to my subsequent return to Handong in the fall of 2009 and my eventual appointment to the university's faculty of law where I have, since then, been teaching in Handong's U.S. and International Law program of study. I am now in the midst of my eighth semester of teaching American law in an Asian university.

Through my teaching experiences over this period of time, I have encountered much of what Professor Jasper Kim of Ehwa University described in his article entitled: "Socrates vs. Confucius: An Analysis of South Korea's Implementation of the American Law School Model" published in the *Asian-Pacific Law & Policy Journal* in 2009. There, Professor Kim addressed the question: "Socrates vs. Confucius: clash or co-existence?" (Kim, 2009: 322-353, 323) His inquiry was focused upon South Korea's Graduate Law School Act of 2007 by which Korea has transitioned from an undergraduate legal education system to a program of study modeled along the lines of the three-year graduate, professional law school program in the United States." (Kim, 2009: 322-353, 323)

Professor Kim identified both cultural constraints and language barriers to the successful co-existence of a Socratic-styled Western legal educational approach within the Confucian context in which Korean legal education, both substantively and methodologically, is located. With respect to cultural constraints, Prof. Kim

observed:

Korean culture is predominantly predicated on social inequality while American culture is predicated on equality, and accordingly the American law school system is largely predicated on the use of the Socratic method [sic] 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.” (Kim, 2009: 349)

Second, with regard to language barriers, Prof. Kim noted that the English language embodies the fundamental notion of equality and thus it is “relatively non-hierarchical and flat” when contrasted with the Korean language.(Kim, 2009: 349) As a result, he predicted that there would be a more clash and less peaceful co-existence between Socrates and Confucius at least in the first stages of Korea’s implementation of American model of legal education.

While readily acknowledging the accuracy of most of Prof. Kim’s analysis as well as the validity of nearly all his conclusions, I come today to the question of Confucius’ encounter with Socrates in the arena of legal education both from a different perspective and with a distinct task. Rather than expand upon an evaluation of attempts to teach Asian Law through a Western educational model, I will attempt instead to assess the experiences of a Westerner teaching American law in an Asian university through a Christian theological lens confessing that teaching and learning are avenues for expression and formation of humans being created *Imago Dei*. Based upon this analysis, I will suggest in this paper that Socrates may indeed not only co-exist with Confucius, but also, that their relationship has the potential to produce a mutually thriving learning environment. This may occur when Confucius greets Socrates and together they learn from one another how better to relate to their students, to improve their pedagogy and to envision and achieve their learning objectives.

II. Teaching American Law in an Asian University

1. Theological Foundation

Before assessing either the cultural perspectives on or the practices of teaching and learning, we must clearly articulate a theological foundation upon which Christian scholars may ground their inquiries and analyses. If it is to be a Christian foundation, it must begin with the First Article of confession of the historic creeds. “I believe in God the Father, Almighty, Maker of heaven and earth, of all things visible and invisible.” (Leith, 1982: 30) Since all that is in the universe was made by him, then everything in creation is a means of revealing him. King David exclaimed in Psalm 19:

The heavens declare the glory of God,
and the sky above proclaims his handiwork.

Day to day pours out speech,
and night to night reveals knowledge. (Holy Bible, 2001)

Because God is the creator of all that is, then all that is – every subject of inquiry and learning, each topic of explanation and teaching—is thus, at its most fundamental level, an inquiry into the person of God and a means of learning about him – coming to know him. As Francis Schaeffer so succinctly expressed, “He is there and he is not silent.” God reveals himself. He speaks about himself through all that he has made.

But, not only is the universe as a whole a means of general revelation about God, his creation of human beings *Imago Dei* is a special means of his expression. In human activities of life there is a reflection of God’s image. Now, as confessional Christians, we must acknowledge that the consequences of human rebellion against God – Man’s Fall – has fractured and impaired human reflection

of *Imago Dei* – but *Imago Dei* still remains an essential distinguishing characteristic of what it is to be human. As *Imago Dei* thus remains a reality of human existence, human activities, such as teaching and learning, are capable of apprehending and expressing truth through both God’s general revelation and as a process of human reason.

For example, since Lao Tzu was created *Imago Dei*, we may read and so listen to him with the expectation of the possibility of learning truth. When we do so, we discover that he wrote:

“For all things there is a time for going ahead,
and a time for following behind;
A time for slow-breathing and a time for fast-breathing;
A time to grow in strength and a time to decay;
A time to be up and a time to be down. (Lao Tzu, 1990:§ 29)

Lao Tzu’s words resonate with truth to the Christian who has been taught by the Preacher of Ecclesiastes. Yet, one might equally say that Solomon’s words “For everything there is a season, and a time for every matter under heaven...” in Ecclesiastes resound with truth to the Taoist who is schooled in the *Tao TehChing*. Here we have prime evidence in support of the proposition advanced by George MacDonald, whose words so influenced C.S. Lewis, namely, “Truth is truth, whether from the lips of Jesus or Balaam.” Or, as Augustine is often quoted as saying, “All truth is God’s truth.” (Augustine, 1995: II.75)

Indeed, one of the best examples in Scripture of this truth being put into practice is found in the account of Paul on Mars Hill in the city of Athens. After spending time observing the places of worship throughout the city, Paul engaged the Areopagites with these words:

Men of Athens, I perceive that in every way you are very religious. For as I passed along and observed the objects of your worship, I found also an altar with this inscription, ‘To the unknown god.’ What therefore you worship as unknown, this I proclaim to you.

(Holy Bible, ESV, Acts 17:22-23)

In support of his efforts at Athens to tell the Greeks about the God who was “unknown” to them, Paul did not marshal the specific revelation of the Hebrew Scriptures, as he had in the synagogue of Pisidia years before when he gave his first sermon to a predominantly Jewish audience, nor did he appeal to the general revelation of God’s might and power displayed through the natural creation, as he had done in the opening lines of his most theologically astute letter to the Romans. Rather, Paul quoted the Greeks’ own poets and philosophers to demonstrate that the unknown God had indeed made himself known so that they:

[S]hould seek God, and perhaps feel their way toward him and find him. Yet he is actually not far from each one of us, for ‘In him we live and move and have our being’; . . . ‘For we are indeed his offspring.’ (Acts 17:27-28)

And, just as Paul, a Jewish scholar, studied the philosophy and poetry of the Greeks, even so an American professor may and should inquire into Asian philosophy and practices of teaching and learning in order to more fully appreciate and progress in an educational endeavor aimed at whole-person formation. With this theological foundation laid, we may now examine more specifically how East and West may, not only inform one another in this endeavor, but also enhance each other by balancing differing perspectives - when Confucius greets Socrates.

2. Professor - Student Relationship

The first way in which Confucius may welcome Socrates is in the understanding of the relationship between professor and students. For the purposes of this paper, I will focus upon just two aspects: attitude and engagement. Both the Confucian hierarchical and the Socratic equalitarian character of this relationship are founded upon and fostered by an attitude of respect. In the Asian context, it is an

immediate, one might say innate, respect owed to the professor by the students due to the professor's status as a teacher. In contrast, respect in a Western law school setting is initiated by the professor's addressing his or her students by their surnames. This is exemplified in the popular film "The Paper Chase." The opening scene depicts the first day of class for first year students at Harvard Law School. Professor Kingsfield calls upon Mr. Hart, not James or even James Hart, but Mr. Hart, to recite the facts of the first case. American law students have entered the professional arena by earning admission to law school and professional courtesy is practiced by the law professor's attitude of respect for his students. I have found that addressing my law students at Handong by their family names - Ms. Park, Mr. Han - fosters an authenticity of respect that is sometimes lacking when the respect is merely culturally conditioned.

Furthermore, mutuality of respect between professor and students engenders a greater openness to engagement by the students in the subject matter of the day's class. Student engagement emerges beyond respectful, passive listening and vigorous note-taking, characteristic of the Confucian learning tradition, to a more active willingness to pose questions, not only privately to the professor after the class session has concluded, but even publicly in the midst of the other students during the class itself. In order to draw students into this more active engagement, I have found that it is necessary for me to reiterate regularly both my willingness to be interrupted by questions and my approval of students who ask questions during class as those who are indeed listening carefully and wanting to know and understand the subject matter more thoroughly.

3. Teaching Methodology

An integrated Confucian-Socratic attitude of respect in the relationship between professor and students flows naturally into the forming of a balanced pedagogy. Both Confucian and Socratic teaching methodologies are in their

essential form founded upon the pondering of a text through the aid of guided inquiry. The Socratic Method, that is virtually synonymous with Western legal education, however, turns the approach away from the professor's thoughts on the text of the case under consideration, to the students' thinking about the facts, issues, rules and rationales of the case. The students' thinking is guided by the professor's queries. A student's response to the professor's opening question will lead to another question from the professor, the reply to which will provide the basis for yet another question, and so goes the interaction within the Socratic classroom. (Paliwala, 2010: 225).

Through Socratic engagement, the professor seeks to hone the students' thinking skills more than he or she attempts to convey substantive knowledge. Once the students' initial hesitancy to respond is overcome by the professor's openness to their efforts and once the students' reluctance to speak up due to a lack of confidence in his or her language skills is relieved by the professor's acceptance of their attempts, the Socratic Method may be effectively used to heighten the Asian law students' active engagement in the learning endeavor. Indeed, the Confucian methodology that seeks to evoke reflection upon the text may be enhanced as the professor incorporates the Socratesian pedagogy by framing inquiries with a more artful aim and in more inviting tones. In this way, Confucius greets and invites Socrates into the seowon, thus moving toward a merger and balancing of Eastern and Western academies.

A balancing approach to pedagogy is especially instructive when we examine the role of speaking in teaching and learning. To begin this analysis, we may posit three levels of engagement through speaking within a communal learning environment. The first and most basic role for speaking here is discussion – the free sharing of ideas and perspectives, the aim of which is to *observe* the variety of facets any given subject of inquiry may evoke. Within this model, lecture may be viewed as one element of discussion. From the Western tradition, the emphasis at this initial level is a clear expression of ideas. From the East, I would suggest

that there is an expectation at this beginning point of greater enlightenment through first embodying the idea into lived expression in being before an attempt is made to express the idea in words. Professor Jin Li, in her comprehensive work on cultural foundations of learning, has observed that Confucianism, as well as the two other major spiritual traditions in the East, Taoism and Buddhism, de-emphasizes the role of speaking. (Li, 2012: 296) Indeed, one of the most well-known maxims of Lao Tzu is: “Those who understand are not talkers; talkers don’t understand.” Yet all three Eastern traditions flow from the recorded words of their founders – the *Tao TehChing* of Lao Tzu, the *Sayings* of the Buddha, and the *Analects* of Confucius – upon all of which their followers reflect.

From discussion, we move to the next level of learning engagement through speaking – dialogue. Whereas observation was the principal aim of discussion, dialogue is directed toward *understanding*. From the Socratic perspective, greater understanding is achieved through inquiry – those well-formulated questions we spoke of before that build upon the responses to prior inquiries and are targeted at a more thorough and systematic comprehension of the seminal ideas and perspectives expressed at the initial discussion level. From the Confucian approach, on the other hand, greater understanding is achieved, not so much by externalized inquiry, but rather, by internalized reflection. Prof. Li’s analysis of the *Analects* reveals “a rich discussion on the relationship between one’s speaking and moral/virtuous development”.(Li, 2012: 296) Thus, for Confucius, “Fewer words are best” and “deeds shall exceed words.” True understanding is demonstrated by embodiment into being rather than eloquent appeals to good.

From discussion that allows for broad observation of ideas, through dialogue that enables thorough understanding of those ideas, we arrive at the third level in the role of speaking within the learning endeavor – disputation. Here the purpose of speaking is to *evaluate* the worth of an idea in relation to its formative value. From the West, Socratic dialogue progresses into Aristotelian debate – from seeking to inform to attempting to persuade with all the means Aristotle’s *Art of*

Rhetoric places at the speaker's disposal – ethos, pathos, and logos. This Western effort to persuade through disputation is once again balanced by the Eastern emphasis upon doing before speaking. The full integration through balancing East and West is succinctly expressed in the depiction of the post-Exilic Jewish rabbi Ezra about whom we read, “had set his heart to study the Law of the LORD, and to do it and to teach his statutes and rules in Israel.” (Holy Bible, ESV, Ezra 7:10) Thus, the role of speaking, while essential in the teaching experience, is practiced not as mere words in a lecture, but as ideas that have first been embodied into life and then articulated for observation, understanding and evaluation by all participants in the community of learning.

4. Learning Outcomes

An integrated Confucian-Socratesian characterization of the professor-student relationship founded upon respect, along with a similarly balanced pedagogy encouraging thoughtful and thorough engagement of all levels of the learning endeavor, naturally emerges into and culminates in learning outcomes that are focused upon whole-person formation of students. The transformation of legal educational objectives that was engendered by the adoption of the Socratic-case study approach at the “High Citadel” of Harvard Law School at the turn of the Twentieth Century marked the move from merely “learning the law” to the ultimate goal of producing graduates who were “thinking like a lawyer.” (Seligman, 1978)

Sharpening legal practitioners' critical thinking skills and argumentative tactics did not, however, fully form a professional with a developed sense of responsibility and ethics. As a result, most law schools in America included in their curriculum required courses in professional responsibility and humanities. During my law school days at Saint Louis University, I met the humanities requirement by taking a seminar examining the inter-relationship of law and religion. Some law schools in the States, most notably Yale Law School, went so far as to develop an entire course on the “formation of the lawyer” and also offered a dual-degree program in

cooperation with the university's Divinity School that enabled the student to earn both a Juris Doctorate and a Masters of Divinity degree during five years of study.

What Western, Socratic legal education realized as a need was, in fact, an outcome that the Confucian educational tradition always embodied – the formation of a whole person. These “learning virtues” of the East are thoroughly examined through the work of Professor Jin Li in her book *Cultural Foundations of Education: East and West*. Prof. Li's study concluded, among other things, that:

Westerners tend to define learning cognitively while Asians tend to define it morally. Westerners tend to see learning as something people do in order to understand and master the external world. Asians tend to see learning as an arduous process they undertake in order to cultivate virtues inside the self.(Li, 2012: 37)

Here again, the integration achieved by Confucius welcoming Socrates, East greeting West, and Socrates, in turn, appreciating and learning from Confucius yields both a fuller and deeper commitment to educational outcomes that aim, not only at finely-honed analytical skills and argumentative strategies, but also at a developed sense of professional responsibility and ethical alertness that will enable the law school graduate to think like a lawyer and to act like attorney. The outcomes of individual courses of study as well as the entire educational endeavor is thus envisioned in terms of forming a whole person capable of ably engaging the external demands and challenges of a life well-lived with ethical integrity.

III. Conclusion

When Confucius greets Socrates and both value and learn from one another, then professors from each of these respective learning traditions may grow into better relationships with one another and with their students in several respects. First, the relationships they build together within the community of learning will be

based upon mutual respect. Students from the Confucian tradition will help their fellow students from the West grow in respect for their professors. Professors from the Socratic tradition can equally assist their colleagues from the East in appreciating the diverse contributions their students can make to the learning community. Together then professors and students from East and West will grow in their relationships through mutual respect and appreciation.

Professors who have been shaped by the Confucian approach to teaching may improve their pedagogy by engaging their students in reflection upon the legal text through Socratic open, guided inquiries that sharpen the students' approach to thinking about the law. Socratic professors may, on balance, develop more carefully crafted questions for their students as Western professors learn from the Confucian example of brevity and precision in word choice. More thoughtfully composed queries will draw students from both East and West into a deeper engagement of the learning endeavor as professors guide their students from basic observations into a more comprehensive understanding of the issues. Having taken the time to seek such understanding, students will ultimately be equipped to make well-balanced evaluations of both ideas and actions to address the complexity of issues presented to them.

Finally, Confucius and Socrates help professors as a whole to envision and achieve learning outcomes that more fully form competent and responsible persons. Western emphasis on intellectual acuteness is balanced by the priority attached to the internal formation of character of the East. Thus, integration of the Confucian and Socratic approaches has the potential to foster a thriving formative influence within the teaching and learning environment. I have found this to be the case in my experience teaching American law in an Asian university.

“이 논문은 다른 학술지 또는 간행물에 게재되었거나 게재 신청되지 않았음을 확인함.”

“This article has not been published or applied to publish in other academic journals.”

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한글초록

공자가 소크라테스를 맞이할 때: 아시아 대학에서의 미국법 수업을 중심으로

코델 숄튼 (한동대 법학부)

공자의 가르침은 동양의 교육적 전통 형성에 상당한 기여를 하였다. 서양의 교육 전통, 특히 법학 교육의 형성에 있어서는, 그리스의 철학자 소크라테스가 많은 영향을 끼쳤다. 이처럼 서로 다른 동서양의 가르침과 배움에 대한 전통은, 서양의 전통을 가진 교수가 아시아의 대학에서 서양의 법, 구체적으로 미국법을 가르치는 상황에서, 충돌할 가능성이 크다. 하지만 이 글은 그러한 충돌 대신, 두 가지의 문화적 전통을 가진 교수와 학생이 서로 듣고 배우는 과정을 통해, 양쪽이 가진 원칙과 실천으로부터 협력적인 융합과 상호 이득을 얻을 가능성이 더 크다고 주장한다. 유교적이고 소크라테스적인 전통이 융합하여 서로에게 득이 되는 점은 교육의 세 가지 중요한 차원에서 설명할 수 있다. 첫째, 두 가지 전통의 융합은 더욱 깊이 있고 서로를 존중하는 교수와 학생 관계의 기반을 제공할 수 있다. 둘째, 교수는 더욱 적극적인 교수법을 통해 학생들로부터 최선의 활동을 끌어낼 수 있으며, 마지막으로, 지적 성취의 가치와 내적 인격 형성 간의 균형이 전인적인 학습 결과를 증대시킬 수 있다. 따라서 유교적이고 동시에 소크라테스적인 접근방식은 법학을 가르치고 배우는 환경에서 형성적인 경험(Formative Experience)을 성공적으로 길러낼 수 있는 잠재력을 가지고 있다.

주제어 : 법학 교육, 공자, 소크라테스, 교수법, 학습 결과