

# LEGAL DIFFUSION AND THE LEGAL PROFESSION: AN ANALYSIS OF THE PROCESSES OF AMERICAN INFLUENCE ON SOUTH KOREA'S LAWYERS

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## Abstract

Writings on legal transplants often focus on the state-to-state spread of legal rules. Yet, other legal phenomena – such as legal ideas, methods, practices, structures, and personnel – can be observed moving across national boundaries and through non-state pathways. This article empirically examines several key processes of American influence on the South Korean legal profession, how they function, and how they affect the practice of law in the country. This article is based on data gathered from interviews with Korean lawyers, judges, and law professors and conceptualizes processes of legal influence using the social science of the diffusion of innovations, a body of knowledge concerned with the spread of objects and ideas. Diffusion theory has rarely been applied to the study of the transnational dissemination of legal phenomena, yet its insights can enhance our understanding of how such processes occur. Drawing on this theory, this study traces the diffusion into and within South Korea of the law firm model for the provision of legal services, American legal documentary styles, financial deal structures, personnel, and the practice of citing U.S. case law in court proceedings. The paper concludes by analyzing the key factors in legal diffusion processes involving the Korean legal profession

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## INTRODUCTION

Can legal professions evolve in response to foreign influences and adopt new ideas, methods, and practices that can fundamentally alter their structure and characteristics? If so, how do these processes of change occur? While it has long been observed that rules travel across borders, less attention has been given to the transnational dissemination of other kinds of legal phenomena. Alan Watson has argued in several books and articles that adoptions of outside law, which he termed legal transplants, have been the driving force of legal change throughout Western history, if not world history.<sup>1</sup> Watson's bold claim has provoked a slew of responses from scholars disagreeing with, clarifying, and developing the idea of legal transplantation by analyzing other examples of the phenomenon.<sup>2</sup> In the literature on transplantation, the spread of law has been viewed mainly as the state-to-state dissemination of formal legal rules. The borrowing of informal legal phenomena, such as legal ideas, methods, and practices, has been less commented upon, although it may sometimes be highly consequential to the development of a legal system.

This article offers an empirical study of how the transnational diffusion of legal ideas, methods, and practices occurs in a legal profession and can transform how lawyers do their work. Taking the situation in South Korea (hereinafter, Korea) as a case study, this paper traces the processes through which American legal concepts have influenced the Korean bar. It examines how the law firm structure for the delivery of legal services was adopted in Korea, how American-style contracts and financial deal structures entered Korea, how Korean law firms have come to utilize U.S. lawyers, sponsor their employees to study in the U.S., and cite American law as an authority in domestic court proceedings and legal opinions. To limit the scope of the phenomena under analysis, diffusion processes involving alternative dispute resolution, the rise of in-house legal departments, and cause lawyering activism are not considered in this paper.<sup>3</sup>

<sup>1</sup> Representative of Watson's many works are ALAN WATSON, *LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW* (2d ed. 1993); ALAN WATSON, *THE EVOLUTION OF WESTERN PRIVATE LAW* (2001); Alan Watson, *Legal Transplants and European Private Law*, vol. 4.4 ELEC. J. COMP. L. (Dec. 2000), <http://www.ejcl.org/44/art44-2.html>.

<sup>2</sup> Major writings on legal transplants include, but are by no means limited to: William Ewald, *Comparative Jurisprudence (II): The Logic of Legal Transplants*, 43 AM. J. COMP. L. (1995); Gunther Teubner, *Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences*, 61 MOD. L. REV. 11 (1998); David Nelken, *The Meaning of Success in Transnational Legal Transfers*, in 19 WINDSOR Y.B. ACCESS JUST. 349 (2001); YVES DEZALAY & BRYANT GARTH, *THE INTERNATIONALIZATION OF PALACE WARS* (2002); Esin Örüçü, *Law as Transposition*, 51 INT'L & COMP. L. Q. 205 (2002); Daniel Berkowitz, Katharina Pistor & Jean-Francois Richard, *The Transplant Effect*, 51 AM. J. COMP. L. 163 (2003); Pierre Legrand, *The Same and the Different*, in *COMPARATIVE LEGAL STUDIES: TRADITIONS AND TRANSITIONS* 240 (Pierre Legrand and Roderick Munday eds., 2003).

<sup>3</sup> The recent growth of in-house counsel departments in Korean corporations is discussed in Jae-Hyup Lee (이재협), *Sanae Pyönhosawa Pöpch'ichu'üi - Hanguküi Giöppöpmubusöe daehan Gyönghömjök Goch'al* (사내 변호사와 법치주의 - 한국의

This study of legal influence draws on concepts from the social science theory of the diffusion of innovations, which views diffusion as a “universal process of social change.” The theory concerns the spread of material and conceptual objects, which can also be understood as innovations, among individuals and institutions. Sociologist Everett Rogers, a great aggregator and interpreter of diffusion research, identified several features common to diffusion processes, such as stages they go through, how they involve various types of communication channels in which potential adopters learn about innovations, the attributes of innovations that affect how quickly or slowly they are adopted, and the attributes of adopters that influence their propensity to accept new ideas and objects. Rogers also found types of actors in diffusion processes, such as change agents, who serve as lobbyists for the adoption or rejection of an innovation.<sup>4</sup>

Diffusion theory provides an empirical framework for inquiry that has been lacking in much of the writing on legal transplants. Additionally, understanding the spread of law and legal phenomena in terms of diffusion, rather than transplantation, can help discussion move beyond the spread of rules from a single jurisdiction to another. The diffusion metaphor more effectively captures the reality that the spread of law often does not occur in a discrete moment but over long timescales, that there can be more than one origin of and destination for a particular law, that agencies besides governments play roles in the movement of law, and that legal phenomena besides law can be transferred. This last point was particularly stressed by William Twining, the first scholar to argue for the use of diffusion theory in studying the transnational spread of law. He has suggested that the objects of legal diffusion include not only rules, but also “any legal phenomena or ideas, including ideology, theories, personnel, ‘mentality’, methods, structures, practices (official, private practitioners’, educational, and so on), literary genres, documentary forms, symbols, rituals, etc.”<sup>5</sup>

To study the processes of legal diffusion involving lawyers, I conducted interviews with twenty-two lawyers in Korea, including eight foreign legal consultants – lawyers from abroad employed in Korean law firms. All interviews were conducted in Seoul because most Korean lawyers and all large law firms are based there. The interviews were held between March and October 2008 and ranged in length from one-half to three hours. All interviews were conducted in person and in English or Korean. I translated from Korean when it was used. Interviewees uniformly requested anonymity, citing the sensitivity to perceived criticism of others in Korean culture and worries that their words might be interpreted as critical. Therefore, I have not revealed lawyers’ names in accordance with their wishes.

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기업법무부서에 대한 경험적 고찰) [In-House Counsels and the Rule of Law – An Empirical Study on Corporate Legal Departments in Korea], 400 INGWŌNKWAJŌNG (인권과정) [Human Rights Process] 43 (2009). For further information on cause lawyering, see *infra* note 72.

<sup>4</sup> EVERETT ROGERS, *DIFFUSION OF INNOVATIONS* (5ed. 2003).

<sup>5</sup> William L. Twining, *Social Science and Diffusion of Law*, 32 J. L. & Soc. 203 (2005).

I proceed by first discussing the characteristics of the Korean legal profession. Second, I describe how the concept of the law firm arrived in Korea. Third, I explain how certain legal innovations have been introduced to Korea via law firms and how law firms encourage further legal borrowing from the United States. I conclude by examining the most important factors in the legal diffusion processes involving the Korean bar.

## I. CHARACTERISTICS OF THE KOREAN LEGAL PROFESSION

"Becoming a lawyer in Korea has been considered a sure-fire ticket to wealth and honor. But the age-old legacy is no longer true, especially for 'unaffiliated' lawyers."<sup>6</sup> So began a 2008 newspaper article entitled *Lawyers Face Business Polarization*, on the decline of solo practitioner lawyers and rise of law firms in Korea. Although Korean lawyers have traditionally worked alone, the article explains that solo practitioners now receive a dwindling share of legal work. "In 1997, an independent lawyer processed 57.2 lawsuits on average a year. The number plunged to 36 in 2004 and 31.5 in 2007, according to the latest data available." The drop-off in business has even pushed some solo practitioners into insolvency, an astonishing development in a country where lawyers have historically been considered a wealthy and prestigious elite group.<sup>7</sup> "It's not that difficult to see a lawyer shutting down his or her office after failing to take any lawsuit for months, leaving huge liability," an independent lawyer told the newspaper. But not all lawyers are dealing with hard times:

The six top law firms [in Korea] – Kim & Chang, Kwangjang, Bae, Kim & Lee, Hwawoo, Shin & Kim and Yulchon – account for more than half of the 1.3 trillion won [approximately one billion dollar] law market. The six law firms retain only about ten percent of Korean lawyers. 'A law firm is much more reliable than an independent lawyer. So I have commissioned my lawsuit to a law firm although it costs more', a petitioner said.<sup>8</sup>

Law firms are thriving in the legal market, seemingly at the expense of solo practitioners, marking a shift away from a legal profession composed of independent lawyers and towards one in which lawyers work together cooperatively. To comprehend the rise of law firms and their impact in Korea, it is important to understand the traditional features of the country's legal profession.

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<sup>6</sup> Si-Soo Park, *Lawyers Face Business Polarization*, KOREA TIMES, Aug. 31, 2008, [http://www.koreatimes.co.kr/www/news/nation/2008/09/117\\_30290.html](http://www.koreatimes.co.kr/www/news/nation/2008/09/117_30290.html).

<sup>7</sup> "The first case [of a lawyer's bankruptcy] was reported in 2006 and one or two lawyers file such a petition with the court each year, according to the Seoul Central District Court." *Id.*

<sup>8</sup> *Id.*

To become a lawyer in Korea, aspirants have historically had to pass the national judicial examination (*sabŏp sihŏm*, 사법시험), which is divided into two written tests and an interview. The judicial examination, often translated as "bar exam," has historically been extremely difficult, requiring memorization of an immense amount of information, including laws, legal commentaries, standard solutions to legal problems, and law-related Chinese characters and terms that are unfamiliar to ordinary Koreans. Possessing a university degree has not always been required to sit for the exam.<sup>9</sup> The passage rate for the examination between 1981 and 2002 was 2.65 percent.<sup>10</sup> Those who pass the exam attend the Judicial Research and Training Institute (JRTI), where they are educated in practical legal reasoning from a judicial perspective.

Until recently, modern Korean society has been marked by an undersupply of lawyers created by the exam's extreme difficulty and passage quota. At the end of 2010, the number of practicing attorneys in Korea stood at about 11,000 out of a total population of almost 49 million people.<sup>11</sup> There is roughly one lawyer per 4,430 people in Korea, while the OECD average is one per every 1,482 people. Before 1981 only 60 to 120 people passed the examination annually, and there was roughly one lawyer per 20,000 people in the 1970s. Between 1981 and 1996, the Korean government set a quota for passage of the judicial exam of about 300 people each year. Since 1996, however, the Korean government set a target of 1,000 new lawyers per year, and it gradually increased the number of people passing the examination until it reached that level in 2002.<sup>12</sup>

Because there have been so few lawyers in Korea, they have traditionally been regarded as a socioeconomic elite group, commanding relatively high salaries and prestige from common people due to their rarity.<sup>13</sup> Their status as people who have passed the most difficult government examination in comparison with other civil service exams has marked lawyers as particularly intelligent individuals in the popular consciousness. Historically, Korean

<sup>9</sup> During some periods, having an undergraduate degree was required, while at other times it was not, and the rule has often shifted over time. Some have passed the examination without a university education, and a famous example can be seen in former President Roh Moo-hyun.

<sup>10</sup> Dae-Kyu Yoon, *The Paralysis of Legal Education in Korea*, in *LEGAL REFORM IN KOREA* 36, 38–41 (Tom Ginsburg ed., 2004).

<sup>11</sup> Kim P'yŏng-U (김평우), *Pyŏnhosa Sihŏm Hapgyŏkja Surŭl Rosŭkul Iphakjŏngwŏnŭi 75%ro Jŏngha Pangch'imŭl Chŭkgak Ch'ŏlhoehara* (변호사시험 합격자 수를 로스쿨 입학정원의 75%로 정한 방침을 즉각 철회하라) [The Policy that Has Set the Number of Passers of the Judicial Exam to 75% of Law School Students Must Immediately be Withdrawn], Korean Bar Association report, Dec. 8, 2012, [http://www.koreanbar.or.kr/notice/board01\\_detail.asp?idx=911&kind=A10200](http://www.koreanbar.or.kr/notice/board01_detail.asp?idx=911&kind=A10200)

<sup>12</sup> Yoon, *supra* note 10.

<sup>13</sup> *Nation's Lawyers Top 10,000 Mark*, CHOSUN ILBO, Apr. 30, 2008, <http://english.chosunilbo.com/cgi-bin/printNews?id=200804300012>.

lawyers have tended to work as solo practitioners. Lawyers interviewed for this study cited two reasons for this. First, because lawyers could earn high incomes relatively easily, there was never market pressure to work with other lawyers to do more legal work. Secondly, lawyers were proud of their high social status and therefore unwilling to work underneath someone else. However, Korean lawyers have come together to form small cooperative offices, usually of two to three lawyers, in which the lawyers share office space and secretaries but are de facto solo practitioners.

Until the 1980s, when the judicial exam's passage quota was first lifted, all graduates of the JRTI were expected to become judges or prosecutors, and most would retire after about fifteen years to become practicing lawyers. Thus, until recent decades, nearly all lawyers have been judges and prosecutors, and because these jobs were both respected and socially powerful, Korean lawyers carried the prestige of their former careers.<sup>14</sup> One writer noted that,

In Korea, to become a lawyer... generally meant that one would become a judge or a public prosecutor rather than an attorney-at-law. From time to time, Korean parents and grandparents would tell their children, "become a judge or prosecutor when you grow up" rather than saying "become an attorney-at-law." In Koreans' perception, the term lawyer means judges or prosecutors who are governmental officials.<sup>15</sup>

Indeed the judicial examination was part of the Higher Civil Service Examination until 1963.<sup>16</sup> More than just an economic elite group, Korean lawyers have been perceived as almost civil servants, rather than private providers of commercial services. Lawyers customarily see themselves this way as well. Even the term "legal service," signifying legal practice as a commodity traded for profit, only came into usage in Korea in the 1990s, according to Korean lawyers.

The view of lawyers as quasi-civil servants, instead of purveyors of commercial services, is also expressed in regulations regarding lawyers. An example of this is seen in how legal advertising has traditionally been strictly regulated. Lawyers' advertisements until recently have been restricted to newspapers and permitted only to notify the public when a new lawyer began practice. The advertisement could only name the new lawyer and list his

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<sup>14</sup> The Korean phrase "*Jŏngwan yewu*" (전관예우), meaning "respect for former government officials," is commonly used to describe the esteem in which lawyers are held.

<sup>15</sup> Dohyun Kim & Seung Heum Hwang, *Career Patterns of the Korean Legal Profession*, in JUDICIAL SYSTEM TRANSFORMATION IN THE GLOBALIZING WORLD: KOREA AND JAPAN 139, 142 (Dai-Kwon Choi & Kahei Rokumoto eds., 2007). The judiciary and Public Prosecutor's Office are managed bureaucratically, such that most officials are promoted to higher office about every two years. Failure to receive a promotion causes judges to resign to practice law.

<sup>16</sup> *Id.*

academic qualifications and work history.<sup>17</sup> Another example of the close regulation of the legal profession was the issuance of the fee standards by the Korean Bar Association, which all practicing lawyers must join. The Association used to publish a list of lawyer services and the fees that they should cost. However, the schedule was not widely complied with and lawyers generally charged more, taking advantage of their scarcity.<sup>18</sup> The restrictions on lawyers' advertising and pricing for services, in addition to strict quotas on their annual production and the state's direct role in their training, demonstrate how the state treats lawyers as quasi-civil servants rather than free commercial actors. Furthermore, the rules on advertising and pricing were made with the input of the Bar Association and so reflect not only the public or government's view of lawyers, but also how lawyers have customarily viewed their role in society.

The traditional characteristics of the Korean bar closely resemble those of the German and Japanese legal professions. This is because the modern Korean legal system was created by the Japanese Empire during its colonization of Korea from 1910–45, and Japan modeled its legal system mainly on Germany's. Just as in Korea, Germany's legal education centers on a state examination, which is divided into two written tests and one oral test, but Germany differs in its requirement of a five-year course of university law studies and practical training thereafter. After passing the first test of the examination, and before they can sit the final written and oral tests, students must undertake a *referendariat*, a two-year rotating apprenticeship in a trial court, prosecutor's office, the civil service of a local government, and in a lawyer's office. And, during this time, trainees must also attend law lectures given by judges, prosecutors, and civil servants. Both the *referendariat* and the preparation for the examinations stress legal problem-solving from a judicial perspective. This is in line with the German legal ideology of "a state-centered understanding of the role of the legal profession with judges forming the center of the profession," and outlook that is also reflected in regulations on the German bar. Lawyers have historically been banned from advertising services.<sup>19</sup> The prices for almost all services are fixed by a fee schedule issued by local Bar Associations.<sup>20</sup> Until recent years, the commercialization of legal services was

<sup>17</sup> Im Chi-bong (임지봉), *Miguk Hönpöp Pallye Yöllam: "Pyönhosa Kwanggowha" P'yohyönnüi Chayu* (미국헌법판례열람: '변호사 광고'와 표현의 자유) [Readings in American Constitutional Law: "Lawyer Advertising" and Freedom of Expression], LAW TIMES, Nov. 6, 2008, <http://www.lawtimes.co.kr/LawNews/News/NewsContents.aspx?serial=43470>.

<sup>18</sup> Dae-Kyu Yoon, *Current Reform Efforts in Legal Education and the Delivery of Legal Service in Korea*, in EDUCATING FOR JUSTICE AROUND THE WORLD 64, 68 (Louise G. Trubek & Jeremy Cooper eds., 1999).

<sup>19</sup> Ralf Rogowski, *German Corporate Lawyers: Social Closure in an Autopoietic Perspective*, in PROFESSIONAL COMPETITION AND PROFESSIONAL POWER 115–17 (Yves Dezalay & David Sugarman eds., 1995).

<sup>20</sup> Erhard Blankenburg & Ulrike Schultz, *German Advocates: A Highly Regulated Profession*, in LAWYERS IN SOCIETY 110 (Richard L. Abel & Philip S.C. Lewis eds., 1995).



further blocked by rules forbidding lawyers from practicing outside of the district of their appellate or district court, or organizing themselves in limited liability companies.<sup>21</sup> Another feature of the German legal profession is that it was traditionally smaller with respect to the population than common law bars, although in the past three decades the number of German lawyers has increased, following a broader trend of expansion in higher education.<sup>22</sup> Also, until recent decades, German lawyers have typically worked as solo practitioners or in small partnerships. However, law firms started appearing in the 1980s, a trend that occurred mainly as a reaction to the opening of the German legal market to foreign lawyers during Europe's economic integration.<sup>23</sup>

Japan adopted much of the Germanic legal tradition in the late 19th and early 20th centuries as a part of the Meiji Restoration modernization agenda. To become a lawyer, one had to pass a difficult state examination, with no educational prerequisite. For those who passed the examination, Japan maintained a rotating internship modeled on the *referendariat* until 1947, when it created the Legal Training and Research Institute (LTRI), which became the model for Korea's JRTI when it was created in 1970.<sup>24</sup> The LTRI provided trainees an education in judicial reasoning and differentiated them into judges, prosecutors, and practicing attorneys. The government of Japan has historically permitted very few people to pass the bar examination, and subsequently the number of lawyers has historically remained low. In 2000 there was roughly one lawyer for every 7140 people<sup>25</sup>, although that had fallen to one per 4,141 by 2011.<sup>26</sup> The overwhelming majority of lawyers have tended to be solo practitioners, although a trend towards large, American-style law firms has been growing since the 1980s.<sup>27</sup> The genealogy of these firms can be traced back to the law firms founded by American lawyers in the 1950s, who were decreed Japanese lawyers by the U.S. military government that ruled

<sup>21</sup> Rogowski, *supra* note 19, at 117–18.

<sup>22</sup> Blankenburg & Shultz, *supra* note 20, at 117. In 2006, Germany had about one practising attorney per 590 people. By contrast, Britain had about one lawyer per 400 people in the same year. COUNCIL OF BARS AND LAW SOCIETIES OF EUR., NUMBER OF LAWYERS IN CCBE MEMBER BARS (2006). [http://www.ccbe.org/fileadmin/user\\_upload/NTCdocument/table\\_number\\_lawyers1\\_1179905628.pdf](http://www.ccbe.org/fileadmin/user_upload/NTCdocument/table_number_lawyers1_1179905628.pdf).

<sup>23</sup> Rogowski, *supra* note 19, at 123.

<sup>24</sup> JAMES WEST, EDUCATION OF THE LEGAL PROFESSION IN KOREA 8–9 (1991).

<sup>25</sup> Kahei Rokumoto, *The Japanese Judicial System: Institutions and Issues*, in JUDICIAL SYSTEM TRANSFORMATION IN THE GLOBALIZING WORLD: KOREA AND JAPAN 37, 53 (Dai-Kwon Choi & Kahei Rokumoto eds., 2007).

<sup>26</sup> This figure was calculated using the number of lawyers (30,485) reported in 2011. Japan Federation of Bar Associations, White Paper on Attorneys, 13 (2011) <http://www.nichibenren.or.jp/library/en/about/data/WhitePaper2011.pdf>.

<sup>27</sup> Ryo Hamano, *The Development of Corporate Legal Practice in Japan*, in JUDICIAL SYSTEM TRANSFORMATION IN THE GLOBALIZING WORLD: KOREA AND JAPAN 251, 267–77 (Dai-Kwon Choi & Kahei Rokumoto eds., 2007).

Japan after World War II. The Japanese legal profession has been characterized by a Germanic legal ideology, not only in its historically state-controlled training of practitioners,<sup>28</sup> but also in its Bar Association's ban on advertising and regulation of fees.<sup>29</sup>

The legal professions of Korea, Germany, and Japan have historically shared broad outlines of commonality, especially regarding their ideological view of lawyers as quasi-civil servants rather than providers of commercial services. But over the past decade, Japan and Korea have shifted away from their German-style legal professional past. During this time, Japan and Korea created special "judicial reform" committees to transform their legal systems,<sup>30</sup> resulting in the adoption of many American ideas, most notably graduate-level law schools. Korea replaced its state-centered legal training by planning to abolish the JRTI by 2019, opening a system of U.S.-style graduate law schools in 2009, and increasing the annual quota for the production of lawyers to 1500-2000. On this latter point, it is noteworthy that to remedy the perceived social problem of the high cost of hiring a lawyer, Korean policymakers did not attempt to more strictly enforce the German-derived fee schedule, but moved to increase the number of lawyers.<sup>31</sup> In 1999, the Fair Trade Commission, Korea's antitrust regulator, ruled that lawyers' and other professional organizations' fee regulations violated anti-cartel price-fixing laws, symbolizing the precedence of American competition law concepts over the

<sup>28</sup> In 2004 Japan opened a new graduate-level law school system that replaced the LTRI as the center of legal education. This reform represented a partial privatization of Japanese legal education. Mayumi Saegusa, *Why the Japanese Law School System Was Established: Co-optation as a Defensive Tactic in the Face of Global Pressures*, 34 LAW & SOC. INQUIRY (2009).

<sup>29</sup> JAPAN FEDERATION OF BAR ASSOCIATIONS, ARTICLES OF ASSOCIATION, <http://www.nichibenren.or.jp/library/en/about/data/articles.pdf>. The ban on advertising was replaced with stringent regulations in 2000. Kazumasa Kuboi, *Legal Ethics, Public Interest Activities and Independence of Lawyers* (Statement of policy, 8 October 2001) 3 [http://www.nichibenren.or.jp/library/en/document/data/HI\\_031\\_PS\\_12thPOLA2.pdf](http://www.nichibenren.or.jp/library/en/document/data/HI_031_PS_12thPOLA2.pdf).

<sup>30</sup> Japan's judicial reform committee's conclusions are available at Justice System Reform Council, Recommendations of the Justice System Reform Council For a Justice System to Support Japan in the 21st Century (June 12, 2001) <http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html>. Korea's counterpart, the "Judiciary Reform Commission" (사법개혁 위원회, *Sapōpgaehyōk Wiwōnhoe*), concluded deliberations in 2005.

<sup>31</sup> Academic commentators who have degrees from the United States have tended to call for an increase in the number of lawyers to remedy the situation, while those who studied in Germany are more inclined to support stricter enforcement of the state-mandated fee schedule. Kim Sang-kyōm (김상겸), "Pōpch'i" *Haech'inŭn Chōngwanyewu*, "Yujōnmujoe" *ŭi Sasŭlŭl Kkŭnōra* ('법치' 해치는 전관예우, '유전무죄'의 사슬을 끊어라) [Break the Chains of Rule-of-Law-Harming Cronyism and Bribery], SISA JŌNŌL, Oct. 29, 2008, <http://www.sisapress.com/news/articleView.html?idxno=47549>.

Germanic ideal of a closely regulated legal profession.<sup>32</sup> The Korean Bar Association has also liberalized advertising in recent years, permitting lawyers to promote themselves more directly.<sup>33</sup> These changes that have chipped away at Korea's production and regulation of lawyers as quasi-civil servants have mainly been caused by an increase in the number and sway of American-educated government officials and their law professor advisors, who see the reforms as the modernization of old arrangements.<sup>34</sup>

Some changes in the legal profession have been produced not by policymakers, but by transformations in the behavior of Korean lawyers. The most important change has been the adoption of the law firm model for the provision of legal representation and advice. Scholars have identified four key elements of large law firms, which first emerged in the 1900s in America, that represent changes from previous legal professional models of organization: the promotion to partnership, which is partial ownership of the firm; cooperative practice with other lawyers; enduring relations with clients; and lawyer specialization in narrow legal areas.<sup>35</sup> These characteristics of legal practice have diffused and are continuing to diffuse into Korea. This has caused at least three changes to the bar: a shift from it existing as a profession of solo practitioners to one in which lawyers work cooperatively, the emergence of an elite in the profession composed of lawyers from the largest and most profitable law firms, and a movement away from the Germanic legal ideological conceptualization of lawyers as civil servants and towards a view of

<sup>32</sup> Sin Yŏn-su (신연수), *Pyŏnhosa Suimryo Wanjŏn Chayulhwa... Ohiryŏ Nop'ajil Chŏnmang* (변호사 수입료 완전 자율화....오히려 높아질 전망) [Lawyers' Fees Are Totally Deregulated... But They Look Set to Rise], *LAW TIMES*, Feb. 18, 2000, <https://www.lawtimes.co.kr/LawNews/News/NewsContents.aspx?kind=AE&serial=1187>. Kwak Jŏng-su (곽정수), (*Kongjŏngwi*) *Chŏnmunjakyŏksa Kat'ŭn Œpmuposu Ch'oego 50 Paech'a* (공정위) 전문자격사 같은 업무 보수 최고 50 배차) [(Fair Trade Commission) Compensation for Licensed Professions Multiplies by 50 Times], *THE HANKYOREH*, Oct. 5, 2000, <http://www.hani.co.kr/section-004000000/2000/004000000200010052128022.html>.

<sup>33</sup> *Pyŏnhosa Kwanggo Kanŭnghaejinda* (변호사 광고 가능해진다) [Lawyer Advertising Will Be Possible], *CHOSUN ILBO* (조선일보), Nov 11, 2009, [http://news.chosun.com/site/data/html\\_dir/2009/11/11/2009111100976.html](http://news.chosun.com/site/data/html_dir/2009/11/11/2009111100976.html).

<sup>34</sup> Yukyong Choi, *POLITICS, CONFLICTS, AND POWER REDISTRIBUTION OF THE MODERN LEGAL COMPLEX: THE LEGISLATIVE PROCESS OF REFORM OF THE KOREAN LEGAL PROFESSION* (unpublished J.S.D. dissertation, University of California, Berkeley, 2011); Neil Chisholm, *AMERICAN LAW IN KOREA: A STUDY OF LEGAL DIFFUSION* (unpublished D.Phil. thesis, University of Oxford, 2011).

<sup>35</sup> Two other characteristics noted by these writers relate to technological changes, such as increased use of telephones and typewriters, and the proliferation of written materials that altered the way legal research was conducted. Since these features are essentially technological, they are excluded from this study. Marc Galanter & Thomas Palay, *The Transformation of the Big Law Firm*, in *LAWYERS' IDEALS/ LAWYERS' PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION* 31, 33-35 (Robert L. Nelson, David M. Trubek & Rayman L. Solomon eds., 1992).

them as providers of commercial services. The following section analyzes how the idea of the law firm entered Korea from the United States.

## II. THE ADOPTION OF THE LAW FIRM IN KOREA

The first and oldest law firm in Korea was founded by a lawyer named Kim Hŭng-han (김흥한) in 1958. Near the end of the Korean War, he was employed by a National Assembly member who helped him to receive a scholarship from an American cultural foundation to study at the University of Washington School of Law.<sup>36</sup> After spending three years there, he returned to Korea and started the first law firm. He named it "Kim, Chang & Lee" in the American style, using lawyers surnames separated by a comma and an ampersand – a novel idea in Korea.<sup>37</sup> Kim later said in an interview that he adopted the American-style name and law firm structure because he wanted to indicate that he knew U.S. law to potential American investors in Korea in the years after the Korean War. Mr. Kim's strategy worked well, as he attracted many American clients.

When American people would start a business, they would start by looking for a lawyer. They would search for a lawyer who speaks English, knows American law, and the American system, and since no name but mine came up, business could not but pour into my office. You have to understand that they had no choice.<sup>38</sup>

In this way, Mr. Kim's law firm essentially monopolized the foreign investment segment of the legal market until 1967 when two other firms (now defunct) were started by lawyers who had also studied in the United States. These first three law firms adopted the concepts of billable hours and the use of paralegals as well as three of the four features of law firms – cooperative work, long-term relations with clients, and specialization of lawyers. They did not fully adopt the concept of promotion to partnership. These firms created titular positions of partnership, but in reality there was little sharing of profits and decision-making power. The three firms grew to have dozens of lawyers, but abruptly disintegrated over profit and power-sharing issues in the 1980s –

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<sup>36</sup> The name of the cultural foundation is not specified in the book in which Mr. Kim's story is told. KIM JIN-WŌN (김진원), RO PŌM (로펌) [Law Firm] 64–70 (1999).

<sup>37</sup> An example of the diffusion of an American legal practice can be seen in how the U.S. style for naming law firms (e.g. "Smith & Jones") has been adopted by many firms today. U.S.-style names sound strange to many Koreans, as the ampersand, rather than being translated as "and," is often directly transliterated into Korean, pronounced as "aen" (앤). It can sound strange, even to very educated people. IM CHONG-IN & CHANG HWA-SIK (임종인 & 장화식), PŎPNYUL SAMUSO KIMAENJANG (법률사무소 김앤장) [The Law Offices of Kim & Chang] (2008) 26.

<sup>38</sup> Kim, *supra* note 35, at 67.

although Kim, Chang & Lee survived in a smaller form because it maintained the loyal client base of foreign investors it established in the 1950 and 1960s. A Korean lawyer offered an explanation for why Kim, Chang & Lee shrank from a large to medium-size firm during the 1980s and has stayed that way:

The [sole] partner of that firm is famous for running everything personally. He does not allow people to work independently. And it seems like he keeps the firm to a small size that maximizes his power and profit, because if he expanded [beyond 40 lawyers] he would have to share control.

Currently, the most successful and largest Korean law firms consist of a group, sometimes called "the Big Four," that were founded in the 1970s and 1980s: Kim & Chang (1973), Lee & Ko (1977), Bae, Kim & Lee (1980), and Shin & Kim (1981). These firms were established by judges who had retired to legal practice and who had studied, and sometimes worked, in the United States, except for Bae, Kim & Lee, whose founder had no American degree. This second generation of firms more closely imitated the structure of American law firms than the first three Korean firms, according to lawyers interviewed for this study. These firms more deeply institutionalized teamwork by creating separate practice groups, encouraged a greater degree of specialization, and gave partners more say in management decisions. Yet, even in these second generation firms, the term "partner" (p'atŭnŏ, 파트너) was a nominal job title that did not signify co-ownership of the firm or a claim to a share of firm profits. Before the mid-1980s, the founder or founders of Korean law firms made nearly all management decisions and took most of their firms' profits.

Korean lawyers say that the reason law firms adopted partner systems only nominally is that the founders were reluctant to cede any control or profits to those working beneath them. Korean culture stresses hierarchy in social relations between individuals, and the law firm founders saw themselves as owners entitled to all profits and decision-making power in their firms. In their view, law firm founders exist at the top of a social pyramid, at a level at which no younger lawyer who arrived at the firm later can hope to join. As might be expected, younger lawyers tend to bristle at the condescension inherent in this arrangement and feel their talents are insufficiently rewarded. Lawyers interviewed for this study reported that frustrated partners often leave to start their own firms, at which they seek to reproduce the strong control over the new law firm. In this way, Korean social patterns have worked against the diffusion of the partnership system for ownership of law firms. As an innovation, the concept of partnership lacked the attribute of compatibility with existing beliefs and values of many Korean lawyers. If an idea lacks compatibility, its diffusion can be slowed or blocked.<sup>39</sup> These patterns of interpersonal relations also hindered the diffusion of cooperative legal practice, which was also very rare among lawyers before the 1980s.

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<sup>39</sup> Rogers, *supra* note 4, at 240-46.

In the mid-1980s however, some firms began to take steps towards the adoption of “real partner systems,” as Korean lawyers sometimes refer to the American style of partnership. The trend began at Bae, Kim & Lee, which was founded by a former judge, Kim In-Söp (김인섭), who, according to a Korean legal sociologist, “proclaimed that his law firm would maintain and develop the traditional value system of the Korean legal community. This new firm could be seen as a reaction to the more competitive American style law firms that concentrated on foreign law affairs.”<sup>40</sup> Ironically, this firm ended up adopting the most genuine partnership system up to that time after an uprising in 1986 by younger employees who were dissatisfied by the total control of the firm by the founder. A lawyer involved in the coup said that it was a “revolution” that ended in the creation of a kind of “Magna Carta,” a written agreement that laid out a system for the division of profits and decision-making power in the law firm. The young lawyers acted as change agents lobbying for the adoption of a partnership system that granted themselves greater economic and social benefits. Since this uprising, the other three major law firms have moved in the same direction as Bae, Kim & Lee, but they have not gone as far according to interviewees, and Bae, Kim & Lee is still widely considered to have the most transparent and egalitarian partner system out of the Big Four law firms. Bae, Kim & Lee’s adoption of the U.S.-style of co-ownership of a law firm among partners can thus be seen as a milestone in the diffusion into Korea of elements of the law firm model for the delivery of legal services.

The need for legal services stemming from international commercial transactions was an important factor in the rise of the second generation law firms.<sup>41</sup> As a Korean law professor explains:

During the period of Park Jeong-Hee’s dictatorship in the 1970s, corporate law practice in Korea was restricted within a small boundary that mainly covered international business transactions. In a sense, international affairs were the only place where lawyers could function without governmental guidance, because all the important business of domestic affairs was totally occupied and controlled by the bureaucratic government.<sup>42</sup>

Because of their historical connections with international clients, Korean law firms have sought to hire lawyers proficient in English and encourage their

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<sup>40</sup> Kuk-won Lee, *Corporate Lawyers in Korea*, in JUDICIAL SYSTEM TRANSFORMATION IN THE GLOBALIZING WORLD: KOREA AND JAPAN 219, 232 (Dai-Kwon Choi & Kahei Rokumoto eds., 2007).

<sup>41</sup> Further discussion on the economic background in which law firms developed can be found in Kim Seong-Hyun, *The Democratization and Internationalization of the Korean Legal Field*, in LAWYERS AND THE RULE OF LAW IN AN ERA OF GLOBALIZATION 217, 222–228 (Yves Dezalay & Bryant Garth eds., 2011).

<sup>42</sup> Lee, *supra* note 37, at 231.

non-fluent lawyers to improve their English skills by granting them sabbaticals overseas. Proficiency in the English language is crucial to the diffusion of U.S. legal concepts, methods, and practices into the law firms even today, since it allows Koreans to surmount a barrier of comprehensibility that would otherwise render foreign ideas inaccessible. Additionally, close connections with international, Anglo-American law firms also contribute to legal diffusion. Because they have historically served as intermediaries between Korean law firms and multi-national corporate clients, they are involved in the transfer of knowledge to Korean lawyers. This is discussed further in the next section.

Although the law firm model for the delivery of legal services has mainly been found among large firms concentrating on international clients, in recent years the law firm model has been diffusing *within* Korea, resulting in the establishment of small and mid-sized law firms with a domestic focus. The law firm model is moving from being a style of practice limited to the elite of the legal profession to being a means for ordinary lawyers to organize and cooperate in the Korean legal market, which is becoming increasingly competitive as the state relaxes quotas on the annual production of lawyers. Non-elite lawyers feel a need brand their operations "law firms," while recently-qualified lawyers see law firms as the most desirable places to work. Some Korean lawyers at large firms view the rise of small law firms with ambivalence, often expressing the view that they are not true "law firms" because of their perceived lesser degree of adoption of the elements of law firms, such as partnership and teamwork. One Korean lawyer voiced a common sentiment when he said, "I feel disgusted with them for lying to their clients, saying they are law firms... They should just call themselves *hapdong samuso* (합동사무소) [joint offices, a term implying solo practitioners working independently in the same office]." Comments like these reveal the prestige of the law firm model in Korea – an attribute that aids its diffusion – as established law firm lawyers look down upon newcomers taking up the "law firm" label. The spread of the law firm model of practice and the incomplete adoption of the concept of partnership among both small and large firms shows that the diffusion of the law firm into Korea is an ongoing process. The diffusion process is continuing even today as an increasing number of lawyers organize themselves into small, domestic-oriented law firms and also as partnership systems gradually share profits and management responsibilities more widely.

### III. LAW FIRMS AS A PLATFORM FOR THE DIFFUSION OF ADDITIONAL LEGAL PHENOMENA

#### A. The Role of International Law Firms in the Diffusion of Documentary Forms and Deal Structures

The most direct pathway for the diffusion of American-style practices into Korean law firms has been their close work with the legal representatives of

foreign investors, usually large international law firms. The Big Four law firms that arose in the 1980s have especially been influenced by such contacts owing to their extensive foreign-oriented practices. These close collaborations have resulted in the transfer of knowledge and proprietary documentation from international, usually Anglo-American, law firms to the Korean law firms' lawyers as they work together on a particular project. Generally, when a Korean law firm works on a cross-border transaction involving a foreign party, the foreign party's international counsel will provide the documentation for contracts and agreements to the Korean side. The Korean law firm then translates these forms into the Korean language for its domestic client.<sup>43</sup>

One lawyer at a major firm gave the following example of such a transfer of documentation. She explained that in 2004, a wave of foreign investment in Korean office real estate started, and the investors' lawyers from large Anglo-American firms found the Korean contract forms to be "too simple." The foreign lawyers "wanted to clarify responsibilities" for a variety of circumstances not present in existing Korean documentation, and so they provided the Korean lawyers a new contract form that contained many elements that were alien to Korean contracts. For example, the form had a section on "representations and warranties," which, in the words of the lawyer, stated that, "this building meets building codes, is insured against fire, its taxes are paid, does not produce environmentally unfriendly chemicals, or specifies who should bear the cost of those chemicals, and so forth – they covered all the possibilities." However, representations and warranties clauses were not traditionally used in Korean contracts because in its civil law system, the issues these clauses consider with are usually dealt with in statute or in rules on the sale of goods in the Civil Code, both of which are normally referenced by contracts. These references serve as the civil law counterparts of long, detailed contract clauses found in common law jurisdictions. In Korea, as in other civil law countries, representations and warranties clauses are seen as technically unnecessary, but they have entered into usage through the insistence of international lawyers.<sup>44</sup> Thus, through the communication channel of cooperative work with international law firms on cross-border transactions, Korean lawyers learn of and adopt foreign legal documentary styles for domestic usage.

When common law concepts like representations and warranties enter into Korean legal documentary usage, they often diffuse within the Korean legal community and come to be used in purely domestic transactions in

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<sup>43</sup> The translation process is possible mainly because of elite Korean lawyers' proficiency in English. Sometimes, bilingual Korean-American lawyers assist in translations. One lawyer noted that some Anglo-American legal terms have no known translation in Korean, and in such cases lawyers utilize Japanese legal dictionaries to translate English terms into Japanese and then into Korean. Thus, Japan is often an intermediary in the diffusion of common law terminology into Korea. This illustrates the circuitous, multidirectional routes through which legal diffusion often takes place.

<sup>44</sup> In parts of Continental Europe, such common law inspired sections in contracts are colloquially called "parrot clauses" by lawyers because they repeat the statute and the Code.



which no international law firm is present. A Korean lawyer explained how this occurs, saying, "we translate so many foreign documents that when we prepare domestic documents there is an influence. We prepare more specific clauses and the style itself is influenced. Now representations and warranties clauses are used between Koreans." She said that domestic contracts are also "tailored" to the Korean context; the borrowed clauses are simplified and shorter. In her estimation, although domestic Korean contracts used for the purchase and sale of buildings have been growing in size, from around 15–20 pages in 2000, to 30 pages by 2007, they are not yet as large and detailed as an 80-page British contract she saw in 2007.

Another lawyer told of his slightly different experience. According to him, contracts and agreements Korean lawyers receive from foreign firms are commonly reused domestically, often being directly translated and of equal length to the original foreign documentation. This lawyer also contested the idea that there is much "tailoring" of foreign legal documents during the translation process. He said that in his experience lawyers mainly altered clearly inapplicable clauses, such as provisions relating to LIBOR on domestic loan agreements, since such an international reference interest rate would not be relevant. Such alterations to foreign clauses can be understood in diffusion theory as "reinvention," or "the degree to which an innovation is changed or modified by a user in the process of adoption and implementation."<sup>45</sup>

Foreign contract and agreement forms can also diffuse from large Korean law firms into other segments of the legal profession, including small law firms. One lawyer attributed this phenomenon to the Financial Supervisory Service (FSS), a Korean financial regulator, because it posts documents submitted to it on its website for transparency purposes. The lawyer added that large law firms have asked the FSS to restrict access to such documents in order to limit the circulation of their forms. Another lawyer claimed that the forms circulate because younger lawyers sometimes "beg" older lawyers with whom they have a social relationship for the forms, "and it can be difficult to refuse these requests if you are close." When asked why the foreign forms and their Anglo-American contract law concepts have come into use in the Korean legal community, lawyers spoke admiringly of the style of the foreign forms, particularly their detailed provisions dealing with various contingencies. They believed such comprehensive clauses were technically superior, and did not resist adopting them. In diffusion sociology terms, lawyers saw clauses in the international firms' documentation as possessing relative advantage, which is "the degree to which an innovation is perceived as being better than the idea it supersedes."<sup>46</sup>

Financial deal structures represent another major category of legal innovation that has entered Korea via its law firms' work with international law firms. The spread of deal structures is related to the international growth in and diffusion of financial innovations, often associated with derivatives and securitization of debt, which have proliferated over the past two decades.

<sup>45</sup> Rogers, *supra* note 4, at 17, 180–188.

<sup>46</sup> Rogers, *supra* note 4, at 229.

According to lawyers, the legal structures underlying these innovations did not come to Korea until the 1997–98 Asian Financial Crisis. One lawyer summarized the process:

Before the Asian Financial Crisis, there was no structured finance market, or a very small one. But Korean companies had to sell bad debt to foreign bankers. The foreign investors approached Korean banks and told them about selling bad debts... Then the foreign investors and international law firms wanted to use the transaction documents tested in other countries, so they tailored the documents to the Korean situation.

During the resolution of the 1998 Asian Financial Crisis, the knowledge of structured finance and its associated legal concepts and documentation began diffusing into major law firms, eventually becoming a familiar part of their operations.

An example of the diffusion of deal structures can be found in Shin & Kim, a law firm renowned for its structured finance practice. In 2003, Shin & Kim assisted Korean Air Lines with the sale and purchase of accounts receivable, a securitization transaction in which the airline sold future revenue from its Seoul-Tokyo route packaged as bonds to Nomura Securities. After successfully marketing the idea to Korean Air, Nomura and its counsel, the international firm Paul Hastings, provided the airline's law firm Shin & Kim with the deal structure and documentation necessary for the transaction. Nomura and Paul Hastings acted as change agents in the diffusion process as they sought to advance the adoption of the foreign legal innovation.<sup>47</sup> This was the first time this kind of transaction occurred in Korea, and the deal earned Shin & Kim recognition for the "Securitization Deal of the Year" in the International Financial Law Review's Asian Awards for 2003.<sup>48</sup> According to a lawyer from the firm, Shin & Kim gained much knowledge from this deal, and it later recycled the documentation and deal structures into transactions for the sale and purchase of accounts receivable for Korean credit card companies – purely domestic transactions.

Direct contact with international law firms and investment banks serves as a crucial communication channel through which knowledge of financial deal structures and legal documentary forms diffuse into Korean law firms. The process of diffusion seems to be fairly straightforward – documentation and deal structures are given to Korean law firms, are translated, and these forms and structures can then diffuse into the domestic market as law firms offer

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<sup>47</sup> Rogers, *supra* note 4, at 366.

<sup>48</sup> Shin & Kim, *Awards & Rankings*, Mar. 12, 2004, [http://www.shinkim.com/eng/mo6/about\\_o3\\_view.asp?no=69](http://www.shinkim.com/eng/mo6/about_o3_view.asp?no=69). Lee & Ko was also awarded for playing a role in the transaction: Lee & Ko News, *IFLR Asian Awards 2003 - Securitization Deal of Year*, Mar. 15, 2004, [http://www.leeko.com/eng/news/firm\\_news\\_view.asp?fldx=178](http://www.leeko.com/eng/news/firm_news_view.asp?fldx=178).

Korean clients new kinds of services learned from cross-border deals. Documentation and deal structures may then circulate within Korea through personal connections or their being made public on the FSS website. Forms and deal structures are templates that can be adapted to similar transactions, making them easily diffusible innovations. New contract and agreement forms also confer an economic benefit upon law firms that utilize them, for example, as longer documentation appears to Korean clients to be more sophisticated and professional, lawyers report. Longer documentation also allows Korean lawyers to charge more fees for more billable hours. The diffusion of documentary forms and deal structures thus benefits from these perceptions of relative advantage.

Another factor that aids the diffusion of forms and deal structures is their observability, "the degree to which the results of the innovation are visible to others," a variable positively correlated to adoption of an innovation.<sup>49</sup> By working literally alongside lawyers from American and British firms, Korean lawyers can not only gain a thorough understanding of how various legal-financial structures and forms are deployed, but lawyers also see that they are used by foreign firms that are prestigious and successful. Lawyers in Korea thus associate these legal innovations with the prosperity and sophistication of firms that have already adopted them. One foreign lawyer at a major Korean firm echoed this idea as he explained legal diffusion from the international level by saying that, "influence comes through exposure to foreign lawyers, big shot law firms. If you work with someone and see them do something successfully, you start to think, 'I can do that.' If you see something done enough, you can do it yourself."

### B. Study Abroad Programs in Law Firms

As the law firm model of legal practice has developed in Korea, it has come to include a *yuhak* (유학) [study-abroad] system that exposes lawyers to foreign influences. Typically, after five years of employment at a large or mid-sized law firm, young associates have been able to apply for permission to obtain a master's degree overseas. Historically, at least up to 2008, the law firm generally paid for the year's tuition and living costs. If the firm's management accepts the associate's application, and customarily almost all applicants succeed, he or she can study for a year in a country of their choice.<sup>50</sup> Lawyers must agree to work for their law firm for a fixed period upon their return, typically two years, so that the firm can recoup its investment in the attorneys' training.

Although some lawyers choose to go to other countries, according to one lawyer "more than 90% of associates choose to go to America" for three

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<sup>49</sup> Rogers, *supra* note 4, at 258.

<sup>50</sup> As law firms have grown in size in recent years, however, several lawyers reported that it now takes seven years before an associate can apply for study-abroad and that it is no longer a foregone conclusion that all associates will be able to go.

reasons: first, they have experience using English in their work and they feel most comfortable in an English-speaking country; second, many lawyers want to take their children to the United States to enroll them in schools and have them learn English at a young age. This is an important factor for Koreans because there has been a strong social trend emphasising childhood English education, and taking children to study English abroad at a young age is a common phenomenon among middle-class professionals.<sup>51</sup> Third, in the words of another lawyer, "the [United States] has an established program for foreign lawyers, the LLM, and other countries don't."<sup>52</sup> After obtaining an LLM, many law firms have encouraged their employees to pass the bar exam of an American state or work for six months in an international law firm that has a relationship with their Korean firm. Sometimes, lawyers who pass the bar exam choose to stay in the United States and work for a few years, although this is generally regarded as not particularly helpful to their careers upon their return to Korea.<sup>53</sup>

Statistics confirm that the United States has been the most popular study destination. According to one Korean researcher, based on data from 2004, 37% of lawyers employed at the Big Four law firms had received their last degree from a foreign country. Out of those lawyers, 92.7% held degrees from the United States. Among Korean attorneys with foreign licenses, 93.5% were licensed in America. Meanwhile, 75% of all Big 4 law firm lawyers who passed the judicial examination between 1980 and 1990 studied overseas, with most going to the United States.<sup>54</sup>

The trend to study abroad originated at Kim & Chang in the early 1980s and has since become an institutionalized feature of the major law firms in . One of the lawyers involved in adopting the study-abroad system at Bae, Kim & Lee described the firms' motivation for initiating the program, saying there were three reasons; to provide a sabbatical for lawyers after some years of hard work, to offer an incentive for young lawyers to join the firm, and to educate them in the languages and cultures of international legal practice. "Lawyers need to work with international law firms and foreign clients, so it is important that they be proficient in the language and be able to understand

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<sup>51</sup> Taking young children abroad to learn English is known in Korean society as *jogi yuhak* (조기유학) [early study abroad]. It is a major reason young married couples seek employment and education in English-speaking countries. Juyoung Song, *The Struggle over Class, Identity, and Language: A Case Study of South Korean Transnational Families*, 16 J. OF SOCIOLINGUISTICS 201 (2012).

<sup>52</sup> European countries have LLM programmes for foreign lawyers, but they are mostly recent creations, many having been founded during the 2000s after the Bologna Process reforms. They are still less well-known in Korea than U.S. LLM programs. Laurel S. Terry, *The Bologna Process and its Implications for U.S. Legal Education*, 57 J. LEGAL EDUC. 249–50 (2007).

<sup>53</sup> It is often difficult for foreign lawyers with LL.Ms to get legal jobs in America. Carole Silver, *States Side Story: Career Paths of International LL.M. Students, Or "I Like to Be in America"*, 80 FORDHAM L. REV. 2383 (2012).

<sup>54</sup> Lee, *supra* note 37, at 244–248.

their clients culturally,” the lawyer explained. Thus, the study-abroad program was designed to facilitate foreign influence from its inception. And although most lawyers have chosen to go to the United States in recent years, this lawyer emphasized that he encouraged some lawyers to study in China and Germany as well.

Korean lawyers’ general view of the impact of study-abroad programs is that they benefit associates mainly by teaching them about American culture, improve their English, and give them a broad understanding of the U.S. legal system. It is not thought that law schools teach knowledge that can be directly applied by lawyers to their work upon their return home. One lawyer said that the most important benefit to her was improved communication skills. She described how after her study experience in the United States, she could communicate directly to foreign lawyers or clients, whereas before she was only a passive listener on conference calls and relied on Korean-American or American lawyers to act as intermediaries and convey her messages. This was important because it made her work “much more efficient.” This experience is typical, most lawyers interviewed for this study agreed.

An American lawyer in Seoul voiced the skeptical view that the one-year study-abroad experience does not significantly influence Korean lawyers. He argued that the LLM degrees consist of just six to eight courses, and they usually do not include the first-year JD courses, which are considered to be the bedrock of American legal education, and therefore their effects upon lawyers are likely to be minimal. Moreover, he contended, lawyers use the time abroad more as a vacation. He explained that in his experience, “there are two types of people: those who do nothing and those who do a little bit.” In his view, almost all Korean lawyers used their time as a break and, “just practiced golf for a year.” A handful of other interviewees echoed his sentiments.

However, an American professor at a Korean university stated that in his experience Korean lawyers tended to be quite proud of their legal system and in fact looked down on that of the United States – except for lawyers who had experience studying in America. He described how he had lawyer friends whose opinions on the United States changed completely after studying there, and that they had come away from their experience with a new respect for American legal ideas. Most Korean lawyers tended to concur with this view that, in a vague sense, the study-abroad year in America instills in lawyers a more open-minded attitude towards U.S. law. A Korean lawyer described the impact on his previously held view, which he said was typical among lawyers, that Continental civil law is far superior to Anglo-American common law:

The most important way the study-abroad changed me was that I found the [United States] legal system to be advanced. Before my study period I had a vague impression that the [United States] was not advanced compared to the German or French systems. But I found the [United States] has a more perfected system. I got a positive shock. This was the single most important change.

Study-abroad programs at law firms do not directly lead to the adoption of particular American legal practices. Yet experiences in the U.S. affect the characteristics of lawyers as potential adopters of American legal innovations. The time spent in the United States is a critical period for lawyers to improve their English language abilities, and this makes concepts from America and Anglophone jurisdictions more accessible to them. Language is crucial for legal diffusion processes, as Wolfgang Wiegand observed when tracing the parallels between the reception of Roman law and the growing American influence on European lawyers in the 1990s. Just as “the Latin language was the vehicle which carried *ius commune* over the Alps,” widespread English fluency among lawyers today similarly facilitates the adoption of U.S. legal concepts by making them more accessible.<sup>55</sup> And while LLM degrees do not directly result in the adoption American legal phenomena in lawyers’ day-to-day work, the degrees provide knowledge and familiarity that tend to enhance lawyers’ general views of the prestige of American legal phenomena.<sup>56</sup>

### C. Foreign Lawyers in Korean Law Firms

Unlike other large economies in Europe and Asia which have opened their legal markets to foreign competition and seen an influx of Anglo-American international law firms, Korea has long kept its legal market closed to firms from overseas. Korea is similar to Japan and China in this regard.<sup>57</sup> The Korean Bar Association had successfully convinced the government to rebuff entreaties from the United States and Britain to allow their lawyers to operate there.<sup>58</sup> Yet for about the past twenty years, many in the Korean legal community have discussed the “opening of the legal market” with apprehension, airing fears about how non-indigenous firms might dominate the local market, as they do in many European countries.<sup>59</sup> The long-awaited

<sup>55</sup> Wolfgang Wiegand, *The Reception of American Law in Europe*, 39 AM. J. COMP. L. 229, 231 (1991).

<sup>56</sup> As an American professor involved in LLM teaching explains, “the ‘export’ in this arrangement is knowledge and understanding of host country systems that can generate further influence on the student’s home country legal system...” Ronald A. Brand, *The Export of Legal Education: Its Promise and Impact in Transition Countries*, in *THE EXPORT OF LEGAL EDUCATION: ITS PROMISE AND IMPACT IN TRANSITION COUNTRIES* 1, 2 (Ronald A. Brand & D. Wes Rist eds. 2009).

<sup>57</sup> Misasha Suzuki, *The Protectionist Bar Against Foreign Lawyers in Japan, China, and Korea: Domestic Control in the Face of Internationalization*, 16 COLUM. J. ASIAN L. 385 (2003).

<sup>58</sup> The OECD and WTO also pressured Korea, in vain. Taehan Byōnhosa Hyōphoe (대한변호사협회) [Korean Bar Association], TAEHAN PYŌNHŬP OSIPNYŌN SA (대한변협 오십년사) [The Fifty Year History of the Korean Bar Association] 396–7, 480 (2002).

<sup>59</sup> Jae-won Mun (문재원), *Pōpūi Segyehwawa Yōngmi Ropōmūi Segye Jibae* (법의 세계화와 영미 로펌의 세계 지배) [The Globalization of Law and the Global Dominance of Anglo-American Law Firms], 43 SEOUL NATL. U. LEG. STUDIES 277 (2002); Kyōng-T’aek

market opening finally materialized after Korea signed free trade agreements with the European Union in 2009 and the United States in 2011; these treaties took effect in 2011 and 2012 respectively. According to the treaties, firms from the United States and European Union, likely to be British, will be able to establish "Foreign Legal Consultant offices" at which they may offer legal advice on the law of their jurisdiction and public international law. After two years, the foreign firms will be allowed to make specific cooperative agreements with Korean firms involving domestic legal services, while after five years they will be able to enter into joint ventures with local firms.<sup>60</sup> By mid-2012, two American firms and one British firm had received final approval from the Ministry of Justice to open offices in Seoul, while about 15 other major international law firms were awaiting permission.<sup>61</sup>

Yet before these very recent developments, many foreign lawyers had come to work in Korean law firms, and the majority of them have held American legal qualifications. Foreign lawyers can be categorized into three main groups: Koreans with JDs and no local license, Korean-Americans with law degrees, and non-ethnic Koreans with foreign credentials. According to Korean law, all foreign lawyers must make clear that they are not Korean lawyers, represent themselves as "foreign legal consultants," and cannot give advice on domestic legal matters. These rules were put in place in 2009 to prepare for the opening of the legal market as well as to regulate the growing population of foreign lawyers in Seoul. Prior to 2009, the government took a more *laissez-faire* approach.<sup>62</sup> There is no written account of how the first foreign lawyers arrived, but it is generally understood by Korean lawyers that the earliest foreign lawyers were the American "foreigner" lawyers who came in the 1980s. Korean-Americans followed in the 1990s, and Koreans with JDs started to arrive in small numbers in the 1990s, becoming more common by the early 2000s.

The non-Korean lawyers have been predominantly American, reflecting the two countries' close ties, national as well as cultural. The most prominent and longest-serving foreign lawyer in the country is believed to be Jeffrey

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Jöng (종경택), *Pöpnul Sijangüi Kaebanggwa Pöpnulsamusoöi Yökhwal* (법률시장의 개방과 법률사무소의 역할) [Legal Market Opening and the Role of Law Firms], 8 MINSAPÖP YÖNGGU (2000).

<sup>60</sup> European Union – Korea Free Trade Agreement, Oct. 15, 2009, Annex 7-A-4. United States – South Korea Free Trade Agreement, Dec. 3, 2010, Annex II.

<sup>61</sup> Tom Huddleston Jr., *Korean Government Approves Three Law Firms' Prospective Office Heads*, THE AM LAW DAILY, Jun. 15, 2012, [http://www.americanlawyer.com/amlaw\\_daily.jsp](http://www.americanlawyer.com/amlaw_daily.jsp).

<sup>62</sup> The most stringent new regulation is the requirement that foreign lawyers will have three years practice experience in their home countries. No such condition existed before 2009. This rule functions as a barrier to entry inserted into the law to hinder the efforts of foreign firms to expand into Korea upon the opening of the legal market. Foreign Legal Consultant Act, art. 4 (2009).

Jones, who arrived in Korea in 1980.<sup>63</sup> His connection to Korea, as with many other American lawyers in Korea, began when he came to the country as a Mormon missionary, during which time he mastered the Korean language, which very few foreigners studied at the time.<sup>64</sup> Other American lawyers are connected to the country through a Korean spouse. These types of connections show how relationships unrelated to law or the state can lead to the transplantation of individual lawyers, and, as will be seen, diffusion of legal phenomena. Until recently Korean law firms did not actively recruit foreigner lawyers, nor did they tend to poach experienced lawyers from international firms to bring new expertise and clients. According to foreign legal consultants resident in Seoul, most foreign lawyers first came to Korea at a young age for personal reasons and either stayed or decided to return later. However, in recent years, law firms have started very limited recruiting at American law schools.

The United States, with its large population of Koreans naturalized as American citizens and their children, has a sizeable pool of Korean-Americans qualified as lawyers who possess a linguistic and cultural understanding of Korea. Eighty-percent of foreign lawyers in Korea are thought to be Korean-Americans.<sup>65</sup> In the early 1990s, as the Korean political climate turned from dictatorship to democracy and as the nation began to emerge as a major economic power, many Korean-Americans began to take an interest in working in their ethnic homeland.<sup>66</sup> At the same time, the American-style law firms began to gain prominence in the Korean public's view. The Korean media created an attractive image of them as being founded and run by multi-lingual and worldly-wise Korean lawyers, coining the term *kukje pyŏnhosa* (국제변호사) [international lawyer] to describe them. According to Korean lawyers, this image created a trend for Korean law students to give up on

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<sup>63</sup> Five-time President of the American Chamber of Commerce in Korea and a renowned salesman of legal services, Jones is famous in the Korean media. He often pens guest columns in newspapers and speaks fluent Korean on television – a rare feat for a foreigner that often profoundly impresses Koreans. The media have dubbed him “the Korean with blue eyes.” Im & Chang, *supra* note 34, at 156-61. Robert Holley, another Harvard-educated lawyer who speaks fluent Korean and first encountered Korea as a Mormon missionary in the 1980s, quit practicing law to become a full-time comedian and is famous for his flawless mimicry of Korean regional dialects.

<sup>64</sup> David I. Steinberg, KOREAN ATTITUDES TOWARD THE UNITED STATES (2005) 314. The LDS Church encourages its young-adult male members to serve as missionaries for a two year period. Church members with greater talents receive intensive foreign language training and are dispatched abroad to non-English speaking countries, where they preach in the local language. As many Mormons missionaries have been sent to Korea, Mormons comprise a large proportion of Americans with advanced linguistic and cultural understanding of Korea. They are disproportionately represented among American lawyers in Korea, even today.

<sup>65</sup> Yves Dezalay & Bryant Garth, ASIAN LEGAL REVIVALS: LAWYERS IN THE SHADOW OF EMPIRE (2010) 244.

<sup>66</sup> Kim, *supra* note 35, at 50-51.



attempting to pass the judicial exam – which often took several years of study – and go to the United States to obtain JDs. They believed they could bypass the difficult examination process required to practice law and obtain a superior qualification. Many also counted on the legal market opening perceived as imminent since the 1990s. Therefore, according to a Korean lawyer, the idea of becoming a *kukje pyōnhosa* seemed for a time more attractive than becoming a regular *pyōnhosa* (변호사) [lawyer]. However, according to one lawyer, by the late 1990s a glut of Koreans with JDs appeared on the legal market and many of them could not find employment, taking the wind out of the sails of the trend. Yet there are still many Korean law students traveling to the United States to obtain JDs.<sup>67</sup> Though there are no clear statistics, Korean-Americans are considered to make up the largest group of foreign lawyers in Korea, overtaking American foreigners, who now are considered to be in third place behind Koreans with JDs.

It is worth noting that aside from the non-Korean American lawyers, Korean-Americans, and Koreans with JDs, there is a small miscellaneous category of lawyers from various other countries such as China, Japan, or Vietnam. These lawyers can normally be found mainly at the large law firms, and there are usually one or two per firm, if any. There are also a small number of European lawyers, whose main connection to Korea tends to be a Korean spouse.<sup>68</sup>

The traditional role of all types of foreign lawyers has been to serve as the English-speaking face of the law firm to international parties. The foreign lawyer can be a reassuring presence across the table from overseas clients, who often find the Korean legal system, business environment, and culture frustrating and quite alien. Aside from facilitating dealings with foreign parties, they often edit translated legal documents. Korean lawyers interviewed often reported that these were the only duties of foreign lawyers, but this is not always true. One reason Korean lawyers see the foreign lawyers' role as very limited is because they often look down on them. "I can't understand why they would come here. It seems like they couldn't make it in their own country," one Korean lawyer frankly commented, voicing a common sentiment. An American lawyer explained this typical opinion by saying that, "there is an attitude that the only thing foreign legal consultants do is English, that if Koreans could speak better English they wouldn't need us." Korean lawyers tend to have a higher view of Korean-Americans since they appear to have a more understandable connection to Korea. Koreans with JDs are

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<sup>67</sup> In 2008, I interviewed several students who were preparing to travel to the United States to obtain JDs. Generally, their main motivations were the expectation of an opening of the legal market that would allow American lawyers to practice in Korea. Their study plans were facilitated by the widespread availability of LSAT books and test preparation classes in Seoul, often taught by American instructors. These support mechanisms undoubtedly ease the way for Koreans to acquire JDs, contributing indirectly to legal diffusion processes.

<sup>68</sup> According to a German lawyer at a Korean law firm, there were a total of five German lawyers practicing in Seoul as of 2007.

presently the least esteemed group of foreign lawyers since they have neither the perfect English of Americans, nor the detailed knowledge of the Korean legal system that Korean lawyers possess. Additionally, as one American lawyer explained, "they don't fit well into the hierarchy of Korean lawyers, which is based on what year they passed the bar exam."

Despite Koreans lawyers' perceptions that they do little, foreign lawyers play roles in legal diffusion processes. First, as legal personnel, they are themselves objects of legal diffusion. Secondly, they are involved in the dissemination of knowledge about American law. U.S. lawyers report that they are often asked questions by Korean colleagues about American legal concepts in both formal and informal ways. One Korean lawyer stated that, "I can either search through 2000 pages of references or walk down the hall, ask someone, and get an explanation in five minutes. Or sometimes we even talk about it over lunch." Examples of topics this lawyer discussed with foreign lawyers include, rules governing insider trading and publicity rights. The lawyer explained that legal issues she asked about tended to be in areas where the Korean law and precedent were vague and underdeveloped, but more established in American law. Therefore, in seeking to learn how insider trading litigation proceeds in the United States, its major case law, and doctrines, the lawyer felt that she could discover a guide for strategy and argumentation in her Korean insider trading practice. More formally, American lawyers are sometimes requested by their Korean managers and colleagues to find American materials, including cases, laws, and academic papers, to support a legal opinion for a client or to be submitted to a court as evidence in litigation. In these ways, American lawyers in Korea function as interpersonal communication channels for information about U.S. law.<sup>69</sup>

Firm-client relations are another area where American lawyers have been implicated in legal diffusion processes that have changed how law is practiced. Traditionally, Korean lawyers did not place great stress on responsiveness to the needs of clients – likely because of their lofty socio-economic status and undersupply. Consequently, it was commonplace for them to deal with clients in a high-handed manner until the past 10-20 years, according to interviewees. The idea of taking a service-industry approach to the provision of legal services seems to have been introduced to Korea by lawyers who studied in America. One lawyer recalled how his boss, a famous lawyer of the first generation to study in the United States, influenced him:

Maybe I learned this approach to practicing law from Chan Jin Kim... He stressed one expression I remember. "The lawyer should behave like a *kisaeng* (기생) [Korean version of a geisha, or female entertainer]. Always try to please the client." The reason he stressed this is that Korean lawyers think they are privileged. They frequently forget they provide services. They can be somewhat arrogant.

<sup>69</sup> Rogers, *supra* note 4, at 204-13.

The lawyer above also described how his attitude was also affected by a senior Korean American-qualified lawyer, who stressed to him, "the importance of giving clients solutions, not just saying what's right or wrong."

Foreign lawyers are also well known for their role in improving the level of service in meetings. One Western corporate manager recounted a common experience among foreign businessmen in Korea. A problem involving Korean employment law arose at this manager's company, and he sought a consultation at a law firm with a foreign lawyer. As is standard when Western managers in Korea consult resident foreign lawyers, the meeting featured one Korean lawyer who could speak English and an American lawyer. The Korean lawyer's presence was legally necessary because of the ban on foreign lawyers advising on Korean legal matters. The manager recounted that during meetings the Korean lawyer only told him what he was not legally allowed to do, while the foreign lawyer told him exactly how to solve his problem. Korean lawyers said this experience is typical and agree that, over time and largely due to contact with American lawyers in their firms, they have realized the importance of client-centric service, and strive to apply it in their practice. A client-oriented style of practice can therefore be understood a diffusible legal innovation, and, in the case of the Korean legal market, its diffusion was facilitated by U.S. lawyers. This manifestation of American influence on the practice of law in Korea is significant because it represents a change in the style of legal problem-solving as well as the commercialization of legal expertise.

#### **D. The Citation of American Law as an Authoritative Source of Legal Reasoning**

Another way in which Korean lawyers adopt American legal ideas is in the citation of U.S. legal materials in legal opinions – written legal advice for clients – and in the submission of evidence to courts and regulatory bodies. Korean judges report that they see American cases, statutes, textbooks, and articles submitted as evidence in litigation, predominantly by large law firms, less frequently by small firms, and rarely or not at all by solo practitioners. Citing U.S. law is never essential for Korean lawyers when dealing with issues arising entirely in the Korean jurisdiction. It can only be required in cases in which there is an international dimension. Therefore, references to American law are superfluous and even unexpected in purely Korean litigation and administrative proceedings. Why then do citations of U.S. materials occur in such cases?

Korean lawyers report that they sometimes cite American sources in litigation involving issues for which there is no existing precedent. This use of U.S. law is commonly explained as filling a gap in Korean law. For example, an American lawyer at a Korean firm described how he submitted to a court American case law materials dealing with promissory estoppel, an Anglo-American concept in the law of contracts. He said that because this doctrine has been transplanted recently through usage in contracts, "it's a new legal

concept in Korea, so in order to fill in the blanks [for judges] we provided supplementary evidence."

A related reason lawyers give for using American law is that if a particular Korean law is based on a U.S. law, American legal interpretations of the law can be relevant guidance for Korean judges. For example, a lawyer specializing in corporate bankruptcy, an area in which the Korean law is strongly influenced by the United States,<sup>70</sup> said that he referred judges to the American Norton and Collier treatises on bankruptcy in some litigation.<sup>70</sup> "It's sometimes accepted. But some judges think it is not acceptable to just follow U.S. interpretations," he explained. Other lawyers echoed the sentiment that American materials are often ignored, but they continue to submit them anyway as a supplement to their arguments.

Korean law firms also sometimes provide their clients with legal opinions that rely on American precedents or law. A lawyer dealing with intellectual property at a mid-sized firm said that when she gives her clients advice she will use American law "only when there is nothing else." She said that, "In litigation, I can insist on my opinion to judges, but when I give legal advice, I say 'there is a case like this in the United States, and the court may refer to American law, but I'm not sure.' I stress I can't be sure, but the court could possibly conclude like this."

What sorts of communication channels are used in the dissemination of U.S. law? Lawyers report that they locate information using Korean books that describe American legal theories, American legal textbooks, and online resources like Westlaw or LexisNexis. Some lawyers say that although all lawyers at their firm read English, sometimes they ask American lawyers at their firms to assist in legal research on American law. Another way lawyers obtain U.S. legal materials is through an international client's foreign lawyers. One lawyer involved in a Korean libel case against Newsweek, an American magazine, received supporting U.S. case law documents from Newsweek's American lawyers and submitted them to the court.<sup>71</sup>

The use of American materials in Korean legal argumentation is facilitated by lawyers' English language skills. Judges and lawyers say that, generally, of all the foreign legal materials that are presented to courts, most come from the United States and Japan. One law firm employs a German lawyer who said he often "internally advises" the firm in litigation and legal opinions using German law and scholarship, but citation of German law appears to be rare since lawyers report that few colleagues read German or ever conduct research into German law. Japanese law is regarded as commonly researched, however many Korean lawyers interviewed for this study explained that because their English is better than their Japanese, they are more likely to research U.S. law than Japanese law when looking for arguments to fill gaps in Korean law. This tendency seems to be connected to the trend in Korean education to emphasize English as the primary second language students should learn,

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<sup>70</sup> See Chiyong Rim, *Insolvency Law and System in Korea*, 28 KOREAN J. INT'L & COMP. L. 1 (2000).

<sup>71</sup> The case is described in Kyu Ho Youm, *PRESS LAW IN SOUTH KOREA* (1996) 125, 147-48.

whereas the second language of older generations of jurists was more often Japanese, due to the colonial influence.

The citation of U.S. law in Korea thus reveals a subtle influence on lawyers' ways of thinking in that this practice demonstrates that elite Korean lawyers view American law as potentially authoritative and illuminating in certain situations, and they expect that the courts and administrative bodies to whom they submit U.S. legal materials will regard it the same way.

## CONCLUSION

The influence of American legal ideas, methods, and practices on the Korean legal profession has been profound.<sup>72</sup> Since the foundation of the first law firms by U.S.-educated Koreans, they have developed into the most prosperous segment of the legal profession, which has resulted in the accelerating diffusion of the law firm within Korea as non-elite lawyers adopt elements of the law firm style of practice. Law firms have transformed a profession of atomized solo practitioners into one in which cooperative work is increasingly accepted and even preferred. Some features of the law firm model of legal practice, like durable relations with clients and charging by billable hours, are leading to an increasing commercialization of law. Korean lawyers' treatment of clients is changing from high-handed to customer-centric, a move helped by legal diffusion as well as increased competition in the legal marketplace. Overall, the role of lawyers is society shifting away from

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<sup>72</sup> Not all aspects of America influence on the legal profession could be discussed here. As noted at the start of the paper, additional influences include the spread of alternative dispute resolution, in-house legal departments, pro-bono work at law firms, and cause lawyering. The latter has been particularly important in Korean society as progressive lawyers have sought to foster social change through lawsuits and other legal work. Leaders in these movements have often spent time in the United States and consciously borrowed legal activist strategies used there. Patricia Goedde does not explicitly discuss diffusion-related aspects of Korean cause lawyering in her research on the subject, but they are very much in the background of figures she discusses, such as Park Won Soon, former activist and current mayor of Seoul, who spent time at Harvard and modeled his hub of social activism, the Beautiful Foundation, on the Ford Foundation. Patricia Goedde, *From Dissidents to Institution Builders: The Transformation of Public Interest Lawyers in South Korea*, 4 E. ASIA L. REV. 63 (2009); *Is There a Public Interest Law Movement in South Korea?*, 1 KOREA U. L. REV. 1 (2007). See also Kim, *supra* note 38; Tom Ginsburg, *Law and the Liberal Transformation of the Northeast Asian Legal Complex in Korea and Taiwan*, in *FIGHTING FOR POLITICAL FREEDOM* 43 (Terrence Halliday, Lucian Karpik & Malcolm Feeley eds., 2007). One particularly stark example of legal diffusion among activists can be seen in Bae Güm-Ja (배금자), an activist lawyer who obtained an LLM at Harvard in the late 1990s and after studying the then-current U.S. state government lawsuits against tobacco companies, engaged in a similar litigation campaign against Korean tobacco companies upon her return home. Bae Güm-Ja (배금자), *PÖPBODA SARAMI MÖNJÖDA* (법보다 사람이 먼저다) [People Come First Over Law] 180–198 (2005).

the German vision of the profession as quasi-civil servants and towards the American image of lawyers as providers of commercial legal services in a marketplace. A sign of this can be seen in how Korean lawyers are clamoring for relaxation of the rules on advertising.<sup>73</sup> More change in this direction should be expected as arrival of Anglo-American law firms will intensify competition and offer Korean lawyers closer contact with foreign lawyers and firms, which can facilitate more borrowing of ideas, methods, and practices. One aspect of the law firm model that remains to be fully adopted by Koreans is the partnership system; in the coming years partners may come to truly share decision-making power and profits, replacing the founder-takes-all system that prevails at most firms today.<sup>74</sup>

The law firm has served as a portal through which other objects of diffusion have been introduced to the practice of law in Korea. Lengthy American-style legal documentation and financial deal structures have entered Korea through the communication channel of work with international law firms. Korean law firms have “adopted” the legal innovation of U.S. personnel through hiring foreign legal consultants, and these U.S. lawyers have in turn been involved in further legal diffusion as they disseminate knowledge of American law within their firms and encourage a commercial service-provider mentality among co-workers. Large law firms also engage in the citation of U.S. law, cases, and scholarship in their work. These legal diffusion processes represent the adoption of foreign arguments in legal advice and reasoning presented to clients, courts, and regulators. All of the above objects and processes of diffusion have been facilitated by the law firm model for the delivery of legal services, and they have greatly influenced the practice of law in Korea.

There are three key factors in the diffusion processes analyzed in this paper that have worked in favor of the diffusion of ideas, methods, and practices from America: English, education in the United States, and direct contact with foreign lawyers. First, knowledge of the English language removes a major barrier to adopting legal phenomena from English-speaking jurisdictions, facilitating the spread of information about such phenomena through communication channels. English also increases the observability and decreases the complexity of U.S.-derived legal ideas and practices. Observability and complexity are two key perceived attributes of innovations

<sup>73</sup> In July 2011, in response to membership queries, the Korean Bar Association announced it would allow lawyers to engage in audio advertising on buses. Shin Jong-ch'ŏl (신종철), *Pyŏnhyŏp “Bŏsŭesŏ Pyŏnhosa Kwango Dŭrŭl Su Itta”* (변협 “버스에서 변호사 광고 들을 수 있다”) [Bar Association: It Will Soon Be Possible to Hear Lawyer Advertising on Buses], *LAW ISSUE*, Jul. 11, 2011, <http://www.lawissue.co.kr/news/articleView.html?idxno=11096>

<sup>74</sup> Alternatively, Korean partnership models may not need to change much since many American firms are increasingly creating non-equity partner positions, seemingly converging with the classic Korean model. Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 *STAN. L. REV.* 1867 (2008).

strongly correlated to the rate of diffusion.<sup>75</sup> English's effect on diffusion can be seen, for example, in how lawyers report that their facility in English leads them to use that language when conducting comparative legal research. Why is English proficiency common among Korean lawyers? There is a strong, society-wide trend to learn English: Koreans spend three times as much as Japanese on English education, despite having half Japan's GDP per capita and a population 40% its size.<sup>76</sup> This tendency has the effect of improving English skills in the legal community. More directly, daily activities within the law firm are often conducted in English, such as consulting with foreign clients, interacting with foreign lawyers employed at their firm, and when working alongside lawyers from international law firms. Law firm managers therefore strongly encourage their lawyers to learn English.

Educational experiences in the United States have influenced the diffusion of American ideas, methods, and practices primarily by altering Korean lawyers' perceptions of legal innovations originating in the United States. Periods of study in LLM programs in America, originally undertaken by individual lawyers at their own expense, have come to be institutionalized in Korean law firms as rites of passage for Korean lawyers aspiring to become *kukje pyŏnhosa*, international lawyers. However there appear to be few tangible examples of American legal phenomena transmitted through such overseas experiences. Korean lawyers generally say that after LLM programs they do not bring back specific legal innovations for use in their work, but rather they feel that their time in the United States enhanced their view of the prestige of the American legal system. In terms of diffusion theory, overseas educational experiences altered lawyers' perceived attributes of American legal innovations, especially their potential compatibility with existing circumstances and relative advantage, two important variables in diffusion processes.<sup>77</sup> In other words, as LLM educations make Korean lawyers more familiar with U.S. law generally, they tend to see American ideas, methods, and practices as being likely to function in Korea and confer benefits. Colloquially speaking, educational experiences make lawyers more open-minded about adopting legal innovations from the United States.

Direct contact with American lawyers in their own firms, in international firms, and in foreign investment banks appears to be a major type of pathway for the spread of U.S. legal phenomena. These connections serve as interpersonal communication channels in diffusion processes. Interpersonal communication channels are more powerful and likely to lead to diffusion than impersonal, mass media channels, such as books or LLM programs.<sup>78</sup> Financial deal structures and legal documentation such as contracts are often

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<sup>75</sup> Rogers, *supra* note 4, at 257–259.

<sup>76</sup> Alan Brender, 'English Growth – and Backlash – in Korea' *Inside Higher Ed* (20 February 2007) <<http://www.insidehighered.com/news/2007/02/20/korea>> accessed 17 December 2007

<sup>77</sup> Rogers, *supra* note 4, at 229–34, 240–46.

<sup>78</sup> Rogers, *supra* note 4, at 205.

proprietary knowledge, and therefore cannot be learned from mass media sources; there is virtually no way to obtain these legal innovations except through collaboration with foreign entities. In addition, foreign legal consultants within law firms are also implicated in the diffusion of legal phenomena. These close links with lawyers outside the social system of the Korean legal profession serve as cosmopolitan communication channels that provide special access to knowledge about American legal innovations.<sup>79</sup> The foreign actors themselves often function as change agents, arguing for the adoption of certain legal phenomena, such as a contract or a legal service-provider mentality. Why does the Korean legal profession have a significant level of contact with foreign enterprises and lawyers? In large part it is because of globalized international markets and foreign investment in Korea. These conditions lead to a larger demand for and supply of foreign legal personnel and certain kinds of innovations than would be expected in a less open economy. Indeed, Korea's first law firm, Kim, Chang & Lee was founded in 1958 to sell legal services to foreign investors.

The salience of language, foreign legal education, and direct contact with foreign legal personnel suggests lessons for understanding legal diffusion processes involving legal professions. When lawyers from one jurisdiction learn another's language, seek legal training there, and work alongside its lawyers, it can be expected that, to some degree, legal phenomena will be diffused.

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<sup>79</sup> Rogers, *supra* note 4, at 207-8.