

WHAT FIRMS WANT: INVESTIGATING GLOBALIZATION'S INFLUENCE ON THE MARKET FOR LAWYERS IN KOREA

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Abstract

This article addresses one of the central debates regarding globalization: how best to approach liberalizing markets in order to balance the interests of local and non-local actors and institutions. It takes the legal services market as its focus and draws on the South Korean ("Korea") experience as a case study. Korea recently liberalized its regulatory approach to legal services by changing both its method of producing lawyers (including initiating a graduate level law school system and drastically increasing the proportion of bar exam passers) and allowing foreign competition to directly enter its market through foreign law firms and foreign-licensed lawyers working as foreign legal consultants.

Arguments for liberalization suggest that competition from foreign actors will introduce benefits to the local market that are particularly important to global actors. In the legal services context, this suggests that global clients may prefer particular expertise and experiences that would be recognized and promoted by the law firms serving them. In our research, we explore this possibility by analyzing the hiring preferences of law firms serving global clients as reflected in the credentials of their lawyers. We draw on a unique dataset comprised of information published by law firms in the form of professional profiles of their lawyers. The firms we analyze are competitors in the global market and include five elite Korean law firms and U.S.-based law firms with Korean-practices situated in their Hong Kong offices—a short airplane trip from Seoul. Our analysis provides insight into the credentials and expertise preferred by each group of firms. From this, we assess the ways in which the two groups of law firms value foreign legal education and law school reputation, as well as the interplay of globalization and gender.

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I. INTRODUCTION

One of the great debates among economists and policymakers concerns how best to approach liberalizing markets in order to balance the interests of local and non-local actors and institutions.¹ The legal services market is no exception. The argument for liberalizing the legal services market goes something like this: As technology facilitates interaction that transcends national borders and as regulatory and operational barriers that prevent investment diminish, the need for legal services to support business activities requires that lawyers have access to the same markets open to their clients. One element of this argument is that investors prefer their home country advisors (including lawyers), so that in this respect liberalization of the legal services market promotes investment and economic growth.

In the context of legal services, the argument for liberalization carries an implicit suggestion that the services and advice provided by global law firms² are different from those available from local firms. Differences might relate to expertise regarding fields of practice, industries and types of transactions, as well as to national law and professional and business culture. Professional norms may be different too, and may encompass issues related to conflicts of interest, responsiveness and communication, among others. This does not suggest differences in quality, although that too may be contested. Instead, the key question is whether a global business environment demands a different set of expertise, experience and approach.

Research suggests that one potential consequence of liberalization is that actors in the local market will develop expertise to match their global competitors.³ In the context of the legal services market, this process is supported at least in part by the circulation of lawyers among global and local law firms and clients, which in turn facilitates the development of new legal expertise by local lawyers, and through them, by their firms.⁴

¹ See, e.g., Joseph E. Stiglitz, *Capital Market Liberalization, Economic Growth, and Instability*, 28 WORLD DEV. 1075 (2000) (arguing for the need to reconsider capital market liberalization in the wake of the Asian financial crisis).

² In this article, we use the term “global law firms” to refer to firms with multiple offices outside of their home country. See generally Carole Silver, Nicole De Bruin Phelan & Mikaela Rabinowitz, *Between Diffusion and Distinctiveness in Globalization: U.S. Law Firms Go Glocal*, 22 GEO. J. LEGAL ETHICS 1431 (2009) (describing global law firms). The term “foreign law firms” is used to refer to firms based outside of Korea.

³ See Sida Liu, *Globalization as Boundary-Blurring: International and Local Law Firms in China's Corporate Law Market*, 42 LAW & SOC'Y REV. 771, 791 (2008); YVES DEZALAY & BRYANT G. GARTH, *DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER* 263-65 (1996); Carole Silver, *The Variable Value of U.S. Legal Education in the Global Legal Services Market*, 24 GEO. J. LEGAL ETHICS 1, 36 (2010) (describing pathways for developing expertise).

⁴ Liu, *supra* note 3, at 789-91; see generally Mihaela Papa & David B. Wilkins, *Globalization, Lawyers and India: Toward a Theoretical Synthesis of Globalization*

The circulation of lawyers also offers an opportunity for convergence around the professional norms characteristic of global law firms.⁵ No less important is the benefit to foreign law firms (including global law firms) of access to local expertise. Research on global law firms' approach to growth, for example, indicates that these firms capitalize on the knowledge and experience of lawyers embedded in the target market,⁶ and, in this sense, they also benefit from regulation that permits lawyer mobility. Regulation that allows or encourages lawyers to circulate supports these potential gains. But the target is controlled liberalization, growth balanced against stability.⁷

One approach to understanding the consequences of liberalization is to focus on the hiring and promotion decisions of local and global firms before and after regulatory changes. Law firms privilege certain experiences, credentials and characteristics through these decisions and their preferences contribute to stratification within the profession. The path of globalization's influence is revealed in the changes in firms' preferences for particular credentials and characteristics, and in the manner in which these changes relate to new competition resulting from reduced regulatory barriers.

An important opportunity for studying these processes is presented by Korea's liberalization of its legal services market. Until 2009, Korea was formally closed to foreign law firms.⁸ Pursuant to a series of trade agreements and related regulation, foreign law firms now have been authorized to establish offices there. For U.S.-based firms, the market opening dates from March 15, 2012—the effective date of the Korea-U.S. Free Trade Agreement. This followed the earlier opening with regard to European Union-based law firms under the Korea-EU Free Trade Agreement, which became effective on July 1, 2011. Both of these

Studies and the Sociology of the Legal Profession, 18 INT'L J. LEGAL PROF. 175 (2011) (describing globalization of knowledge).

⁵ Liu, *supra* note 3; See also Papa & Wilkins, *supra* note 4.

⁶ See generally Silver, Phelan & Rabinowitz, *supra* note 2.

⁷ See, e.g., Dani Rodrik, *Has Globalization Gone Too Far?*, 39 CAL. MGMT. REV. 29, 43 (1997) ("[A]s policymakers sort out economic and social objectives, free trade policies are not automatically entitled to first priority."); Dani Rodrik, *How to Save Globalization from its Cheerleaders* 31 (Kennedy Sch. of Gov't, Working Paper No. RWP07-038, 2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1019015 ("[O]ur main challenge at the moment is to recreate [the Bretton Woods] compromise, by designing a global architecture that is sensitive to the needs of countries—rich and poor alike—for policy space. This requires us to move away from a market-opening mindset, and to recognize that what nations need to do in order to maintain social peace and spur economic development in our second-best global economy often conflicts with the free movement of goods, services and capital. The only way to save globalization is not to push it too hard.").

⁸ Oigukbeopjamunsabeob [Foreign Legal Consultant Act], Act No. 9524, Mar. 25, 2009.

Agreements anticipate the permission of increased activity through a planned staged reduction of barriers over the five years following their effectiveness.⁹

At approximately the same time that the opening of the Korean legal services market began, Korea's legal education and licensing regime also underwent substantial revision,¹⁰ effecting a rebalancing of the necessary investment for obtaining the status of a lawyer in Korea. Today, while more time is required for formal legal education, there is more certainty that graduates will succeed in passing the bar exam and becoming licensed Korean lawyers. The new legal education and licensing regime also is likely to change the incentives for bypassing the Korean legal education and licensing regime by pursuing foreign legal education and licensing outside of Korea.

Korea's importance as a site of study is further enhanced by the pre-liberalization development of a small group of elite internationally-focused Korean law firms, which have provided competition for global law firms that only recently have been permitted to formally enter the Korean market. These elite Korean law firms have been the focus of substantial research, which provides a rich foundation for our work." By considering

⁹ In most FTAs that Korea has entered into, the staged opening of the legal services market has been specified. The Korea-EU FTA and the Korea-U.S. FTA, for instance, provide for a three-stage opening process within five years of entry into force. See Free Trade Agreement Between the Republic of Korea and the United States of America, Annex II, U.S.-S. Kor., June 30, 2007, *modified*, Dec. 5, 2010, *available at* http://www.fta.go.kr/webmodule/_PSD_FTA/us/doc/2E_all.pdf; Free Trade Agreement Between the Republic of Korea, of the One Part, and the European Union and its Member States, of the Other Part, Annex 7-A-4, U.S.-European Union, Oct. 6, 2010, *available at* http://fta.go.kr/webmodule/_PSD_FTA/eu/doc/Full_Text.pdf. See also Anthony Lin, *British Firms Face Hurdles on the Road to Seoul*, ASIAN LAW (Mar. 28, 2011) (describing the need for UK-licensed lawyers to enable UK law firms to open offices in Korea: "Clifford Chance's top Korea lawyer is . . . a U.S.-qualified lawyer, admitted in New York—not a U.K.-qualified one.").

¹⁰ The new legal education system is modeled on the 3-year J.D. program in the U.S. See Beophak jeonmun daehakwon seolchi unyeong-e gwanhan beopryul [Act Regarding the Establishment and Operation of Professional Law Schools], Act No. 8544, July 27, 2007, *amended by* Act No. 10866, July 21, 2011. Beginning in 2009, a total of 2,000 post-graduate students were admitted in 25 law schools around the country. See generally Youngjoon Kwon, *Recent Reform in Korean Legal Education*, 13 J. KOR. L. 1, 13 (2013). Before the introduction of the new legal education and licensing regime, one had to pass the National Judicial Exam and then be educated at the Judicial Research and Training Institute for two years. *Id.* at 4-7. This old regime will phase out by 2017. See Byeonhosasiheombeop [Bar Examination Act], Act No. 9747, [May 28, 2009], Addendum, arts. 1-2. The first National Bar Exam was administered in 2012, when the first graduates under the new legal education and licensing regime emerged, and the bar eligibility will be premised upon graduation from law school. *Id.* at Addendum, art. 5(1).

¹¹ See, e.g., 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

the hiring preferences of both Korean and global firms—which meet as competitors and collaborators in the legal services market—we hope to provide a benchmark for future study. Finally, we benefit from the substantial attention already devoted to the Korean legal profession, including research investigating these elite Korean law firms and the careers of their lawyers.

We begin with a brief overview of the Korean legal market, where our focus is on both those elite internationally-focused Korean law firms that serve corporate clients and the regulatory context in which these firms developed. We then draw on an original dataset developed from the professional profiles of lawyers working in two groups of potential competitor law firms: the elite Korean law firms and a group of U.S. firms with Korea-focused practices situated in Hong Kong (an easy flight to Seoul and a preferred location for such practices prior to the effective date of the Korea-U.S. FTA).¹² A comparison of the backgrounds and credentials of the lawyers in these two groups of firms provides insight into the preferences of the law firms. Between them, they offer three groups of lawyers for our study: (1) Korean-licensed lawyers practicing in Korean firms, (2) foreign-licensed lawyers practicing in Korean firms and (3) foreign-licensed lawyers practicing in the U.S. firms' Hong Kong offices. Exploring their backgrounds and credentials allows us to consider their fungibility, and suggests how greater mobility of individual lawyers among the firms, combined with regulatory changes, may modify preferences and opportunities in the Korean legal services market. In the sections below, we focus specifically on legal education, practice experience and gender in order to provide a framework for comparing the

(Yves Dezalay & Bryant G. Garth eds., 2011); JINWON KIM, LOPEOM [LAW FIRM] (2009); Kuk-Woon Lee, *Corporate Lawyers in Korea: An Analysis of the 'Big 4' Law Firms in Seoul*, in JUDICIAL SYSTEM TRANSFORMATION IN THE GLOBALIZING WORLD: KOREA AND JAPAN 231 (Dai-Kwon Choi and Kahei Rokumoto eds., 2007); Jaewan Moon, *Impact of Globalization on Korean Legal Profession* (unpublished manuscript) (on file with author); Soogeun Oh, *Globalization in Legal Education of Korea*, 55 J. LEGAL EDUC. 525 (2005); Tom Ginsburg, *Transforming Legal Education in Japan and Korea*, 22 PENN ST. INT'L L. REV. 433 (2004); Sang-Hyun Song, *Legal Education in Korea and the Asian Region*, 51 J. LEGAL EDUC. 398 (2001); Jeanne Lee John, Comment, *The KORUS FTA on Foreign Law Firms and Attorneys in South Korea—A Contemporary Analysis on Expansion into East Asia*, 33 NW. J. INT'L L. & BUS. 237 (2012).

¹² Hong Kong was a common site for the Korea-focused practices of U.S.-based firms. See, e.g., Anthony Lin, *The Right People at the Right Time*, AM. LAWYER, Jan. 1, 2011 (describing the decision of Cleary Gottlieb and Simpson Thacher to locate their Korea-focused practices in Hong Kong during the period when establishment in Korea was not possible); Peter Kim, *Korean Times*, INTERNATIONAL BAR ASSOCIATION, Feb. 2, 2010 at 51-52, available at <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=B4DACD34-E9A2-4A88-A6C2-01C51890BF2A> (“... most Korean teams [of international law firms] work out of Hong Kong, Tokyo or Shanghai”); see also *Long-Distance Practice*, AM. LAWYER, Jan. 1, 2011 (identifying 8 elite U.S.- and U.K.-based law firms with Korea-focused practices situated outside of Korea, 7 of which are located in Hong Kong).

preferences of the firms and the investments made by their lawyers. We conclude with suggestions for future research.

II. THE KOREAN CONTEXT: LAW FIRMS, LAWYERS AND THE MARKET FOR LEGAL SERVICES

Our focus here is on a relatively small segment of the Korean legal profession.¹³ This is not to say that globalization will ignore the rest of the profession, but we leave to others the work of considering this influence. Here, our investigation is limited to those most directly involved in the market that serves global corporate clients: the elite Korean law firms that originated with a focus on serving international business clients investing in Korea.

This small group of elite Korean firms was founded by lawyers who personally invested in international credentials, and who sought from the start to represent international corporate clients.¹⁴ They did not focus on domestic businesses at least in part because Korean corporations traditionally did not seek professional advice from law firms.¹⁵ Foreign, and particularly U.S.-based businesses, however, were accustomed to relying on lawyers in private practice, and the Korean firms sought to serve this role regarding the inbound work generated by foreign corporations initiating operations in Korea.

The international focus of these firms was a reflection of their founders' personal trajectories. This history has been explored by others and we will not repeat the details here, but the important point is the common path of the founders: after studying in Korea and qualifying as a Korean lawyer—itsself an arduous path¹⁶—they pursued additional legal

¹³ For an analysis of the larger profession, see Jae Won Kim, *The Ideal and the Reality of the Korean Legal Profession*, 2 ASIAN PAC. L. & POL'Y J. 45 (2001).

¹⁴ JINWON KIM, HANGUKEUI LOPEOM [LAW FIRM IN KOREA] 76-91 (2009).

¹⁵ Lee, *supra* note 11, at 231 (explaining the difference between international and domestic matters: "In a sense, international affairs were the only place where law and lawyers could function without the governmental guide, because all the important business of domestic affairs were totally occupied and controlled by the bureaucratic government.").

¹⁶ On the difficulty of qualifying as a lawyer in Korea during this period, see Chang Rok Kim, *The National Bar Examination in Korea*, 24 WIS. INT'L L.J. 243, 245-46 (2006) ("The number of successful applicants remained under one hundred until 1978, and at about three hundred from 1981 to 1994. Even though it has been increased by degrees from 1995, it still remains at about one thousand. The total number of Korean lawyers who have cleared this tight entry barrier is only 10,768 as of August of 2005. Thus, Korea, with a population of forty-eight million, has only one lawyer for every 4,484 people. This ratio is seventeen times larger than that of the United States, eight times those of England and Germany, and three times that of France.") (footnotes omitted); Hyung Tae Kim, *Legal Market Liberalization in South Korea: Preparations for Change*, 15 PAC. RIM L. & POL'Y J. 199, 206 (2006) ("Historically, the passage rate for the exam has been around one to two percent.") (footnote omitted).

education in the United States. Some pursued graduate degrees (LL.M. and S.J.D.) common for international law students, while others completed the basic three-year J.D. degree that serves as a basis for bar eligibility in the U.S.¹⁷ When permitted by regulation, they also sat for a bar examination to become licensed as a lawyer in the U.S. before returning to Korea to begin advising foreign clients that included Coca-Cola, Ford Motor Company and Bank of America, among others.¹⁸

Today, several of the largest and most successful¹⁹ elite Korean law firms share this heritage of international foundation and focus.²⁰ But they

¹⁷ Kim Seong-Hyun, *supra* note 11, at 222-223 ("Almost all the founders of law firms were graduates of American universities and had careers as judges or prosecutors. But the lawyers obtained their juridical credentials in Korea. The first firms such as KCL, JungAng, and Kim, Shin & Yu were rather a common bureau of lawyers specializing in international affairs than grand commercial firm. The law firms recruited their members through family networks and school ties. It was Kim & Chang that established American style law firm in respect to business methods and recruitment (KIM Jin-Won, 1999: 72-73). In 1972, KIM Young-Mu, J.D. from Harvard Law School, and CHANG Soo-Gil, his friend of Seoul National University's Faculty of Law, developed legal services in the form of commercial enterprise. It recruited young lawyers who had just completed the courses of the Judicial Research and Training Institute, then taught them the international affairs. Kim & Chang offered them also the overseas training in the U.S. These methods were rapidly diffused to other firms, and recently more and more young lawyers without experiences as judges and prosecutors start their juridical careers from law firms. Then sent to American law schools to obtain LL.M. and learn American legal techniques.").

¹⁸ YVES DEZALAY & BRYANT G. GARTH, *ASIAN LEGAL REVIVALS: LAWYERS IN THE SHADOW OF EMPIRE* 127 (2010); *See also* Lee, *supra* note 11, at 232 (describing that the founder of Lee & Ko, Lee Tae-Hee, was the son-in-law of the owner of Korean Air Lines. "The patrons functioned as the protectors for the [law firm] founders and their new law firms in two ways. They were economic rainmakers as well as political umbrellas...").

¹⁹ As of May 2007, the total volume of Korean legal market is estimated to be 1,400 billion won. *Six Law Firms Earn Half of the Legal Market in Korea*, CHOSUN DAILY NEWS, http://news.chosun.com/site/data/html_dir/2007/03/29/2007032901097.html. The half of these revenues went to Big 6 law firms that have 930 lawyers (about 11% of lawyer population). *Id.* The same six law firms grew over 1,500 lawyers by 2012. (Ministry of Justice statistics, May 2012). The estimated revenue of these six firms as follows: Kim & Chang: \$390,909,909; Bae Kim & Lee: \$172,727,270; Lee & Ko: \$139,090,900; Shin & Kim: \$118,181,810; Yulchon: \$112,727,270; Yoon Yang: \$92,727,270. INVESTCHOSUN, March, 2013, http://invest.chosun.com/site/data/html_dir/2013/03/12/2013031202090.html. Dollar amounts were computed based on an exchange rate of 3/13/2013, \$1 = 1100 Won. In this article we focus on five of these firms, as discussed below. As of 31 October 2014, there are 16,620 lawyers in total and there are more than 760 law firms (Membership update, the Korean Bar Association, <http://www.koreanbar.or.kr/info/info07.asp>). Mergers between law firms are frequent. Half of the Big 6 law firms have merged with another firm: Kim & Chang, Bae Kim & Lee and Yulchon did not merge, but Shin & Kim, Lee & Ko and Yoon & Yang LLC increased the number of their lawyers through mergers with other major firms. KIM, *supra* note 14, at 127.

²⁰ In fact, several top Korean law firms have established offices outside of Korea, including Bae Kim & Lee. *See* KIM, *supra* note 14, at 189-193.

also are credited with developing the law firm model in Korea.²¹ In the early years of the firms' development, when law firms were virtually unknown in Korea, public perception considered "law firm lawyers" and "international lawyers" to be synonymous.²² More recently, the firms also broadened their practices to include Korean-based corporate clients and the growing demand for domestic corporate legal advice, while at the same time maintaining their core foreign corporate clientele and international focus.²³ This development pattern for the elite Korean law firms of international-followed-by-domestic focus is described by one local participant-observer as "the localization of international legal services."²⁴

These elite Korean firms share a third commonality. In addition to their international founders and focus, each firm also has pursued a two-track hiring and promotion approach that furthered their international identity. On one hand, they encouraged their Korean-licensed lawyers to study law outside of Korea. For those who had not pursued international legal education prior to joining the firm, generous leave-of-absence policies, sometimes coupled with financial support, was available to allow lawyers to interrupt their practices to study overseas.²⁵ On the other hand, the firms also hired a second set of advisors to serve their foreign

²¹ Neil Chisholm, *Legal Diffusion and the Legal Profession: An Analysis of the Processes of American Influence on South Korea's Lawyers*, 26 COLUM. J. ASIAN L. 8-9 (2013), available at <http://idv.sinica.edu.tw/nchis/20130925.pdf>.

²² KIM, *supra* note 14, at 118.

²³ The financial crisis of 1997 that led to the IMF bailout actually contributed many business opportunities for law firms. The increase in merger and acquisition activity, and in bankruptcy, not only created more business for the firms but also provided opportunity through restructuring the Korean economy in ways that supported an increased role for lawyers. *Id.* at 110-117, 120.

²⁴ Interview with Korean legal market participant-observer (2009). Earlier, Korean businesses, like the Japanese, relied on the bureaucracy for guidance. On Japan, see Dan Fenno Henderson, *The Role of Lawyers in Japan*, in, JAPAN: ECONOMIC SUCCESS AND LEGAL SYSTEM 28 (Harald Baum ed., 1997) ("If we think of the English common law as built by judges, the German system as made and refined by professors, then, of course, in the American legal system the key role is the lawyers. In like sense, for Japan, it is clearly the bureaucrat." (footnotes omitted)). See also KIM, *supra* note 14, at 120 (domestic corporate advising also had earlier been handled by sole practitioners).

²⁵ Lee, *supra* note 11, at 236 (describing the policy of supporting overseas study by Kim & Chang, Bae Kim & Lee, Lee & Ko and Kwang Jang: "There is an established pattern that the outstanding young Korean attorneys who have contributed more than 7 years to their law firms have a chance to go abroad for further study of law and business."). See also *Id.* at 248 (describing that the firms provide financial support for pursuit of LL.M. degrees for their lawyers).

corporate clients: cadres of foreign-licensed lawyers,²⁶ many of whom were connected to Korea either by nationality or ethnicity.²⁷ While these foreign-licensed lawyers lacked the credential to practice Korean law, many nevertheless worked permanently with the firms serving as important resources for global clients.²⁸

The starting place for understanding how globalization has shaped the Korean legal market is with the role of lawyers in Korea, generally. According to Kuk-Woon Lee, “before the mid-1990s, Korean lawyers were kept within the narrow boundaries of the judicial area: neither the world of politics nor the world of business was the territory of lawyers within Korean society.”²⁹ Dezalay and Garth similarly describe post-war Korean lawyers as dissociated from the developmental state and business.³⁰

The way in which Korean lawyers have been produced has had a critical relationship to the shape of the global Korean legal services market.

²⁶ The term “foreign-licensed lawyer” in this article indicates individuals who are not licensed to practice in Korea. Korean lawyers who also are licensed in an overseas jurisdiction are identified as “dual qualified.”

²⁷ This policy of hiring foreign lawyers also spilled over into the corporate counsel sector in Korea. Park Chung-a, *In-House Lawyers Take on Enhanced Role*, KOREA TIMES, April 30, 2007, http://www.koreatimes.co.kr/www/news/special/2009/05/206_2043.html (describing Samsung, for example, as having “a large in-house counsel composed of 171 lawyers including 66 domestic lawyers and 105 foreign lawyers. The number is twice that of four years ago.”). See also Jae-Hyup Lee, *Sanaebyeonhosawa beopchijui [In-House Counsels and Rule of Law: An Empirical Study on Corporate Legal Departments in Korea]*, 400 INGWONGWA JUNGUI, [HUMAN RIGHTS AND JUSTICE] 43, 54 (2009).

²⁸ Liu, *supra* note 3 (“Korean firms have also expanded practices that directly compete with foreign firms. In addition, in recent years they have stepped up recruitment of their own foreign-trained lawyers to advise clients on international transactions.”); Yves Dezalay & Bryant G. Garth, *International Strategies and Local Transformations: Preliminary Observations of the Position of Law in the Field of State Power in Asia: South Korea*, in *RAISING THE BAR: THE EMERGING LEGAL PROFESSION IN EAST ASIA* (William P. Alford ed., 2007) at 91 (“Koreans who have studied abroad are very privileged in Korea, and they also can play a double game not available to most Koreans. By definition . . . they are not representative of a society that is highly segmented and hierarchical. At the same time, however, our focus on the law provides an almost opposite bias. Lawyers in Korea, . . . are both central and marginal The advantage of a detour from a typical Korean trajectory to the United States—which in Korea, as elsewhere . . . has become the source of credentials increasingly as important as international currency—is that it allows many of them to cross over boundaries and avoid the segmentation that limits others’ possibilities.”). See also Moon, *supra* note 11, at 6 (describing “Korean-descent foreign lawyers” who, “after failing the judicial examination, finished one-year LL.M. course in American law schools, passed New York bar and came back to Korea working as Korean law specialist other than foreign law specialist, which spread a sense of grievance all throughout Korean law circles.”).

²⁹ Lee, *supra* note 11.

³⁰ Dezalay & Garth, *supra* note 28, at 102-104.

A key element is the bar examination. Traditionally in Korea, the bar examination served the primary function of filtering entry to the roles of judge and prosecutor. Korea's bar exam has carried a notoriously low pass rate.³¹ Over the 22 years from 1981 through 2002, the average pass rate for test-takers was 2.65 percent.³² Applicants need not have studied law at a university level, and in fact need not have studied at university at all. Indeed, Roh Moo-Hyun, elected president of Korea in 2002, was "a human rights lawyer without a university education."³³ However, all bar passers were required to complete two years of education at the Supreme Court's Judicial Research and Training Institute.

The extraordinarily low bar pass rate has contributed to the elite status of those who passed and assumed roles of lawyer, judge and prosecutor.³⁴ It also caused students interested in becoming lawyers substantial uncertainty in their career paths. Alternative paths for Koreans interested in legal careers were attractive because they promised the certainty that Korea's licensing regime refused. For some Korean law graduates, that path was to work in a corporate law department, where qualification in Korea was unnecessary.³⁵ For others, foreign legal education and foreign qualification was the choice.

As explained by Bryant Garth and Yves Dezalay,³⁶ the ability of the elite to reproduce its power in the next generation has been frustrated by Korea's bar examination system. The low bar pass rate and resulting uncertainty made it impossible for top lawyers to guarantee the next generation a place in the family business. But the accessibility and certainty surrounding legal education and licensing in the U.S., among

³¹ Yoon Dae-Kyu, *The paralysis of legal education in Korea*, LEGAL REFORM IN KOREA 37, 39 (Tom Ginsburg ed., 2004) ("Under such a system, there was fierce competition to enter the profession. Many capable young people risked everything to pass through the bottleneck examination process. Preparation for the examination itself was an all-or-nothing gamble This resulted in a huge loss of human resources, considering that a vast majority of applicants were deemed to fail in spite of their long-term strenuous efforts."). See also Setsuo Miyazawa, Kay-Wah Chan & Ilhyung Lee, *The Reform of Legal Education in East Asia*, 4 ANN. REV. L. & SOC. SCIENCE 333, 351 (2008) ("In practice, many applicants [to the Korean bar examination], even those who are full-time university students, spend years in cram schools preparing for the examination.").

³² Yoon, *supra* note 31, at 40; See Table 3.2.

³³ Tom Ginsburg, *Introduction: The Politics of Legal Reform in Korea*, in LEGAL REFORM IN KOREA 6 (Tom Ginsburg ed., 2004).

³⁴ Jaewon Kim, *Legal Profession and Legal Culture During Korea's Transition*, in RAISING THE BAR: THE EMERGING LEGAL PROFESSION IN EAST ASIA 51 (William P. Alford ed., 2007).

³⁵ However, this is changing and it is now more common for corporations to hire counsel that are Korean-qualified. In addition, the corporate law departments house substantial numbers of foreign lawyers. See Lee, *supra* note 27, at 55-59. See Park, *supra* note 27.

³⁶ Dezalay & Garth, *supra* note 28, at 95-96.

other foreign legal systems, offered a mechanism for bypassing the harshness of the licensing regime. Supporting this path to foreign legal education and licensing is the fact that Korean families place a high value on education, including foreign education. And in offering positions in top law firms to these succeeding generations of Korean elites, who might not otherwise qualify as lawyers in Korea but could master the more predictable and lenient bar exam in the U.S., the finesse around the regulatory barrier was completed.

The new framework for the education and licensing of Korean lawyers continues to unfold as we write. Education that used to be conducted under the direction of law faculties now occurs in graduate law school programs.³⁷ Twenty-five law schools were accredited by the Law School Education Commission under the auspices of the Ministry of Education & Human Resources Development in 2008. The reform has resulted in a general requirement that law school graduation is a condition to sitting for the bar.³⁸ The size of each school's student body is strictly limited by the Ministry of Education with an eye toward the total number of graduates who might sit for the bar examination in any particular year.

The Ministry of Justice each year decides the particular number of individuals who will be permitted to pass the bar examination.³⁹ Careful attention has been given to the relationship of the size of the graduating class of new law school graduates and the number of bar passers, to try to offer appropriate incentives to law students to pursue their studies with sufficient attention and interest in coursework and other law school activities. The old regime's low bar pass rate resulted in students spending tremendous amounts of energy (and other resources) on preparing for the bar exam. The new regime is intended to help students gain more from their law school experience because passing the bar exam will be possible for a greater proportion of graduating students.

To the extent that the pass rate for the Korean bar exam is raised substantially, the need to leave Korea to pursue legal education and a law license elsewhere is likely to diminish. If the pass rate is high enough—perhaps as high as two-thirds of test takers,⁴⁰ for example—there may be a

³⁷ Kwon, *supra* note 10, at 1.

³⁸ Byeonhosasiheombeop [Bar Examination Act], Act. No. 9747, May 28, 2009, art. 5(1) (S. Kor.).

³⁹ In each of the first three new bar exams, which were administered in 2012, 2013 and 2014, the number of passers was approximately 1,500, which is roughly 75% of the total law school student quota (2,000). The number of bar passers for future years has not been determined and remains highly contested. Yong-Sup Kim, *Status and Problems of Selecting Successful Candidates for Bar Examination*, 142 JUST. 188, 199 (2014).

⁴⁰ This would be similar to the pass rate for the New York bar exam, for example, which was 61% for all test takers in 2012, and as high as 76% for first time test takers sitting for the July exam. See National Conference of Bar Examiners, 2012 Statistics, http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2013/8201132012statistics.pdf.

substantial reduction in the number of Korean students who pursue legal education outside of Korea.

At the same time, the shift to a graduate law school system has decreased the available slots for students to study law in Korea. Before the reforms, as many as 9,000 students studied law in approximately 100 Korean universities each year, all of whom were eligible to sit for the bar exam under the old regime.⁴¹ Now, the number is limited to 2,000 at 25 accredited law schools, whose graduates will have exclusive eligibility to take the new bar exam.⁴² Students who are not admitted to law school in Korea might pursue legal studies overseas,⁴³ and in this way the tide of students enrolling in U.S. law schools might continue much the same as under the old regime.

The reforms may privilege certain students over others. For example, English language proficiency is a factor considered in admissions decisions to law school in Korea, and an international mindedness may be considered an important element for success in school.⁴⁴ These qualities may be easier for economically privileged students to acquire.⁴⁵

Parallel to the reform of Korean legal educational, another change relates to the ability of foreign law firms to establish offices in Korea. The government has agreed to reduce barriers to foreign law firms, and has begun this process by implementing a licensing regime for foreign-licensed lawyers. Under the Foreign Legal Consultant Act of 2009, foreign law firms are authorized to establish offices, to be known as Foreign Legal

⁴¹Kyong-bong Ahn, [A Desirable Direction of the Undergraduate Legal Education under the Law School System], 164 DAEHAG GYOYUK [UNIVERSITY EDUCATION] (Mar., 2010), available at <http://magazine.kcue.or.kr/last/popup.html?vol=164&no=3882>.

⁴² Under the Law School Act, the accredited law schools must close the undergraduate law program. Beophagejeonmundaehagwon selchiunyeonge gwanhan beopryul [Act on the Establishment and Operation of Law School], Act. No. 8852, art. 8 (S. Kor.). As a result, the 25 accredited law schools have stopped admitting new undergraduate law students since 2009. Most of these schools have had a large student population; in total, they used to admit about 4,700 students each year.

⁴³ Students can still study law in the remaining undergraduate faculties but they cannot obtain the eligibility to take the bar exam. Moreover, the undergraduate law major is not considered to be advantageous in terms of the law school admission. Many expect the interest in undergraduate law major will decline over time.

⁴⁴ Jae-Hyup Lee, *Legal Education in Korea: Some Thoughts on Linking the Past and the Future*, 44 KYUNG HEE L. REV. 47, 55 (2009).

⁴⁵ A local weekly magazine ran a story claiming the new law school system favors the economic privileged and the graduates of top elite universities. HANKYOREH (Feb. 27, 2009), http://h21.hani.co.kr/arti/cover/cover_general/24406.html. Law school tuition is generally higher (20-40%) than college tuition in Korea, and some have criticized law schools as becoming "money schools." As of 2012, the average annual tuition of for national and municipal law schools was 10.04 million won (\$9,127), and 20.75 million won (\$18,863) for private law schools in Korea. Dollar amounts were computed based on an exchange rate of 3/13/2013, \$1 = 1100 Won. Kwon, *supra* note 10, at 19-20.

Consultant Offices (or FLCOs).⁴⁶ Only lawyers individually registered as Foreign Legal Consultants (FLCs) may practice with a FLCO in Korea under the current terms of the regulations.

The basic framework of Korea's FLC Act is quite typical of other jurisdictions that use the same status to regulate foreign-licensed lawyers.⁴⁷ The Act requires foreign-licensed lawyers to register, which provides information to Korean authorities about who is practicing in the country. In addition, it limits the scope of an FLC's advisory activities to the regime in which the FLC is assumed to be competent, based on his/her qualification: the law of the jurisdiction in which the FLC is admitted (as well as international law).⁴⁸ To this end, the Act requires foreign lawyers to have some practice experience related to the law of the jurisdiction in which they are licensed, and they must have practiced in that country for at least one year in order to qualify for FLC status. Last, FLC status is mandatory only for foreign-licensed lawyers practicing with foreign law firms; it has not been interpreted at the time we write to require foreign-licensed lawyers practicing with Korean law firms or in corporate counsel positions to obtain an FLC license, although this may be reconsidered in the future. This inapplicability of the FLC registration process based on the employer's identity means that foreign and local firms are not on equal footing in capitalizing on the services of foreign-licensed lawyers.

The changes described in this section reflect globalization's influence on the way in which lawyers are produced and on the market for competition over their services.⁴⁹ Both the client-side of that market and the supply of new lawyers will feel the effects of these forces. These changes will shift as the legal services market is exposed more directly to foreign law firms and lawyers in the planned phased opening.⁵⁰ But even

⁴⁶ FLC Act, art. 16 http://elaw.klri.re.kr/kor_service/lawView.do?hseq=24533&lang=ENG.

⁴⁷ See generally, Kyungho Choi, *Korean Foreign Legal Consultants Act: Legal Profession of American Lawyers in South Korea*, 11 ASIAN-PACIFIC L. & POL'Y J. 100 (2009). On foreign legal consultant rules in the U.S., see Silver, *Regulating International Lawyers: The Legal Consultant Rules*, 27 HOUSTON J. INT'L L. 527 (2005). For a discussion of the origins of foreign legal consultant regulation, see SYDNEY M. CONE, *INTERNATIONAL TRADE IN LEGAL SERVICES: REGULATION OF LAWYERS AND FIRMS IN GLOBAL PRACTICE* (1996).

⁴⁸ See Liu, *supra* note 3 (the FLC Act also apparently authorizes FLCs to serve as counsel in international arbitration proceedings).

⁴⁹ See Richard L. Abel, *Revisioning Lawyers*, in *LAWYERS IN SOCIETY: AN OVERVIEW* (Richard L. Abel and Philip S.C. Lewis eds., 1996); see also Richard L. Abel, *Using the Theories: Comparing Legal Professions*, in *LAWYERS, A CRITICAL READER* (Richard L. Abel ed., 1997); Papa and Wilkins, *supra* note 4 (describing three processes of globalization, economic, knowledge and governance).

⁵⁰ See Sheppard Mullin (law firm), *Korea Passes Foreign Legal Consultant Act*, ANTITRUST L. BLOG, <http://www.antitrustlawblog.com/2009/04/articles/article/korea-passes-foreign-legal-consultant-act-opening-the-countrys-legal-service-market-to-law-firms-in-foreign-countries-that-are-parties-to-effective-free-trade-agreements-with-korea/> (4/13/2009).

before this opening, the market for lawyers was substantially affected by global forces because of the importance of foreign legal education and the presence of foreign-licensed lawyers. These are described in more detail below.

III. PARTICIPANTS IN KOREA'S LEGAL SERVICES MARKET: THE LAWYERS

In this Section, we begin with an overview of the data in order to set the stage for our focus on legal education, practice experience and gender, below. Our data were collected from the websites of Korean- and U.S.-based law firms in order to enable comparison of the firms' preferences for particular credentials, characteristics and experiences. As described earlier, the data allows a comparison of three groups of lawyers: (1) Korean-licensed lawyers practicing with Korean law firms, (2) foreign-licensed lawyers practicing with Korean law firms and (3) lawyers practicing in Hong Kong on behalf of U.S.-based firms and concentrating on Korea-related matters. The third group (referred to as "Hong Kong lawyers") is further limited to individuals who could be identified as ethnically Korean, including Korean nationals and Korean Americans. We imposed this limitation because we wanted to explore the fungibility or essential similarities of the foreign-licensed lawyers practicing in Korean firms (group 2) and the Hong Kong lawyers. Our expectation was that lawyers in groups 2 and 3 were similarly affected by the regulatory approach of Korea's earlier bar pass regime, which had the effect of "pushing out" students who might be interested in legal careers because of the low pass rate and the resulting uncertainty about whether time spent investing in preparing for a legal career might be wasted.⁵¹ Thus, our interest was focused on those U.S.-based law firm lawyers who had both a practice and personal connection to Korea (through ethnicity and/or nationality). The common understanding is that both groups 2 and 3 are populated primarily by lawyers that come within the 'ethnically Korean' category. According to Anthony Lin, writing for the *American Lawyer*, "[v]irtually all the Korean practices at U.S. firms are led and largely staffed by Korean or Korean-American lawyers."⁵² Seong-Hyun Kim describes group 2 as comprised mostly of "Korean American Lawyers . . . many of [whom] are immigrants to the US, but the number of Koreans who graduated from Korean universities and obtained American lawyers' qualification is rapidly increasing."⁵³ Our focus, then, was on those who might have been 'pushed' to study in the United States (or elsewhere) and comprise the pool of foreign-licensed lawyers working in Korea (group 2) and Hong Kong (group 3). In essence, we wanted to learn whether Korean and U.S.-based firms preferred different characteristics or experiences, or

⁵¹ See Dezalay and Garth, *supra* note 28, at 95-96 (describing their explanation of the impact of the low bar pass rate).

⁵² Anthony Lin, *Seoul Proprietors*, *AM. LAWYER*, Oct. 2007.

⁵³ Seong-Hyun Kim, *supra* note 11, at 10.

whether they provided comparable opportunities to the lawyers most directly affected by Korea's regulatory approach.⁵⁴

The data were gathered in 2011. We describe below the method for gathering and coding data, and then analyze the overall characteristics of the data, categorizing the lawyers into the three groups described above. We then compare the groups on the basis of particular characteristics, including law school reputation and gender, to reveal some of the distinctions between preferences of Korean and U.S.-based firms.

We reviewed and coded biographical information in the professional profile of each lawyer from law firm websites of five of the elite, internationally-focused Korean law firms.⁵⁵ Among the characteristics we coded are status in the firm (partner, associate, etc.), gender, education (degree earned, university and law school), languages, practice area and earlier work experience. We cannot be certain that all relevant information was published in the lawyer profiles, and the data reflect only published information. For example, descriptions of earlier work experience may not be as consistently reported as other categories of information. In all, we gathered biographical information for 1510 lawyers practicing in the five Korean law firms.

With regard to the U.S.-based law firms, we began by searching the websites of U.S.-based law firms to determine which firms had Korea-focused practices and where the lawyers in these practices were based. Hong Kong emerged as the most common site,⁵⁶ and we focused our energy on identifying those U.S.-based law firms with Hong Kong offices that housed lawyers whose practice focus included inbound or outbound Korean matters and clients. We identified 14 of these firms and proceeded to review the professional profiles for lawyers involved in such practices. Our search was aimed at identifying lawyers who were both ethnically Korean and involved in Korea-related practices. Evidence of ethnicity was based on a lawyer's name, photo, language and, in certain instances, information on schooling, other activities pursued in Korea and nationality. We identified 59 lawyers who could be identified as ethnically Korean and coded their profiles for the same characteristics as in the case of the Korean-law firm lawyers, described above.⁵⁷

It is not possible to verify the representativeness of our sample, either with regard to the total group of lawyers and law firms based in Korea whose practices concentrate on international corporate matters, or with regard to global law firms relating to their Korean-focused practices.

⁵⁴ However, we could not consistently distinguish between Korean nationals and those who were ethnically Korean, and gathered information on both groups with regard to the U.S.-based law firms (we use the term "Korean ethnicity" or "ethnically Korean" to refer to both).

⁵⁵ Data gathering for the Korean law firms was conducted in May-June 2011.

⁵⁶ See Lin, *supra* note 52 (confirming Hong Kong as a common site for these practices).

⁵⁷ Data gathering for the U.S.-based law firms was conducted in October 2011.

While we were comprehensive in our approach for the five Korean firms we selected for study, we do not have information available to assess their representativeness of other internationally-focused corporate firms. At the same time, our concentration on Korean-ethnicity for lawyers practicing with U.S.-based firms may not reflect the larger group of lawyers involved in Korea-related practices for these firms. Rather, our research provides a case study of the preferences reflected in the profiles of the particular lawyers included in the data. The analysis below offers a benchmark for studying the market for Korean legal services before and after market opening and the influx of new law school graduates into these firms.⁵⁸

The overall characteristics of the lawyers in our dataset are set out in Table 1. Generally, most of the lawyers share three characteristics: they are licensed in Korea, they are ethnically Korean and they are male. Of those lawyers who are not licensed in Korea, the vast majority (84.1%) are licensed in the U.S.

Table 1: General characteristics of all lawyers in dataset (n=1569)⁵⁹

| | |
|--|-------|
| Korea-licensed lawyers | 79.0% |
| Lawyers licensed only outside of Korea | 21.0% |
| U.S.-licensed lawyers | 28.6% |
| Gender: % of males | 80.9% |
| Korean ethnicity | 97.2% |

We identified 1240 Korean-licensed lawyers practicing in Korean law firms, all of whom are ethnically Korean. Table 2 describes some of the basic characteristics of this group, including education - specifically, the university attended and whether a law-degree was earned. Under Korea's earlier regime, which governed the lawyers we study here, the primary degree in law was an undergraduate course of study resulting in an LL.B. Education is discussed in more detail below; here, we note only that our focus is on three elite universities - Seoul National University, Korea University and Yonsei University ("SKY") - that together account for a substantial proportion of our sample.⁶⁰

⁵⁸ Korean law firms began hiring graduates of the new law school system when they first were introduced to the legal market in 2012. So our data of 2011 fit very nicely to compare these changes.

⁵⁹ Bar admission is not exclusive, so individuals who are licensed in Korea, the U.S. and elsewhere are reported in all three groups.

⁶⁰ Andrea Matles Savada and William Shaw, *South Korea: A Country Study*, WASHINGTON: GPO FOR THE LIBRARY OF CONGRESS (1990), available at <http://countrystudies.us/south-korea/37.htm> ("With the exception of the military, whose top echelons were educated at the Korea Military Academy, the postwar elites of South Korea shared one characteristic: they were graduates of the most prestigious universities. There was a well-defined hierarchy of such schools, starting with Seoul National University at the top and followed by Yonsei University and Korea University

Table 2: General characteristics of Korean-licensed lawyers practicing with Korean law firms (n=1240)

| | % of all Korean-licensed lawyers practicing in 5 Korean law firms |
|--|---|
| <i>Gender:</i> | |
| (i) % who are male | 83.1% |
| <i>Education:</i> | |
| (i) % who earned degree from SKY | 92.0% ⁶¹ |
| (ii) % who earned LL.B. ⁶² | 78.1% |
| (a) % of LL.B.s earned from SKY | 91.2% |
| <i>Foreign law license:</i> | |
| (i) % who indicate admission in a 2 nd , foreign jurisdiction | 14.3% |

Similar information is set out in Table 3 for lawyers practicing with these Korean firms who are not licensed in Korea (group 2, whose members we refer to as ‘foreign-licensed lawyers’). It is worth mentioning here the variation in ties to Korea in the foreign-licensed lawyer group. Nearly one-third (30.0%) combine Korean ethnicity with an indication of close ties to the country: they earned their undergraduate degrees in Korea. Another 45.9% appear to have looser ties: they are ethnically Korean and graduated from college in the U.S.⁶³ On the other hand, certain of the foreign-licensed lawyers appear to have had little or no connection to Korea until they were adults;⁶⁴ these are the approximately

(known as Koryeo in Korean.”) See also Lin, *supra* note 52, at 2 (describing Seoul National University as “a school that looms larger in the Korean imagination than Harvard does in America.”).

⁶¹ More recent information gathered through a search of the websites of the five law firms in March 2014 indicates that the proportion of SKY graduates hired by our five firms may be decreasing: as of March 2014, these five law firms have hired 133 lawyers who graduated from (Korean) law school since 2012. Among them, 104 (78.1%) were SKY law school graduates. Relatedly, 106 (79.6%) earned their undergraduate degrees from SKY. This represents a slight decrease compared to our 2011 data, but SKY’s dominance persists.

⁶² LL.B. is the undergraduate degree in law.

⁶³ Hilary Potkewitz, *Law Firms’ Seoul Food*, CRAIN’S NEW YORK BUSINESS (JAN. 20, 2008), <http://www.crainsnewyork.com/article/20080120/SUB/771027369/law-firms-seoul-food> (describing Yoori Oh, “a 25-year-old third-year student at Cardozo School of Law. Born in Seoul, she’s been in the United States since the ninth grade”).

⁶⁴ See Biography of Jeffrey D. Jones, available at http://www.kimchang.com/frame2.jsp?lang=2&b_id=87&mode=view&idx=2416

15.9% of foreign-licensed lawyers who are not ethnically Korean, based on our analysis of their professional profiles, and also did not earn an undergraduate degree in Korea.

Table 3: General characteristics of foreign-licensed lawyers practicing with Korean law firms (n=270)

| | % of all foreign-licensed lawyers practicing in 5 Korean law firms |
|--|--|
| <i>Gender:</i> | |
| (i) % who are male | 72.2% |
| <i>Education:</i> | |
| (i) % who earned undergraduate degree in Korea | 30.0% |
| (a) % of undergraduate degrees in Korea that were LL.B.s | 34.6% |
| (ii) % who earned a law degree in the U.S. | 83.3% |
| (a) % of those who earned U.S. law degree who also earned undergraduate degree in the U.S. | 62.7% |
| (b) % of those who earned U.S. law degree who earned undergraduate degree in Korea | 34.2% |
| <i>Jurisdiction of law license (showing only jurisdictions with at least 5 lawyers represented):</i> | |
| (i) % of all foreign-licensed lawyers admitted in the U.S. | 84.1% |
| (ii) % of all foreign-licensed lawyers admitted in China | 5.6% |
| (iii) % of all foreign-licensed lawyers admitted in Canada | 2.6% |

Table 4 sets out overall characteristics of the Hong Kong lawyers (group 3), who are ethnically Korean and working in Korea-focused practices for U.S.-based law firms in their Hong Kong offices.

(describing Jeffrey Jones, a foreign-licensed lawyer who has practiced in Korea since 1980, as having had, since he began practicing with the firm, "some involvement with most of the foreign investors active in Korea").

Table 4: General characteristics of ethnically Korean lawyers practicing in Hong Kong with U.S.-based law firms (identified below as “HK lawyers”) (n=59)

| | |
|--|---------------------|
| Gender: | % of all HK lawyers |
| (i) % who are male | 72.9% |
| Education | |
| (i) % who earned an undergraduate degree in Korea | 23.7% |
| (a) % of those who earned an undergraduate degree in Korea who attended SKY for this degree | 100% |
| (b) % of those who earned an undergraduate degree in Korea that was an LL.B. | 21.4% |
| (ii) % who graduated from a U.S. law school | 76.3% |
| (a) % of those lawyers who graduated from a U.S. law school who earned a J.D. there | 97.8% |
| Jurisdiction of law license (showing only jurisdictions with at least 5 lawyers represented) | |
| (i) % of all HK lawyers admitted in the U.S. | 76.3% |

As Tables 2-4 reveal, the overwhelming majority of lawyers in our dataset are Korean-licensed. However, more than one-quarter (28.6%) of all the lawyers practicing in Korean firms are licensed outside of Korea; a segment of these lawyers also are Korean-licensed. This indicates a significant investment on the part of these law firms in global credentials and reflects their outward-focused strategy, which characterizes even their home country head offices. This aggregation of Korean-licensed and foreign-licensed lawyers in the home offices of the Korean firms reflects a mirror image of the “glocal” approach that U.S.-based law firms have taken to their overseas offices and practices there.⁶⁵ For U.S.-based law firms, the

⁶⁵ See Roland Robertson, *Comments on the "Global Triad" and "Glocalization"*, in GLOBALIZATION AND INDIGENOUS CULTURE (Inoue Nobutaka ed., 1997), available at <http://www2.kokugakuin.ac.jp/ijcc/wp/global/15robertson.html> (“Because ‘glocalization’ means the simultaneity – the co-presence – of both universalizing and particularizing tendencies.”); see also Roland Robertson, *Globalization Theory 2000+*: Major Problematics, in HANDBOOK OF SOCIAL THEORY 458, (George Ritzer and Barry

glocal approach consists of combining in a single overseas office both locally educated and licensed lawyers who capture local knowledge and U.S. law graduates who develop lines of communication to the firms' home offices and represent the U.S. identity of the firms' origins. But the glocal strategy has not reached into home office staffing for most U.S.-based law firms; it is an approach limited to their overseas structures. To better understand the ways in which Korean firms pursue a glocal strategy at home, we explore the characteristics, credentials and experiences of their lawyers in the following section.

Our analysis embraces both lawyers and law firms because both are potential competitors that likely will be influenced by the changes in regulation, legal education and other forces. These potential competitors are first, the Korean and U.S.-based law firms that are focused on representing clients in the international Korean legal market, and second, the individual foreign-licensed (group 2) and Hong Kong-based (group 3) lawyers, who populate the firms and help them reach beyond their respective national identities to better relate to the clients and others involved in Korea's international legal services market. By comparing on two levels—individual and firm—we hope to illuminate possible interactions that reveal differences in firm preferences and lawyer profiles that together suggest opportunities and challenges related to their identities.⁶⁶ In addition, we aim to provide a benchmark for future study that addresses the results of liberalization as U.S. (and other foreign) law firms move into Seoul, and the new law school regime begins producing graduates who have passed the bar and begin their careers in the context of greater openness and possibly also increased competition for lawyers.

A. LEGAL EDUCATION: THREE STRANDS OF THE KOREAN MARKET FOR LEGAL SERVICES

Education is a means of investing in assets recognized by law firms and their clients. It serves as a path for acquiring important experiences and credentials both within and outside of Korea. In some cases, this leads also to the more formal credential of being licensed to practice law. Even without the license, however, the educational credentials of the lawyers we study reflect the importance of prestige and of gaining fluency and comfort with particular contexts. It has special importance in Korea,

Smart, eds., 2001)(introducing the concept of glocalization "as a corrective to the oversimplified dichotomy between global homogeneity, on the one hand, and local differentiation, on the other, that characterized thinking on the interaction between the emergence of global markets and local markets, cultures, identities and practices."). See also Silver, Phelan and Rabinowitz, *supra* note 2 (describing global law firms).

⁶⁶ Swethaa Ballakrishnen, "Why is Gender a Form of Diversity?": Rising Advantages for Women in Global Indian Law Firms, 20 IND. J. GLOBAL LEGAL STUD. 1261 (2013) (discussing the interaction and importance of studying both law firms and individual lawyers).

where education has served as a mechanism for social mobility.⁶⁷ At the same time, for the firms, education may serve as a signal to reinforce a firm's prestige and ability to successfully compete for top talent.⁶⁸ In this section, we explore and compare, where possible, the educational credentials of the three groups of lawyers.

We begin by focusing on the reputation of the educational institution where our lawyers earned their first degree in law. For Korean-licensed lawyers practicing with Korean law firms (group 1), the existing hierarchy of Korean society frames their experiences and places great emphasis on the school they attend.⁶⁹ These lawyers establish important relationships through their school ties, and these relationships in themselves are valuable tools in the arsenal necessary to acquire and represent clients in Korea. As Hyo Young Kang, a U.S.-educated and -licensed lawyer who has served in a variety of relevant roles, including with elite Korean, English and U.S.-based law firms, commented, "[y]oung lawyers entering a Korean firm know they can count on the upperclassmen they knew at, say, SNU for mentoring and advice. Indeed, in Korean society, such school bonds last a lifetime, providing most of a graduate's professional network and much of his social one as well."⁷⁰ Prestige, then, is valuable in itself as well as bringing practical consequences.

For Korean-licensed lawyers, the relevant source of educational reputation is the undergraduate degree institution, in contrast to those in the foreign-licensed and Hong Kong groups with a U.S. J.D. (groups 2 and 3, respectively). As reported in Table 2, 92% of the Korean-licensed lawyers earned their undergraduate degree at one of the three elite SKY

⁶⁷ See generally BRUCE CUMINGS, *KOREA'S PLACE IN THE SUN: A MODERN HISTORY* 59 (1996) ("[T]he practical glue holding the system together was education").

⁶⁸ Silver, *supra* note 3, at 10-12 (describing Chinese law firms' inexperience with WTO disputes as they were developing substantive expertise).

⁶⁹ In fact, some lawyers with strong Korean ties have explained to us that high school also matters a great deal in Korea, in addition to the university connection. See also Brendon Carr, *Dominance of SKY universities nearly complete in legal profession*, KOREAN TOP NEWS (Oct. 26, 2008), available at http://koreantopnews.com/Business/Dominance_of_SKY_Universities_Nearly_Complete_in_Legal_Profession/ ("Anyone who's had contact with Korean society for any period of time will be familiar with the importance of school networks, and, thus, the university entrance examination. An unholy triumvirate of three universities in the capital—Seoul National University ("S"), Korea University ("K"), and Yonsei University ("Y")—has such a hammerlock on influence and power that teenagers will sit out a year and try again on the test rather than go to a "lesser" university, or commit suicide out of hopelessness over their lot in life without a SKY diploma."). See generally Sunwoong Kim, *Rapid Expansion of Higher Education in South Korea: Political Economy of Education Fever*, in *THE WORLDWIDE TRANSFORMATION OF HIGHER EDUCATION* 223 (Alexander Wiseman ed., 2008).

⁷⁰ Lin, *supra* note 52, at 2.

universities.⁷¹ Nearly three-quarters (71.0%) of all Korean-licensed lawyers in the Korean firms reported earning an LL.B. at one of the SKY universities, or, stated differently, 77.3% of those who graduated from one of the SKY universities earned an LL.B. there. The influence of Seoul National University, however, is even stronger than indicated by these figures. Slightly more than 80% (80.4%) of the Korean-licensed lawyers who attended one of the SKY universities for any undergraduate degree graduated from Seoul National University; at the same time, 78.3% of all LL.B.s earned at SKY by this group were earned at Seoul National.

One interpretation of this dominance by the SKY schools, and Seoul National in particular, suggests that the elite law firms strongly prefer students who have successfully navigated admission and the curriculum at these schools. But interpreting the significance of the presence of elite university graduates is complicated by the role of the Korean bar exam. Under the old regime that was in place when the lawyers in our dataset entered the profession, the low pass rate meant that passing itself sent the strongest signal regarding quality to prospective employers. This is in contrast to the U.S. context, where the likelihood of passing the bar is sufficiently high so that bar passage alone does not signal quality.

Relatedly, an alternative explanation for the dominance of SKY graduates draws from the consequences of these same strict bar pass limitations that preceded legal education reform. According to this narrative, because so few applicants passed the bar exam in Korea during the period when nearly all of the lawyers in our dataset were licensed, the dominance of SKY graduates—and of Seoul National graduates in particular—in the bar pass pool is the primary explanation for the dominance of SKY and Seoul National graduates among the Korean elite firms in our dataset. That is, according to this argument, Korean firms do not prefer SKY graduates but simply must draw from the pool of bar passers, and consequently from the JRTI graduates, which is dominated by SKY graduates.⁷² More research is necessary to determine which of these explanations has influenced the hiring decisions of the Korean firms, including exploration of their post-legal education reform hiring.

If it is difficult to clarify whether Korean law firms prefer elite educational credentials regarding their Korean-licensed lawyers' undergraduate institution, considering the non-Korean educational

⁷¹ See *supra* note 62 (regarding the proportion of SKY graduates hired since 2012.) See also Int. #11 (on file with author) (One possible explanation suggested by a former partner of one of our five firms regarding the slight decrease in SKY dominance among new hires is a sense on the part of the elite firms that they must diversify their hiring patterns to include non-SKY law school graduates, as well. This source reported that at least one firm had reached out to recruit entry-level lawyers from non-SKY law schools.).

⁷² The cumulative number of the JRTI graduates from 1963 and 1998 was 17,303. The number of SKY graduates was 11,994 (69.3%). Similar dominance was observed from 1998-2007 data among JRTI graduates (64.9%).

credentials of Korean-licensed lawyers may clarify. The U.S. is the dominant non-Korean jurisdiction for the Korean-licensed lawyers with regard to legal education and licensing, as it is also for lawyers in groups 2 and 3. In terms of lawyer licensing, slightly more than one-quarter of all of the lawyers practicing in the Korean firms (26.8%) were admitted in the U.S. This includes 14.3% of the Korean-licensed lawyers, and 84.1% of group 2 foreign-licensed lawyers. More than three-quarters (76.3%) of the Hong Kong lawyers were admitted in the U.S. as well. But the relationship to the U.S. is even stronger with regard to education. Nearly 40% (38.9%) of all of the lawyers we studied graduated from a U.S. law school (whether with a J.D., LL.M. or other degree). However, the importance of the U.S. is more accurately revealed by the fact that 92.7% of all of the lawyers in our dataset (Korean-licensed, foreign-licensed and HK) who earned a non-Korean law degree were graduates of U.S. law schools.⁷³

Table 5 reports the proportion of lawyers in each of the three groups who earned any U.S. law degree, and of those the proportion earning a J.D. or LL.M. The general pattern is quite clear: Korean-licensed lawyers (group 1) favor the LL.M., while foreign-licensed lawyers in Korean firms (group 2) and the Hong Kong lawyers (group 3) favor the J.D. (with the preference for the J.D. being strongest in group 3).

Table 5: U.S. educational experiences of all lawyers (n=1569)

| | Korean-licensed (group 1) | Foreign-licensed practicing in Korea (group 2) | Hong Kong lawyers (group 3) |
|--|------------------------------|--|-----------------------------------|
| % who earned any U.S. law degree | 27.2% | 83.3% | 76.3% ⁷⁴ |
| - % of those who earned U.S. degree earning an LL.M. | 95.3% | 11.6% | 2.2% |
| - % of those who earned U.S. degree earning a J.D. | 1.8% | 87.6% | 97.8% |

⁷³ Nor does this take into consideration lawyers who were visiting scholars or otherwise participated in U.S. legal education without earning a degree.

⁷⁴ An additional 8.5% of Hong Kong lawyers earned their primary legal education in an English-speaking common law jurisdiction outside of the U.S. For the remainder of the Hong Kong lawyers, there was not sufficient information available to indicate the location of their legal education.

The heavy influence of the U.S. likely relates to a number of factors. The importance of English in international commercial transactions gives weight to studying overseas in an English-speaking country. The importance of U.S.-based clients to the elite Korean law firms reinforces the U.S.'s role as a receiving country for Korean students. In addition, the possibility of obtaining a law license is important. Several U.S. jurisdictions welcome graduates of foreign law schools without imposing any limitation related to licensing status in their home jurisdiction,⁷⁵ and citizenship status does not present a barrier for bar admission in the United States.⁷⁶

The preference for elite credentials is equally apparent with regard to U.S. legal education for the Korean-licensed group. Using U.S. News ranking to indicate reputation, Table 6 shows that more than 45% of Korean-licensed lawyers who earned a U.S. LL.M. attended a law school ranked among the top ten. U.S. News rank is, of course, only a loose approximation of reputation that stands quite apart from other influences that may shape the attractiveness of a particular school and the signal it sends to potential employers; these include the presence of certain faculty and the substantive focus of a lawyer's program of study in the U.S., location of the law school and alumni connections, among other factors. At the same time, U.S. News is an important consideration for many international graduate students in considering where they might want to study. It has the simplicity of purporting to capture reputation in a single number, thus simplifying the task of generating a more nuanced understanding of the sway of these schools. It is commonly referred to by international students in describing how they chose a particular law school.⁷⁷

In Table 6, we compare across our three groups of lawyers to explore the U.S. law school credentials of lawyers who earned any U.S. law degree (as reported in Table 5). For each group, we look only at the dominant degree earned for that group: the LL.M. for Korean-licensed lawyers (group 1) and the J.D. for groups 2 and 3. The results show a marked

⁷⁵ See *Routes to Qualifying*, THE LAW SOCIETY, available at <http://www.lawsociety.org.uk/careers/becoming-a-solicitor/routes-to-qualifying/> (The new regulatory approach to licensing overseas-educated lawyers in England, for example, requires that the applicant be licensed in her home country in order to short circuit the typical licensing regime).

⁷⁶ See *In Re Griffiths*, 413 U.S. 7 (1973) (holding that Connecticut's exclusion of aliens from practicing law violates the Equal Protection Clause of the Fourteenth Amendment).

⁷⁷ See Carole Silver, *The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession*, 25 FORDHAM INT'L L.J. 1039, text and notes 43-45 and 53 (2002) ("[T]he higher a law school's reputation, the more common law and Western Union LL.M students it attracts"). See also Silver, *supra* note 3, at 10-12 (regarding the role of ranking as a signal by U.S.-based law firms).

difference between the two J.D. groups, with more than twice the proportion of Hong Kong lawyers (group 3) graduating from a top ten law school as the foreign-lawyer group (group 2).

Table 6: U.S. law school U.S. News ranking for all U.S.-educated lawyers (separating LL.M. and J.D.), comparing the three groups of lawyers

| U.S. News rank of school where relevant degree was earned | Korean- licensed lawyers, LL.M.s only (n=317) (1) | Foreign- licensed lawyers in Korean law firms, J.D.s only (n=192) (2) | HK lawyers, J.D.s only (n=44) (3) |
|---|---|---|--|
| 1-10 | 46.4% | 22.4% | 56.8% |
| 11-25 | 41.0% | 29.7% | 36.4% |
| 26-50 | 11.4% | 20.3% | 2.3% |
| 51-100 | 1.3% | 22.9% | 4.5% |
| 101 and on | -- | 4.7% | -- |

First, we put to the side direct comparability between the Korean-licensed lawyers (group 1) and the other two groups. Despite attending the same law schools, the difference in degree programs pursued by the Korean-licensed lawyers complicates any inferences that might be drawn from the high-ranking schools they attended. For the Korean-licensed lawyers (group 1), it is their LL.M. degree law school that we report on in Table 6. Competition for admission to an LL.M. program is organized substantially differently than is admission for the J.D. program because only the latter requires the LSAT score and implicates U.S. News ranking for the schools. Thus, it would be mistaken to conclude from Table 6 that the reputational signal for Korean-licensed lawyers is similar to that for the Hong Kong lawyers, for example, or that the higher ranking of the schools attended by the Korean-licensed lawyer group indicates something about their quality in comparison to the foreign-licensed lawyers practicing in the same law firms in Seoul. The Korean-licensed LL.M. graduates were not competing for the same seats of admission in their law schools; indeed, in certain schools, they would not have been direct competitors even in the same classroom because of policies that separate grading regimes for LL.M.s and J.D.s. Nevertheless, the reputation of the LL.M. schools for the Korean-licensed lawyer group is consistent with the very highly regarded SKY (and in particular SNU) undergraduate degrees that dominate this group. It suggests that the elite Korean law firms in our study may use SKY credentials as a selection criteria even apart from the overrepresentation of SKY graduates among

bar passers. Regardless of comparability regarding admission, a strong signal is sent by the relationships to these elite schools.

A more straightforward comparison is possible between the two groups of J.D. graduates (groups 2 and 3) included in Table 6. These are the more direct competitors for jobs after graduation, and by limiting the Hong Kong lawyers to those who are ethnically Korean we focus on lawyers with a potential interest in working either in Seoul or in nearby Hong Kong, where their Korea-related expertise would be seen as an important benefit.

For these two groups of J.D. graduates, the difference in the U.S. News ranking of their J.D. law schools is dramatic. More than twice the proportion of Hong Kong lawyers (group 3) attended a school ranked in the top ten by U.S. News as did those in the foreign-lawyer group (group 2).⁷⁸ To explain this, we look to the context of hiring decisions by the U.S. and Korean firms. Elite U.S. firms such as those included in the Hong Kong lawyer group (group 3)⁷⁹ generally base hiring decisions with regard to new law school graduates on a relatively rigid set of criteria in which U.S. law school reputation (including that provided by U.S. News ranking) figures prominently. Typically, hiring decisions for these firms would tend to draw from graduates of top-ranked law schools, and consequently it is not surprising that more than 93% of the Hong Kong-based lawyers in our dataset earned their J.D. from a U.S. News top-20 law school.

But what explains the different orientation of the Korean law firms towards their foreign-licensed lawyers (group 2)? Is law school reputation irrelevant to them? This does not align with the information on where Korean-licensed lawyers earn their LL.M.s, which indicates the same status-consciousness reflective of the Korean university dominance of SKY. Perhaps the answer lies in the roles taken on by foreign-licensed lawyers. We explore this below.

B. FOCUS ON PRACTICE EXPERIENCE

If the Korean law firms count law school prestige consistently with the signal sent by the elite Korean- and U.S.-educational credentials of their Korean-licensed lawyers (group 1), their hiring decisions with regard to foreign-licensed lawyers (group 2) begs for some justification for departing from that same focus on educational reputation. It is possible that the explanation lies in competition over a small pool of highly accomplished ethnic Korean U.S.-licensed lawyers. Perhaps practicing in Korean law

⁷⁸ Of course, the HK J.D. group is also substantially smaller than the number of foreign-licensed lawyers practicing with the Korean firms who earned a U.S. J.D. (comprising less than a quarter of the number of U.S.-J.D.s in the foreign-licensed lawyer group in Seoul).

⁷⁹ The firms that are included in the Hong Kong lawyers group are conscious of prestige. They are included in the American Lawyer list of the top grossing and largest law firms in the United States.

firms is not as attractive for foreign-licensed lawyers as the opportunity to join a U.S.-based law firm's Korea-focused practice in Hong Kong. According to one source, foreign-licensed lawyers practicing in Korean law firms occasionally experience frustration because they perceive that their role in Korean firms is subjugated to that of Korean-licensed lawyers.⁸⁰ Another source describes Korean-licensed lawyers as "looking down on" foreign-licensed lawyers.⁸¹ Consistent with this is the difference in title that most elite Korean law firms use for Korean-licensed and foreign-licensed lawyers: while foreign-licensed lawyers are called "attorney," "foreign attorney" or even "senior foreign attorney," the partner title is rarely conferred.⁸² Of course, partnership-like compensation and roles in management may be awarded through contract even without the title. But these factors may combine to the benefit of foreign law firms and result in a hiring advantage for U.S.-based firms, among others.⁸³

Understanding the roles of foreign-licensed lawyers may illuminate hiring preferences. From inside the Korean firms, descriptions of the roles of foreign-licensed lawyers present them as both central to the international identities and capabilities of the firms, and as participants in the everyday work of representing corporate clients. According to one source, "foreign attorneys' corporate legal practice does not differ much from that of Korean attorneys, except that foreign attorneys cannot represent Korean clients before Korean courts. They usually give consultation on foreign laws, check contractual provisions, and negotiate the deal on behalf of corporate clients."⁸⁴ Another observer of the Korean legal market explained that "foreign lawyers have been hired [by the top Korean firms for] both inbound and outbound work[.]. Foreign lawyers were mostly involved in inbound works, because there were not as many outbound works as inbound ones in the past. But, the number of outbound works has been increasing, with a development of Korean

⁸⁰ See Int. #2 (on file with author) (Korean-licensed lawyer pursuing a U.S. J.D., with experience working in Korea, in Korean law firm, among other places).

⁸¹ Chisholm, *supra* note 21, at 19 ("One reason Korean lawyers see the foreign lawyers' role as very limited is because they often look down on them.").

⁸² See Int. #11 (on file with author) (According to one source, there are two reasons that foreign-licensed lawyers are not identified as partners. First, the Attorney-At-Law Act prohibits lawyers from sharing profits with non-lawyers, and foreign-licensed lawyers are not within the definition of "lawyer" under the Attorney-At-Law Act. Thus, technically it is not possible for a foreign-licensed lawyer to occupy the position of partner in light of the profit-sharing consequences of such a role. Second, the Korean Professional Responsibility Code does not cover foreign-licensed lawyers; instead, it relies on discipline addressed to Korean-licensed lawyers who serve in supervisory roles for the former.).

⁸³ Int. #9 (on file with author) (a lawyer practicing with U.S.-based law firm).

⁸⁴ Int. #4 (on file with author) (an ethnic Korean U.S. licensed lawyer who worked in both U.S. and Korean law firms).

economy.”⁸⁵ On the other hand, Chisholm describes “[t]he traditional role of all classes of foreign lawyers [as being] . . . to serve as the English speaking face of the law firm to international parties.”⁸⁶ This suggests a narrower or more superficial role, and indeed, certain of Chisholm’s sources indicated that “these were the only duties of foreign lawyers”—a conclusion that Chisholm disavowed.⁸⁷ Of course, there is no single model for the role of foreign-licensed lawyers in Korean law firms. Differences may depend on firm policy and on individual characteristics. But there is evidence of both extremes, from substantial participation and appreciation⁸⁸ to marginal and inferior value.⁸⁹

This controversy over the role and value of the foreign-licensed lawyers suggests an opening and opportunity as the market shifts in response to regulatory changes. While foreign-licensed lawyers are valuable to Korean firms because of their foreign-ness and investment in foreign expertise, to new entrants to the market—U.S. and other foreign law firms—these same foreign-licensed lawyers offer the benefit of local, Korean-focused knowledge. For the Korean firms, the cultural and language expertise of foreign-licensed lawyers (group 2) supports their representation of global and Korean clients in international matters. This expertise is difficult to master in an LL.M. program, however, which is more likely to offer exposure than an opportunity to develop expertise. To the foreign law firms (including U.S.-based firms), on the other hand, the appeal of the foreign-licensed lawyer group (group 2) relates to their Korean experiences. They know the principal competition (the elite Korean firms) from the inside out—a benefit to any new entrant as markets become more open—and their understanding and expertise regarding local Korean matters, including their relationships with clients, regulators, business executives, bureaucrats and others with whom they have routinely interacted—promises to facilitate the landing for newcomer firms.

With U.S. and other foreign firms able to establish offices in Seoul, there will be new opportunities to reevaluate the significance of particular credentials and experiences. The foreign firms may well try to capture the expertise of the foreign-licensed lawyer group. It is unlikely that law

⁸⁵ Int. #2 (on file with author).

⁸⁶ Chisholm, *supra* note 21, at 19.

⁸⁷ *Id.*

⁸⁸ One informant offered this explanation: “During the time of [the] IMF financial crisis in Korea (1997-1998), there was huge demand for lawyers who can speak English well and [would] work for or against American counterparts. (In fact, quite many Korean-Americans . . . came to settle in Korea at that time) Of course, at that time, such lawyers could find good positions in the job market, often became law firm partners. Then, they hired lawyers who resemble them (or they might hire people from the same law school).” Int. #10 (on file with author).

⁸⁹ See Moon, *supra* note 11, at 12-13 (describing both high and low value).

school credentials will be a hurdle. While law school status informs the hiring decisions for new graduates it is much less significant in hiring decisions about more experienced lawyers, and perhaps even less so in an overseas market. Liberalization thus may support the foreign-licensed lawyers (group 2) in capitalizing on their Seoul experience. This may mean shifting firms, but it is equally likely to be achieved through a renegotiated relationship with their existing (or another) Korean law firm, or, as one informant described, moving from a corporate counsel position to a foreign law firm.⁹⁰ The point is that the lower prestige of their law school background, which likely explains their Korean-firm position for at least some (and thus their membership in group 2 rather than group 3), becomes less relevant in a newly liberalized and more competitive Seoul legal market.

One possible wrinkle in capitalizing on this experience is presented by Korea's Foreign Legal Consultant licensing regime, which governs foreign law firms and the lawyers who practice with them. As described briefly above, one aspect of liberalizing the Korean legal market was the implementation of a regulatory structure to govern foreign law firms and their lawyers. Under this regime, lawyers practicing with the firms in their Seoul offices must obtain a license to practice as legal consultants. A condition for gaining an FLC license is that the lawyer must have completed a certain period of practice prior to certification as a foreign legal consultant, essentially in order to gain the experience required to competently advise clients on the law of that lawyer's home jurisdiction (where he or she is licensed).⁹¹ For U.S. firms, this means their Seoul-based lawyers must have some practice experience, at least one year of which must have been accomplished in the U.S.⁹² This requirement may be difficult to satisfy for certain foreign-licensed lawyers currently practicing with Korean firms, and without it their ability to exercise mobility and gain the benefits of the more competitive market may be lost.

Our data include information on prior work experience, gathered from the lawyer professional biographies on firm websites. While we are uncertain whether every foreign-licensed lawyer included such information in their online profile even if they had practiced in the U.S. prior to joining their current firm, we know that at least some lawyers in

⁹⁰ Int. #9 (on file with author).

⁹¹ See [Foreign Legal Consultant Act] Article 4.1 ("To be eligible to obtain qualification approval as a Foreign Legal Consultant, an applicant shall acquire the qualification as an overseas-licensed lawyer and has no less than three years of experience with legal services in a home country of license.") Article 4.3 further explains "[a]pplicant's experiences (up to three years in foreign countries other than the country where an applicant is licensed to practice law or up to two years in Korea) in legal services with respect to the laws of the jurisdiction where he/she is licensed to practice law may count towards his/her practice experience period." See also FOREIGN LEGAL CONSULTANT ACT GUIDEBOOK (pp. 25-29).

⁹² FLC Act Article 4.3.

each firm reported prior work experience; thus, we can assume that underreporting, if it exists, is not due to a law firm's policy to intentionally omit such information, for example. Only 25.3% of the Korean firms' foreign-licensed lawyers (group 2) who had graduated from a U.S. law school reported practicing in the U.S.⁹³ This compares to approximately 3% of the Korean-licensed lawyers (group 1) who reported work experience in the U.S. Only 7% of the HK group (group 3) indicated having practiced in the U.S.; however, it is not clear that lawyers with experience in a U.S. office of their current firm would have reported this in their profiles, which leads us to suspect that there may well be underreporting for the HK group.

Practice experience in the U.S. is most significant for the foreign-licensed group (group 2) because of its importance as a condition for qualifying as an FLC, and thereby being able to take advantage of the power stemming from the potential for mobility that results from the market opening. The FLC rules are technically not applicable to Korean firms and their foreign-licensed lawyers.⁹⁴ The effect of this inapplicability is to limit the opportunities of foreign-licensed lawyers who cannot or choose not to practice in the U.S. (or other home country for non-U.S.-based foreign law firms) and to segment the market for foreign-licensed lawyers into two groups: one comprised of lawyers who are available to both foreign and Korean law firms, and the other comprised of lawyers who are available only to Korean firms based on the inapplicability of the FLC regime to these firms. This is consistent with a common characteristic of globalization that intensifies existing divisions.

These various factors reflected in lawyer profiles interact in important ways to limit or enhance their appeal to prospective employers. U.S. law school reputation influences the ability to find job opportunities in the U.S. following graduation; there is some indication that law school prestige correlates with greater opportunities to practice law for new graduates, as opposed to having to take jobs not involving the practice of law.⁹⁵ Consequently, while the importance of law school ranking likely

⁹³ We counted as "U.S. practice experience" any work experience for a U.S. firm unless it specifically indicated the work was undertaken outside of the U.S.

⁹⁴ The FLC Act literally applies only to those foreign-licensed lawyers who must qualify as an FLC in order to practice with a foreign law firm in Korea. See [Foreign Legal Consultant Act], Art. 3. In fact, a junior foreign-licensed lawyer working for one of our five Korean law firms, who had graduated from a U.S. law school ranked in the 11-25 U.S. News range and had practiced for more than three years in the U.S. prior to accepting a position in Korea, was advised by a senior foreign-licensed lawyer to forego registration as an FLC while practicing with the Korean law firm. The lawyer was told that FLC registration only becomes an issue when moving to an FLC firm. See Int. #12 (on file with author).

⁹⁵ Alfred L. Brophy, *Ranking Law Schools with LSATs, Employment Outcomes, and Law Review* Citations (2014), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2456032 (showing strong

declines as experience is amassed, its impact on the availability of U.S.-legal practice positions may reduce the ability of lawyers to take advantage of new opportunities that will come with liberalization of the market. Interaction with global actors (the foreign law firms) thus may be limited because of Korean regulation, which in turn reinforces, albeit indirectly, the importance of law school reputation. It is possible that foreign law firms and foreign-licensed lawyers will collaborate to develop paths for satisfying the practice condition while creating opportunities for both firms and individual lawyers, such as through a period of practice at the firm's home office. But this is an expensive investment for foreign firms and, at the same time, takes the foreign-licensed lawyer away from Korea, which is the very foundation of these lawyers' appeal. Another version of collaboration—this time between foreign and Korean law firms—might press regulators to apply the same FLC conditions to foreign-licensed lawyers practicing in Korean firms.

Thus, we see an interaction between the ability to gain practice experience in the U.S. and law school reputation, which may work to increase the importance of law school prestige in the future. If foreign-licensed lawyers have experienced some sense of inferiority at the hands of Korean-licensed lawyers while practicing in Korea, they may desire to move to U.S.-based firms where their unique combination of U.S. credentials and Korean expertise will be more attractive. But the regulatory hurdle of the FLC Act requires that they have spent at least one year practicing in the U.S., an increasingly difficult experience to acquire in light of the soft job market for new law graduates in the U.S. And opportunities may be even more difficult to obtain for law graduates who may bring with them the complexity of immigration status, which may be relevant for some segment of the ethnically Korean foreign-licensed law graduates.

C. FOCUS ON GENDER

A third way to consider the choices of the firms with regard to their lawyers relates to the representation of women. Research on globalization and the legal profession suggests that globally-focused organizations may be more open to women's participation. Swethaa Ballakrishnen found that liberalization in India offered opportunities for the

"emerg[ence of] . . . a hoard of new legal organizations that deal primarily with transactional corporate work for large global and domestic corporate clients. These big law firms

correlation between U.S. News ranking and employment at full-time, long-term J.D.-required jobs 9 months after graduation).

have expanded and grown institutionally in many unprecedented ways, but a striking feature of their emergence—even in the largest and most prestigious firms in the country—has been the growth and success of their women lawyers.”⁹⁶

Relatedly, women may be better able to capitalize on opportunities that relate to experiences shaped by globalization. Earlier research by Silver on the careers of international L.L.M. graduates from U.S. law schools, for example, showed that women were more likely than men to stay in the U.S. after completing the LL.M. degree.⁹⁷

As Table 7 reports, women are represented in approximately the same proportion in the foreign-licensed lawyer and Hong Kong lawyer groups (2 and 3), where they comprise approximately 28% of each group. This is quite similar to the overall representation of women in large law firms in the U.S. (approximately one-third⁹⁸). In contrast, women account for only approximately 17% of the Korean-licensed lawyer group (group 1), which, although lower than the other groups, is higher than the approximately 10% representation of women in the Korean legal profession as a whole. At the same time, women account for substantially higher proportions of more recent cohorts of bar passers.⁹⁹

Table 7: Gender for each group of lawyers

| | Group 1 (Korean- licensed practicing in Korean firms) (n=1240) | Group 2 (Foreign- licensed practicing in Korean firms) (n=270) | Group 3 (HK-based practicing in U.S.- based firms) (n=59) |
|-------------------|--|--|---|
| % who are male | 83.1% | 72.2% | 72.9% |

⁹⁶ Ballakrishnen, *supra* note 67, at 1262-3 (2013) (footnotes omitted).

⁹⁷ Carole Silver, *States Side Story: 'I like to be in America:' Career Paths of International LL.M. Students*, 80 FORDHAM L. REV. 2383, 2398 (2012).

⁹⁸ Emily Barker, *Stuck in the Middle*, AM. LAW (June 1, 2009), http://www.americanlawyer.com/PubArticleTAL.jsp?id=1202430856584&Stuck_in_the_Middle (requiring a LexisNexis subscription).

⁹⁹ Korean Bar Association, *Korean Lawyer White Paper* (2010), at 38 (reporting on representation of women in the profession). The proportion of women lawyers has been gradually increasing. Women accounted for 27.7% of newly registered lawyers in 2009. This trend will most likely continue, as evidenced by the proportion of women among the successful judicial exam candidates (35.6%) in 2009. *Id.* at 39. Our entire sample (lawyers in Korea and Hong Kong, Korean-licensed and not) is 19.89% women and 80.11% men.

While the representation of women in each group is greater than in the Korean profession overall, the comparatively higher proportion of women in the foreign-licensed lawyer and Hong Kong lawyer groups (2 and 3) suggests that the contexts that are more closely related to globalization's forces may offer greater opportunities for women. Without more information, we cannot determine whether this stems from the shape of the potential lawyer pool or particular interests of global clients. The importance of language ability, for example, which was emphasized as significant for all foreign-licensed lawyers practicing in Korean firms, may relate to women's comparative advantage. According to Sida Liu's research on the globalization of China's legal market, an "overwhelming emphasis on English use [...] . . . confirmed by several senior partners in foreign firms, . . . causes gender imbalance in many firms as female lawyers usually have better language skills."¹⁰⁰

Our data suggest that the Korean firms recently may have begun increasing their hiring of female lawyers. Table 8 reports the proportion of male and female lawyers hired by the Korean firms during the period of 2006 to 2011 (when our data were collected) compared to prior to 2006. According to the information in the lawyer profiles regarding when they joined their firms, the year 2006 was a pivotal point for the firms, when hiring increased substantially.¹⁰¹ This increase was to the benefit of female lawyers, as Table 8 reveals. More women are represented in the newer group of hires than earlier¹⁰² and the difference between the foreign- and Korean-licensed groups (groups 2 and 1, respectively) narrowed substantially.

¹⁰⁰ Liu, *supra* note 3, at 791. See also Carole Silver, *Agents of Globalization in Law*, LSAC RESEARCH REPORT (2009) (indicating that women are not as motivated as men by the desire to improve their English skills when applying to a U.S. LL.M. program; English-language ability was cited as a motivating factor by substantially more male respondents (56%) than female (41%)). This suggests that more women enter the programs thinking that their language skills are already satisfactory.

¹⁰¹ The total lawyer population data also illustrate the rapid increase of the number of women in the legal profession since 2006. At the end of 2005, the total number of female lawyers was 391. By the end of 2009, the number increased to 1,013, more than doubled. See *Korean Lawyer White Paper*, *supra* note 100, at 38.

¹⁰² The five law firms have hired 55 women lawyers who graduated law schools as of March 2014. This is 42.3% of 133 lawyers they hired. See *supra* note 62.

Table 8: Hiring pattern for lawyers practicing with Korean law firms

| | | prior to 2006 | 2006- 2011 |
|-------------------------------------|--------|---------------------|---------------|
| Korean- licensed lawyers (1) | male | 91.2% | 77.9% |
| | female | 8.8% | 22.1% |
| Foreign- licensed lawyers (2) | male | 78.9% | 73.0% |
| | female | 21.1% | 27.0% |

Comparable information regarding hiring date was not available for the Hong Kong lawyer group. But Hong Kong's case itself offers some insight into what we might expect regarding women's representation. A recent report described women lawyers as thriving in Hong Kong firms. The authors explained this in terms of "changing social mores," but also to the role of women in powerful client positions.¹⁰³ Moreover, research by Boutcher and Silver found that female expatriate lawyers in Hong Kong offices of U.S.-based firms were significantly more likely to be partners compared to female lawyers in the home offices of the same law firms. This might suggest that the proportion of women represented in the Hong Kong group is slightly below what we might otherwise expect; at the same time, the small number of lawyers involved (59 total) makes it difficult to draw inferences. This is another area that future research must consider.

IV. CONCLUSION

In this paper, we have explored the preferences for particular credentials and characteristics revealed by the choices law firms make regarding who they hire to participate in the Korean market for legal services. This snapshot of the pre-liberalization Korean legal services market already includes a heavy dose of global forces. These are felt in the debates surrounding reform of the way lawyers were educated and the licensing process, in the outward focus of the elite Korean firms that are included in our study, and in the presence of significant numbers of foreign-licensed lawyers in the Korean law firms.

Globalization has been found to reinforce existing hierarchies and we see evidence of this in the Korean context. One of the most significant

¹⁰³ Steven A. Boutcher and Carole Silver, *Gender and Global Lawyering: Where are the Women?*, 20 IND. J. GLOBAL LEGAL STUD. 1139, 1162 (2013) (citing Jessica Seah, *Female Lawyers Find Hong Kong a Good Career Fit*, LAW.COM (June 13, 2012, 12:00 AM), available at <http://www.law.com/jsp/article.jsp?id=1202558150716&thepage=1>). This same report explained that "35 percent of senior management roles in Hong Kong were held by women, compared to 23 percent in the United Kingdom and 15 percent in the United States." *Id.*

divisions relates to those who obtained a Korean law license and those who earned their legal education and license outside of Korea—which generally means in the U.S. The inability of foreign-licensed lawyers to practice independently in their own firms under the old regime has required them to rely on Korean-licensed lawyers for their place in the legal services market.

One way to bypass this restriction was to practice in nearby Hong Kong. But opportunities there were limited, at least insofar as they concerned Korea-focused practices and those lawyers we could identify as ethnically Korean. More than four times as many foreign-licensed lawyers held positions in Seoul's elite firms (group 2) than in the U.S.-based Hong Kong practices (group 3). And despite sharing the U.S. J.D. credential, the two groups were not entirely fungible because of differences in the status of their J.D.-granting law schools.

This distinction regarding law school prestige may present challenges for foreign-licensed lawyers in the future. In the past, the elite Korean firms offered a valuable option for foreign-licensed lawyers whose U.S. law school credential did not otherwise situate them to compete for an associate position with a global law firm, where they might practice in an office near, if not actually in, Korea. But in the future, this path may be less attractive. In order to capitalize on new opportunities of mobility in the Korean market that stem from liberalization, foreign-licensed lawyers must satisfy the practice conditions of the FLC Act and qualify for positions in foreign law firms' Korean offices. But practice opportunities are competitive in the U.S. market for new U.S. law graduates, making this experience difficult to obtain. Particularly in the current U.S. environment in which there are reduced opportunities to enter private practice following graduation, law school status assumes an even greater significance.

Globalization also may increase the importance for Korean law firms to compete for the same foreign-licensed lawyers who have been practicing on Korea-related matters for the global law firms (group 3). To be sure, they already house a number of lawyers with this experience. But to attract and retain them in the future, the firms may be pressed to reconsider the secondary roles to which at least some of the foreign-licensed lawyers have been relegated in the past.¹⁰⁴

While these existing divisions likely will not be erased by the new regulatory opening of the market, global forces may increase opportunities for women lawyers. In our data, fewer women were represented in the Korean-licensed group (group 1) than in either of the other two lawyer groups. But the data suggest that opportunities increased for women beginning in 2006.¹⁰⁵ It also is possible that particular clients and/or

¹⁰⁴ Moon, *supra* note 11.

¹⁰⁵ A recent news article noted a significant increase of women in the Korean military as judge advocates. One-third of them are now women. See Jisook Choi, [Judge Advocate

substantive fields of practice may provide increased access to women, both in the short and long-term. These issues remain for future scholars.

Finally, there likely will emerge additional considerations that assume significance as the Korean market for legal services opens itself to more direct competition. The policies and practices of global firms are likely to influence the development of their Korean competitors, and vice versa. The starting point is quite substantial similarity: both Korean and U.S.-based firms reflect what can be described as a glocal policy regarding their preference for lawyers' credentials and expertise. But while U.S.-based firms follow this policy only in overseas offices (and continue to rely almost exclusively on U.S.-licensed and educated lawyers in their U.S. offices), Korean firms have taken a glocal approach as a more central aspect of their identities by pursuing it at home. At the same time, it is not entirely clear how much this has led to a combination of cultures because so many of the foreign-licensed lawyers practicing in Korea are ethnic Koreans. In this way, the glocal approach takes a local adaptation, not unlike what is apparent in Chinese offices of U.S. firms, where Chinese nationals have pursued U.S. legal education and law licenses in order to qualify under China's prohibition on locally-licensed lawyers joining foreign law firms.¹⁰⁶

As foreign law firms develop their physical presences in Korea, we expect that they may try to attract the former judges and prosecutors who are so important to the Korean law firms in our study.¹⁰⁷ In our dataset, for example, slightly more than 10% of the lawyers practicing with the Korean firms indicated that they had worked as a judge prior to joining the firm and approximately 5% had worked as prosecutors. These lawyers have so far not joined the U.S. firms in Hong Kong. This may change as there is more competition in Seoul. Again, however, the regulatory measures governing the market opening will constrain their mobility. It is not possible for foreign law firms to directly employ Korean-licensed lawyers at this point.¹⁰⁸ But as relationships with locally-licensed lawyers become

Popular among Law School Graduates], Seoul Shinmun, April 3, 2014, available at <http://go.seoul.co.kr/news/newsView.php?id=20140403025001>.

¹⁰⁶ See Silver, *supra* note 3 at 40 (explaining Chinese nationals are more likely to invest in the J.D., which is the most certain path to U.S. bar admission, due to the restriction on Chinese-licensed lawyers practicing with foreign law firms).

¹⁰⁷ See, e.g., KIM, *supra* note 11, at 9 (explaining during "personnel management seasons of Courts and Prosecutor's Office . . . there are often the competitions between law firms for the recruitment.").

¹⁰⁸ The planned opening was explained as follows: "During the second phase, which is scheduled to begin within two years after the FTA becomes effective, U.S. law firms are permitted to form an affiliation with Korean law firms and are allowed to take cases where both U.S. and Korean laws are involved with Korean law firms and share profits together. Under the final stage, which is set to begin within five years after the FTA takes effect, U.S. law firms are permitted to form a partnership with Korean law firms and hire Korean lawyers under certain requirements. The recently passed FLCA

permissible, we can expect U.S. and other foreign firms to pursue the credibility represented by these former judges and prosecutors, too.¹⁰⁹

In this article, we have aimed to establish a benchmark for future study of the effects of liberalization and globalization on the Korean market for legal services. We have defined this market broadly, to include not only Korean-licensed lawyers but also others who are crucial to the representation of global corporate clients.¹¹⁰ Rather than limit our inquiry to the physical boundaries of Korea, we took note of the practical extension into Hong Kong, where U.S.-based global law firms have situated their Korea-focused practices during the period when they were barred from practicing on the ground in Seoul.

But these choices of who and what to study complicate the conclusions we can draw. Comparisons among the three groups of lawyers and two sets of firms are not perfect, and we have highlighted these concerns while describing the data. Certain of these differences may fade as firms and individual lawyers feel the influence of shifting preferences in a more competitive market. For example, the distinction in which U.S. law degree is pursued by Korean-licensed lawyers (group 1: the LL.M.) and foreign-licensed lawyers (groups 2 and 3: the J.D.) may become less pronounced. While we cannot predict with certainty the direction of this shift, it likely will be influenced by the new law school and bar examination regime, the willingness of students to immerse themselves in international studies and overseas travel, and the ways in which language expertise may factor into admission decisions, among other things. Fewer seats in Korean law schools may balance the higher bar pass rate and, when combined with more opportunities from foreign law firms now present in Korea, result in the continuation of a significant investment in overseas legal education and licensing. Whether these will remain focused on the U.S., however, is another matter.¹¹¹

The reforms recently undertaken in Korea's legal services market are likely to have significant influences on what matters for lawyers, shaping their choices in pursuing particular experiences and credentials that will lead to opportunity and prestige. These preferences also will take shape from the interaction among Korea's lawyers and law firms with outsiders

provides rules governing the first stage of the Korean legal market opening." Sheppard Mullin, *Korea Passes Foreign Legal Consultant Act*, ANTITRUST LAW BLOG (Apr. 13, 2009), <http://www.antitrustlawblog.com/2009/04/articles/article/korea-passes-foreign-legal-consultant-act-opening-the-countrys-legal-service-market-to-law-firms-in-foreign-countries-that-are-parties-to-effective-free-trade-agreements-with-korea/>.

¹⁰⁹ See DEZALAY AND GARTH, *supra* note 18, at 125.

¹¹⁰ "Legal services" itself thus becomes a potentially contested term.

¹¹¹ See Carole Silver, *Coping with the Consequences of "Too Many Lawyers": Securing the Place of International Graduate Law Students*, 19 INT'L J. LEGAL PROF. 227, 239 (2012) (suggesting a possibility that English law schools may implement a new structure to facilitate international students' qualification, which may in turn reduce interest in U.S. legal education on the part of international students).

that include the foreign-licensed lawyers and U.S.-based law firms included in this study. Our research has captured a snapshot of the period prior to reform of the law school and licensing regime, and before foreign law firms could establish offices on the ground. By studying these preferences and highlighting the consequences of existing policies, we hope to reveal certain of the paths of globalization's influence and provide a foundation for future research.