

## Advancing Korean Law and Society Studies: – International Perspectives on the Korean Legal Profession –

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### 【Abstract】

This essay commemorates the contributions of Professor Emeritus Yang Kun, founder of the Korean Law and Society Association. Professor Yang Kun originally called for the advancement of law-and-society studies in South Korea, emphasizing the need to (1) link law with other disciplines, (2) understand colonial and American influences on Korean legal development, and (3) study the role of the legal profession. This essay surveys the international scholarship that combines these

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elements. Part II provides a contextual survey of the beginning of Korean law-and-society studies from an international perspective. Part III presents and critiques prominent scholarship on the Korean legal profession's role in relation to state and society. Part IV addresses a particular dimension of the legal profession, analyzing the understudied phenomenon of public interest lawyering across legal organizations such as public interest lawyer groups, the bar association, private law firms, and law schools. The essay concludes with a call to advance Korean law-and-society studies on this and related areas.

## I. Introduction

"Law and society" studies made its first modest appearance in South Korea in the 1960s, began more serious discussion in the 1970s, and reached a full-scale showing in the 1980s.<sup>1)</sup> Professor Yang Kun, the founder of the Korean Law and Society Association, explains that Korean scholars who wrote seriously about Korean law-and-society issues during this period did so mostly in the English language, after usually obtaining advanced law degrees abroad (usually in the United States).<sup>2)</sup> The lamentations that Korean law is an understudied area in English-language scholarship, compared to Japan and China, endured for several decades. The words "dearth" and "paucity" crept into the prefaces and introductions of infrequent books on Korean law and society in English, from 1967 to 2000, to describe the lack of attention to Korea.<sup>3)</sup>

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1) Yang Kun, 한국의 <법과 사회>, 기타 [Korean "Law and Society," Etc.], 법사회학 [Socio-legal Studies] (2000), pp. 363-366.

2) Ibid., pp. 363, 365.

However, a definite, traceable lineage of scholarship on Korean law-and-society studies existed at the time, from the contemplations of Hahm Pyong-Choon, Yang Kun, and William Shaw, to those of James West, Lee Chulwoo, and Hahm Chaihark.<sup>4)</sup> In the last two decades, works on Korean law and society have proliferated in both the Korean and English languages.

In the first few decades, law-and-society research on Korea often took a top-down, instrumentalist view of the law. As Yoon Dae-Kyu wrote, "One deep-seated idea about law is that it is an instrument at the state's disposal, not a device to regulate state power."<sup>5)</sup> Tom Ginsburg echoes "Law has been a tool of the rulers, not a constraint on them."<sup>6)</sup>

Most of this scholarship is, of course, appropriate to its time, responding to issues specific to that point in history, such as importations of foreign legal orthodoxies, authoritarianism, emergence of human rights discourse, creation of new legal institutions, and paroxysms about the inadequacies of the legal profession. However, most of this literature did not address those legal actors who mobilized the law, or at least attempted to, in tension with the state or other state-colluding actors like major jaebeol conglomerates, due to their small numbers. Given the transition to toward democratization since the 1987 June Uprising, it is perplexing that law-and-society scholarship on South Korea often did not pay enough attention to newly-empowered legal actors, namely lawyers and civil society organizations that

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3) David Steinberg, *Introduction*, in Hahm Pyong-Choon, *Korean Political Tradition and Law* (1971); Sang-Hyun Song, *Introduction*, in Dae-Kyu Yoon, *Recent Transformations in Korean Law and Society* (2000).

4) Surnames are placed first for Korean names unless frequently published otherwise.

5) Dae-Kyu Yoon, *Law and Political Authority in South Korea* (1991), p. 200.

6) Tom Ginsburg, *Judicial Review in New Democracies* (2003), p. 209.

mobilized the law to advance social causes.

While English-language scholarship on Korean law and society have concentrated on broad notions of legal transformation and legal reform to describe the 1990s and early 2000s, the role of Korean lawyers in mobilizing the law for social causes has not been as fully addressed except for a few studies.<sup>7)</sup> This article aims to update the existing literature on the Korean legal profession as societal actors. Part II provides a contextual survey of the beginning of Korean law-and-society studies from an international perspective. Part III presents and critiques prominent scholarship on the Korean legal profession's role in relation to state and society. Part IV addresses a particular aspect of the legal profession, analyzing the understudied phenomenon of public interest lawyering across legal organizations such as public interest lawyer groups, the bar association, private law firms, and law schools.

## II. The Beginnings of Korean Law-and-Society from an International Perspective

Legal scholar Hahm Pyong-Choon was notably one of the first to explain Korean jurisprudence to an international audience. He was the leading figure of Korean law-and-society studies, having written prolifically on a range of Korean law, politics and culture, including legal history, criminality, property rights, and

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7) For example, Patricia Goedde, *Dissidents to Institution-builders: The Transformation of Public Interest Lawyers in South Korea*, 4 East Asia L. Rev. 63 (2009) and *Public Interest Lawyering in South Korea: Trends in Institutional Development*, in *Rights Claiming in South Korea* (Celeste Arrington and Patricia Goedde eds. 2021); Celeste L. Arrington and Yong-il Moon, *Cause Lawyering and Movement Tactics: Disability Rights Movements in Korea and Japan*, 42 L. & Pol'y, 5-30 (2020).

modernization, not to mention shamanism and Northeast Asia security issues.<sup>8)</sup> His high profile, however, rests on the central tenet that Korean society has traditionally been "anti-law."<sup>9)</sup> His position is that Korean tradition considers "law as synonymous with punishment and nothing more"—that law was never about realizing justice or upholding rights, either in dynastic Korea or during Japanese colonialism when "evasion of law has become almost a way of life among our people. And the necessity of fighting for our national independence against the colonial master necessarily entailed a great deal of law-breaking."<sup>10)</sup>

Some scholars refuted Hahm Pyong Choon's characterization of traditional Korean society as undervaluing law, legal processes and institutions. Historian William Shaw demonstrated the extent to which the state and the people relied on legal processes.<sup>11)</sup> While most Koreans preferred to stay out of criminal investigations for reasons of casting suspicion upon themselves, Koreans of various social backgrounds were adept at turning to civil litigation and petitioning the state during Joseon Dynasty, especially for issues concerning land or slave ownership.<sup>12)</sup> Legal historian Park Byung-ho cites the detailed codification of laws during Joseon Dynasty as a testament that pre-modern Korea governed on the basis of legality.<sup>13)</sup> More recently, historian Jisoo

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8) The two most important collections of Hahm Pyong-Choon's works are in *Korean Political Tradition and Law* (1971) and *Korean Jurisprudence, Politics and Culture* (1986).

9) Hahm Pyong-Choon, *Modernization and the Demand for Social Justice*, in *Korean Political Tradition and Law*, p. 143.

10) *Ibid.*

11) See William Shaw, *Legal Norms in a Confucian State* (1981); see also William Shaw, *Social and Intellectual Aspects of Traditional Korean Law, 1392-1910*, in *Traditional Korean Legal Attitudes* (Bong Duck Chun et al. eds. 1980), p. 24.

12) Shaw, *Legal Norms in a Confucian State*, *supra* note 11, p. 114.

13) Park Byung Ho, *Traditional Korean Society and Law*, in *Korean Law in the Global Economy*

Kim has shown how women during this period also leveraged legal petitions in their favor.<sup>14)</sup> Socio-legal scholar Lee Chulwoo further disputes Hahm's portrayal of law as a monolithic ideology to accept or reject, that the Korean people have been savvy enough to invoke attributes of the legal system most advantageous to them, including during the colonial period.<sup>15)</sup> Though Hahm may have overlooked the deeper intricacies of governance during Joseon Dynasty, he cannot be faulted heavily for providing insight into the legal consciousness of his time, especially the struggles in adapting to Western legal concepts and transplants, and the tendency for law to be imposed from top-down.

Meanwhile, Professor Yang Kun also contested what he terms "the Hahm theses."<sup>16)</sup> Yang found that Hahm too readily accepted the 1960s and 1970s law-and-development studies precept, re-emergent in the 1990s, that Western modern law is necessary to economic development, seemingly at odds with Hahm's original point that legal transplants should be absorbed while taking local customs and needs into consideration.<sup>17)</sup> To develop the study of contemporary Korean law and society, Professor Yang prescribed three areas, or "prescriptives," which he thought deserved more attention.<sup>18)</sup> The first suggestion was to link the field of law with other social science systems (presumably areas like political science, economics, and sociology). The second was to give more rigorous, objective attention to the period of Japanese colonialism

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(Sang-Hyun Song ed. 1996).

14) Jisoo Kim, *The Emotions of Justice: Gender, Status, and Legal Performance in Choson Korea* (2017).

15) Chulwoo Lee, *Talking About Korean Legal Culture: A Critical Review of the Discursive Production of Legal Culture in Korea*, 38 *Korea J.* 45, 55-56 (1998).

16) Kun Yang, *Law and Society Studies in Korea: Beyond the Hahm Theses*, 23 *L. & Society Rev.* 891-901 (1989).

17) *Ibid.*, pp. 897-898.

18) *Ibid.*, pp. 899-900.

and postwar U.S. military influence following the Joseon era. And the final suggestion was to examine the role of lawyers:

Under authoritarian regimes, there are usually two modalities of law: law as an instrument of repression, and law as political manifesto of no real effect. However, there is a third possibility. Law might constrain the ruling power ... It can "mediate" political, social, and economic relations both ways, for and against the ruling power. In this sense, the role of the lawyer has to be reappraised.<sup>19)</sup>

Over the years, Yoon Dae-kyu and James West have respectively contributed to interdisciplinary treatments of Korean law in relation to politics and economy.<sup>20)</sup> Professor Yang's oversight of the Korean Law and Society Association, including its long-standing journal *Beopgwa sahoe* (Law and Society), has also invigorated socio-legal analyses of Korean law, institutions, and culture. As for the pre-colonial and colonial periods, legal historian Marie Seong-hak Kim provides a comprehensive study to understand Korean custom in relation to the reception of modern private law—a reminder to include also the discipline of history to understand Korean legal culture.<sup>21)</sup>

Many scholars have written significantly about Korean legal institutions, the legal profession, and their respective transformations over the last two decades, including but not limited to the judiciary, constitutionalism, gender equality, as well as more substantive matters of the law.<sup>22)</sup> This essay, however,

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19) *Ibid.*, 899.

20) Dae-Kyu Yoon, *Law and Political Authority in South Korea* (1990), James M. West, *A Critical Discourse on Korean Law and Economy* (2002).

21) Marie Seong-hak Kim, *Law and Custom in Korea: Comparative Legal History* (2012); see also *The Spirit of Korean Law* (Marie S.H. Kim ed. 2016), Choi Chongko, *Law and Justice in Korea: South and North* (2005), and Jisoo Kim, *supra* note 14.

proposes to update the law and society literature on the international representations of the Korean legal profession in relation to the state and society, particularly the role of public interest lawyering.

### III. The Third Prescriptive: The Role of Lawyers

Yang Kun's third prescriptive for Korean law-and-society studies is to analyze the role of lawyers in the societal transformation of Korea. Since Yang's call, many legal scholars have analyzed the characteristics and transformations of the Korean legal profession,<sup>23)</sup> such as how the state and the incumbent bar have regulated a small cohort of legal professionals through a highly competitive judicial exam,<sup>24)</sup> the reasoning and political dynamics behind legal education reform,<sup>25)</sup> the extent of the legal profession power vis-à-vis the state,<sup>26)</sup> and more recent

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22) For some representative volumes, see Law and Society in Korea (Hyunah Yang ed. 2013), Chaihark Hahm and Sung Ho Kim, *Making We the People: Democratic Constitutional Founding in Postwar Japan and South Korea* (2015), *Current Issues in Korean Law* (Laurent Mayali and John Yoo eds. 2014), Marie S.H. Kim, *supra* note 21, and also the *Journal of Korean Law*.

23) *Recent Transformations in Korean Law and Society* (Dae-Kyu Yoon ed. 2000), *Judicial System Transformation in the Globalizing World: Korea and Japan* (Choi Dai-Kwon and Kahei Rokumoto eds. 2007), *Raising the Bar: The Emerging Legal Profession in East Asia* (William Alford ed. 2007).

24) Sang-Hyun Song, *The Education and Training of the Legal Profession in Korea: Problems and Prospects for Reform*, and JaeWon Kim, *Legal Profession and Legal Culture during Korea's Transition to Democracy and a Market Economy*, in Alford, *supra* note 23.

25) *Ibid.*, see also Yukyong Choe, *Agencies, Roles and Their Choices: Reform of the Korean Legal Profession from 1995 to 2007*, in *Merging Voices on Korea: Korea's Domestic Policies and Their Influence on Asia* (KEIA, 2011).

26) Yves Dezalay and Bryant Garth, *International Strategies and Local Transformations: Preliminary Observations of the Position of Law in the Field of State Power in Asia: South Korea*, in Alford, *supra* note 23; Yves Dezalay and Bryant G. Garth, *Asian Legal*



representations of the legal profession since legal education reform.<sup>27)</sup>

Of these studies, those by Yves Dezalay and Bryant Garth can be viewed as linking all three of Yang's prescriptives by investigating, (1) from an interdisciplinary perspective involving politics, economics, culture, and internationalization, (2) how colonialism and American models influenced the rule of law "revival" in Korea, as illustrated by (3) the social reproduction of legal elites.<sup>28)</sup> The authors' objective has been to study the relationship between the legal profession and the state in various postcolonial jurisdictions.<sup>29)</sup> In the case of South Korea, they originally find that the legal professionals are privileged but politically disempowered state actors.<sup>30)</sup>

This assessment was true before the advent of legal education and training reform in 2008. South Korea has historically had a very small and tightly controlled cadre of legal professionals, which dates back to colonialism when the Japanese government transplanted its civil law system onto Korean soil. Thus, not only did colonial objectives become the law of the land, but the legal education and training system mimicked its institutional prototype back in Japan. Accordingly, the colonial power initially selected

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Revivals (2010).

27) Chulwoo Lee, *Hegemony, Contestation, and Empowerment: The Politics of Law and Society Studies in South Korea*, 1 Asian J. L. Society 275 (2014); Jae-hyup Lee, *The Introduction of the Law School System and the Structure of the Legal Profession: Status and Prospects*, 68 J. Legal Educ. 460 (2019); JaeWon Kim, *South Korea: Reshaping the Legal Profession*, in *Lawyers in the 21st Century Society* (Richard Abel et al. eds. (2020); Yves Dezalay and Bryant G. Garth, *Law as Reproduction and Revolution* (2021).

28) Dezalay and Garth, *supra* note 26.

29) Dezalay and Garth, *supra* note 27; *Fighting for Political Freedom* (Terence C. Halliday et al eds. 2007).

30) Dezalay and Garth, *supra* note 26. See also JaeWon Kim, *supra* note 24.

Japanese citizens to act as legal professionals and then trained Koreans for the legal field at the Imperial University (now Seoul National University).<sup>31)</sup> After Japanese authorities withdrew from the Korean Peninsula in 1945, the system of containing the size of the legal profession stayed largely intact for the next thirty-five years due in part to the tumultuous periods of the Korean War (1950-53), postwar American occupation, and the transition to Syngman Rhee's presidency. By 1960, the size of the legal profession remained small, just under one thousand, in relative comparison to the population of nearly 25 million.<sup>32)</sup>

President Park Chung Hee retained the small size of the legal profession as he maneuvered to bring legal institutions and its actors under his control. However, after Park's assassination in 1979, Chun Doo Hwan abruptly increased the annual quota of the judicial exam from around 100 to 300 to simultaneously legitimize his regime by implementing a "democratic" measure but also to subvert the existing elite legal corps.<sup>33)</sup> Paradoxically, President Chun's act created more space for people trained in the law who would not become direct employees of the state, but rather private practitioners and also newly minted lawyers partnering with social movements. Reforms to increase the size of the legal population to between 2,000 and 3,000 per year mean that the

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31) In 1910, there were 51 Korean lawyers and 30 Japanese lawyers; in 1920, 105 Korean lawyers and 97 Japanese lawyers; and in 1930, 209 Korean and 154 Japanese lawyers. Park Won Soon, *Yeoksaga ideuleul mujoero harira* [역사가 이들을 무죄로 하리라, History Shall Find Them Innocent] (2003): p. 26.

32) In 1960, there were 296 judges, 190 prosecutors, and 456 lawyers. In 1970, there were 413 judges, 343 prosecutors, and 719 lawyers. Dai-kwon Choi, *A Legal Profession in Trans-formation: The Korean Experience, in* Reorganisation and Resistance (William LF Felstiner ed. 2005): p. 175.

33) Ahn Kyong Whan, *The Growth of the Bar and Changes in the Lawyer's Role: Korea's Dilemma, in* Law and Technology in the Pacific Community (Philip S.C. Lewis ed. 1994), p.120. JaeWon Kim, *supra* note 24, p. 63.

private bar has diversified in its role and political make-up in the last decade.

The growing bar has challenged the assumption that Korean legal professionals are a disempowered elite vis-à-vis the state. This is no longer an accurate representation when taking into account (1) lawyer-turned-statesman, including legislators, presidents, mayors, and heads of ministries and agencies,<sup>34)</sup> (2) the elite alumni network of Seoul National University that sustains legacy families in politics and the corporate sector, including the top private law firms, (3) the internationalized and lobbying powers of the largest law firms, (4) the proximity and longstanding powers of the Prosecutor's Office (within the Ministry of Justice) in relation to the Executive office, (5) the decision-making power of the Constitutional Court justices on state acts (including presidential impeachments), and (6) institutional developments in public interest lawyering.

Dezalay and Garth's conclusions have adjusted over the course of their larger studies on the colonial legacy of legal elite reproduction in Asia and beyond.<sup>35)</sup> Their case study of South Korea was an uneasy fit in their 2010 project, as they found Korea's patterns of legal elites' building of power in the state and the market "paradoxical" given the "least legal investment" from their colonial predecessors, as well as "surprising" in their contribution to social entrepreneurship (mobilizing for social movement causes).<sup>36)</sup> Meanwhile, the authors recognize the

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34) Former presidents Roh Moo-hyun and Moon Jae-in, former Seoul mayor Park Won-soon, and currently "prosecutor-turned-president" Yoon Suk-yeol would be the main examples, among numerous others who run for office or are appointed from law faculties to head agencies, commissions, or executive committees.

35) Dezalay and Garth, *supra* notes 26, 27.

36) Dezalay and Garth, *Asian Legal Revivals*, *supra* note 26, pp. 13, 14, 258.

significant American influence on Korean legal institutions, including corporate law practice, legal education, and public interest law. Relying on scholars of Korean law-and-society, they account for the changes precipitated by legal education reform, noting the expanding influence of lawyers vis-à-vis the state, the private bar, public interest lawyering, and various crossovers within the legal profession in the areas of state, market, and social entrepreneurship.<sup>37)</sup>

It is worth taking a step back to ask whether Dezalay and Garth's narratives about Asian legal revivals, reproductions, and revolution from a postcolonial perspective serve as the most appropriate frame to explain Korea's legal profession. Socio-legal scholar Sida Liu challenges their imperialistic orientation in both theory and methodology, referencing China and Hong Kong as examples that do not fit so easily into a postcolonial frame to explain legal elite patterns.<sup>38)</sup> In fact, he argues whether the legal changes in some postcolonial jurisdictions are rather more about decolonization and that maybe it is time to decenter the elite reproduction approach as countries move away from their colonial past.<sup>39)</sup> This critique would certainly apply to the "paradoxical" case study of South Korea where decolonization is more relevant to the development of the legal profession, especially the priorities of national development, rights protection, and internationalization.

Liu also finds that there is an "implicit imperialistic orientation" in the Euro- and US-centric approach that their project takes, moving North to South while heroizing the US empire in the

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37) Ibid., pp. 137-163 (citing Jae-hyup Lee, Chulwoo Lee, JaeWon Kim, Patricia Goedde, among others, including interviewees).

38) Sida Liu, *Legal Elites and the Fading History of Global Legal Imperialism*, L. & Soc. Inquiry 1-6 (2022).

39) Ibid.

process.<sup>40)</sup> This orientation/orientalism is also apparent when the authors presume that Asian colonial relationships are "the geneses of law in Asia"<sup>41)</sup> without defining or accounting for laws and legal systems that preexisted colonial occupations. Additionally, Liu proposes that "law as revolution" cannot be understood without including the revolutionaries themselves, where both legal and non-legal agents may need to break from the conventional majority and elite patterns to do the actual revolutionizing at a grassroots level.<sup>42)</sup> This point also presents a more interesting line of inquiry as to whether Korea's public interest lawyers break with elite patterns to pursue social causes.

#### **IV. Public Interest Lawyering in Relation to the Bar, Law Firms, and Legal Education**

While some legal scholars and practitioners have addressed the history of human rights lawyering in South Korea, fewer still have deeply explored the transformations of public interest lawyering since the representations of the 1990s. This field of inquiry is ripe for further study. The combined international scholarship relating to the legal profession and its political and social activism are exemplified in the Politics of Rights and "cause lawyering" series by Stuart Scheingold and Austin Sarat; Rights Revolution by Charles Epp; and the comparative project by Terence Halliday, Lucien Karpik, and Malcolm M. Feeley on the "legal complex" (constituting the relations among legal professionals and actors) and political liberalism.<sup>43)</sup> The common denominator among these

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40) Ibid.

41) Dezalay and Garth, *supra* note 33, p. 2.

42) Liu, *supra* note 38.

studies is the assumption that the legal profession's role in relation to state, market, and/or society is essential to understanding political liberalism. Furthermore, rights (or activist) lawyers operate in a dual capacity, advocating for all manners of rights vis-à-vis the state or the market economy, while at the same time being in close proximity to the state as agents of the law.

Halliday, Karpik, and Feeley distinguish their research from Scheingold and Sarat, finding a clear divide between the meaning of political lawyering (for civil rights and political freedoms) and cause lawyering (for all of the other many diversified causes).<sup>44)</sup> This bifurcation could apply to South Korea as well, but given some difference in local labels. Before democratization in South Korea, the small number of lawyers who tried to challenge the authoritarian governments of Park Chung Hee and Chun Doo Hwan were known as human rights lawyers (ingwon byeonhosa). Barely a dozen, they symbolically defended students and laborers who were arrested for protesting against the government and generally advocated for civil and political rights. Rather than being viewed as progressive or liberal, the more likely label by the government or conservative members of the bar was that they were either dissident, left-leaning, or pro-communist. After the June 1987 democratic movement and starting in the 1990s, the term "public interest lawyer" (gongik byeonhosa) began to emerge, reflecting a diversification of social causes beyond civil and political rights

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43) Stuart Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Political Change* (2004); Austin Sarat and Stuart Scheingold (eds.), *Cause Lawyering: Political Commitments and Professional Responsibilities* (1998); Charles R. Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (1998); Halliday et al., *supra* note 29.

44) Halliday et al., *supra* note 29, pp. 490-492.

that were more relevant to a growing middle class, in the areas of consumer rights, disabilities, environmental issues, and gender equality, and (continuing) labor rights.<sup>45)</sup> Public interest law groups began to form in the early 2000s, increasingly attending to the wider needs of the population, including migrants, asylum-seekers, the trafficked, and multicultural families.<sup>46)</sup> Mandatory pro bono service began with an amendment to the Attorney-at-Law Act in 2000, leading some of the top law firms to create in-house public interest law foundations and to publicize their pro bono contributions.<sup>47)</sup> In the last ten years, Korean legal newspapers show significant growth and sustained mentions of public interest law and pro bono activities conducted by lawyers, law firms, and law schools.<sup>48)</sup>

The question then is how public interest lawyers mediate social causes within and between the spheres of state, market, and civil society in South Korea. Are Korean public interest lawyers marginalized state actors, or do they leverage power with close proximity to private law firms, civil society groups, as well as other state and legal institutions? Do Korean public interest lawyers qualify as a homogenous group, or are there extra layers of diversity to consider? Do they occupy a privileged or uneasy space of being both elite and grassroots? Are they indeed legal revolutionaries? This section presents these questions as mainly a proposal for further research.

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45) Goedde, *The making of public interest law in South Korea via the institutional discourse of Minbyeon, PSPD and Gonggam*, in *Law and Society in Korea*, *supra* note 22.

46) Goedde, *Public Interest Lawyering in South Korea*, *supra* note 7.

47) *Ibid.*

48) Based on search results of the phrase "public interest" and "pro bono" in *Beopnyul shinmun* and the *Legal Times* (Nov. 4, 2022).

### 1. Human Rights Lawyers, the Bar, and the State

The connection between rights lawyers and the bar has been closely intertwined from the beginning. Considered the godfather of human rights lawyers, Yi Byeong-nin led both the Korean and Seoul bar associations in the late 1950s and 1960s, guarding the bar's autonomy from the state and codifying the principles of human rights and social justice in the association by-laws.<sup>49)</sup> His death in 1986 motivated thirty lawyers to form Cheongbeophoe to handle politically charged cases involving rights violations, which functioned more publicly under the Human Rights Committee of the Korean Bar Association. This group officially became Minjureul uihan byeonhosa moim (Lawyers for a Democratic Society, or "Minbyeon") after democratic transition in the late 1980s.

Representing less than ten percent of the bar, membership in Minbyeon signaled the progressive political stance of its lawyers. Minbyeon gained a degree of political legitimacy under Nobel Peace Prize recipient President Kim Dae Jung (1998–2003) but precipitated an existential crisis when one of its early members, Roh Moo Hyun, became president in 2003, ushering other Minbyeon members into top state posts.<sup>50)</sup> Both conservative backlash and internal reflections were rampant, including reference to Minbyeon as Gwanbyeon ("gwan" meaning government).

While Minbyeon's history is associated with political or "human rights" lawyering, the interests of its membership reflect increasingly diverse social causes, and thereby encompass "public interest lawyers" as well. With over 1200 members,<sup>51)</sup> members can be found across law firms, public interest law groups, NGOs,

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49) Park, *supra* note 31, pp. 28, 160.

50) Goedde, *Dissidents to Institution-builders*, *supra* note 7.

51) MINBYUN-Lawyers for a Democratic Society, *History* at [minbyun.or.kr](http://minbyun.or.kr) (accessed Nov. 12, 2022).



and government. The emergence and mainstreaming of the term "public interest lawyer" in the last two decades illustrates a larger imagining of what lawyers' rights advocacy can be. Meanwhile, the phrase "human rights lawyer" is making a comeback without the left-leaning connotation of the first and second generations of rights lawyers. This time the title is viewed more synonymously with "public interest lawyer" and strongly conveys one's commitment to human rights issues.

## 2. Public Interest Lawyers' Groups

The first public interest law group, Gonggam, was established in 2003 under the auspices of the Beautiful Foundation with just a few lawyers. Gonggam did not concern itself with the state of democracy, but rather with the state of human rights for minorities. As one of its attorneys declared in its early stage, "Public interest law has nothing to do with revolution."<sup>52)</sup> Gonggam's aim was to represent vulnerable communities whose rights have not been protected while residing in a democratic state, including migrants, refugees, domestic violence victims, people with disabilities, etc. With approximately a dozen attorneys, Gonggam "Human Rights Law Foundation" has served as a model for other public interest law groups such as Huimangeui beop (Korea Public Interest Lawyers) and Advocates for Public Interest Law (APIL). However, not all public interest lawyers or groups can follow Gonggam in size or institutional influence. Public interest lawyering has diversified, including in-house counsel for NGOs and smaller practices of one to three attorneys.<sup>53)</sup>

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52) Interview with G181207, Dec. 18, 2007, Seoul, Korea.

53) This is of course alongside longstanding institutions known for their rights lawyering and litigation, such as the Korean Confederation of Trade Unions (KCTU) and the Korea Federation for Environmental Movements (KFEM).

Additionally, Gonggam attorneys not only litigate but also actively network and institution-build to expand the field of public interest lawyering, such as with private law firms, bar associations, NGOs, and law schools.

### 3. Private Law Firms and Pro Bono

The Attorney-at-Law Act and the Korean Bar Association regulations were amended in 2000 to include an annual public service requirement of 30 hours, setting into motion expanding pro bono practices by private law firms. Prior to this, a handful of small to medium-sized firms with Minbyeon members in top management were known for their public interest orientation, such as Sejong, Shimin, Hangeol, and Duksu. Larger firms such as Bae Kim & Lee and Jipyong LLC also had partners who pursued public service projects and wanted to expand pro bono in-house, thereby creating separate legal entities, Dongcheon Foundation and Duroo, respectively. At the behest of Gonggam attorney Yeom Hyeong-guk and other public service-minded partners, all the top ten law firms now have a pro bono center and are part of the Law Firm Public Interest Law Network started in 2016.<sup>54)</sup> This trend is growing among smaller-sized firms as well. As is common among US corporate law firms, pro bono service is not just a professional ethic but a means to balance their profiteering image with one of social responsibility.<sup>55)</sup> Bae Kim & Lee and Jipyong have respectively employed the languages of "law firm's social responsibility (LSR)" and "social value management" in relation to their public interest law work.<sup>56)</sup>

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54) Goedde, *Public Interest Lawyering in South Korea*, *supra* note 7.

55) Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. Rev. 1 (2004).

56) BKL Pro Bono Committee, [bkl.co.kr/law/society/law\\_society.do?lang=en](http://bkl.co.kr/law/society/law_society.do?lang=en) (visited Nov. 17, 2022), Jipyong LLC, "Social Value Management," [jipyong.com/en/csr/csr\\_policy.php](http://jipyong.com/en/csr/csr_policy.php) (visited Nov. 17,

Through entities like Dongcheon and Duroo, full-time public interest lawyers and private lawyers collaborate on pro bono cases. Depending on the issue at hand (e.g., disabilities, migrant and refugee assistance), attorneys from public interest law groups, law firms' public interest law centers, NGOs, and regular law firm practice (including Minbyeon members) converge and pool their knowledge and skill set, leveraging big law firm names and their funding when necessary to mobilize the law, whether on cases, legal drafting, petitions, amendments, or lobbying.<sup>57)</sup> Also a younger network of public interest lawyers, Han Madang, gathers to discuss cases and legal mobilization strategies, thereby accumulating and passing on collective knowledge to a newer generation of public interest lawyers.<sup>58)</sup>

#### 4. Legal Education

Law schools also qualify as sites of public interest lawyering through clinical legal education, externships, public service graduation requirements, and public interest law student associations. Many of the major public interest law organizations mentioned above are involved with law schools to provide externships, guest lectures, or collaborate with law school clinics.<sup>59)</sup> For example, Gonggam and KPIL annually offer short human rights education programs for students and practitioners. Dongcheon Foundation has proactively worked with legal clinic programs at different law schools, while Gonggam attorneys teach as practitioners in the clinical legal education program at Seoul National University.

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57) Goedde, *Public Interest Lawyering in South Korea*, *supra* note 7, pp. 185-188.

58) *Ibid.*

59) *Ibid.*, pp. 188-189.

The centrality and dominance of Seoul National University cannot be overlooked in recent iterations of public interest law. It is unsurprising that most lawyers gravitate to their alma mater given that the vast majority graduated from SNU Law College and the Judicial Research and Training Institute during the pre-reform period as well as the sustained number of SNU law graduates post-legal reform. This includes public interest lawyers and would explain the involvement of Gonggam attorneys to develop and participate in SNU's clinical education program for example. A clinical professor at SNU asserts that the clinicians carry "an especially heavy burden to promote a public interest mentality" so that they produce law graduates "deeply committed to public interest and human rights."<sup>60</sup> The intertwined sense of responsibility and loyalty is understandable, yet it demonstrates the power of one institution to shape a still elite discourse of public interest law. While legal education reform was initiated in part to diversify the legal profession, the continuing dominance of SNU prestige and its alumni network illustrates that the current system still perpetuates certain patterns of elitism,<sup>61</sup> even in public interest law. Other narratives about public interest lawyering coming from outside the SNU-initiated circle deserve further exploration and amplification.

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60) Stephan Sonnenberg, *The Law Clinics at SNU School of Law*, 20 J. Korean L. 89, 129 (2021).

61) Michelle Kwon, *Legal Education Reform: Towards a More Diverse Profession?* 24 Inha L. Rev. 349 (2021).

## V. Conclusion

Korean law-and-society as a field stands ready for the next generation of socio-legal scholars. Beyond the societal context of the legal profession, other issues involving people in relation to the law deserve more pressing attention, such as access to justice, legal aid, professional ethics, and non-constitutional forums like the National Human Rights Commission and the National Ombudsman. For example, "legal opportunity structures" showing how citizens are more able to access the court system via streamlined litigation channels and the availability of public interest lawyers have been studied.<sup>62)</sup> But is it enough? Mobilizing the law for minorities, including gender, disabilities, citizenship status, age, and intersectional identities becomes more important to study, especially from their vantage points of whether the law does indeed serve them. For example, understanding the differences in legal opportunities and costs for the North Korean defector community, especially women and youth, is long overdue. The relationship between individual citizens and legal providers in urban versus rural areas could use deeper comparative analysis. The motivations, impact, and contests of various lawyering groups (e.g., private law firms, in-house counsel, foreign consultants, and accountants) in shaping international trade and economic policies are also understudied.

Perhaps the next "prescriptive" is simply to keep Korean law-and-society studies institutionally sustainable, both domestically and internationally, so that the next generation of scholars exists to study and comprehend the dynamics of law and

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62) Celeste Arrington, *Rights Claiming through the Courts*, in *Rights Claiming in South Korea*, *supra* note 7.

society. The current Korean legal education system is not well placed to produce this cohort under its practicum-and-bar exam orientation, except for perhaps graduate law programs that need to promote this potential area of research and study more effectively. Meanwhile, socio-legal scholars will instead have to come from other disciplines such as sociology, political science, social welfare, and gender studies. There will be a cost to not having legally training academics continue Korean law-and-society studies, so it will be all the more vital to preserve space within the law school system to train future socio-legal scholars.

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국문요약

## 법과 사회 연구의 발전

— 국제적인 관점에서 본 한국의 법률전문가 집단 —

Patricia Goedde

이 글은 법과사회이론학회 창립자인 양건 명예교수의 공헌을 기리기 위한 것이다. 양건 교수님은 당초 (1) 법을 다른 학문과 연계할 필요성, (2) 일제 강점기와 미국이 한국 법률 발전에 미치는 영향을 이해할 필요성, (3) 법조계의 역할을 연구할 필요성을 강조하며 한국 법사회학의 발전을 요구했다. 이 글은 이러한 요소들을 결합한 국제 문헌을 조사한다. 제2부에서는 국제적인 관점에서 한국 법사회학 연구의 시작에 대한 맥락적 조사를 제공한다. 제3부는 국가 및 사회와 관련하여 한국 법조계의 역할에 대한 저명한 문헌을 제시하고 비평한다. 제4부는 공익법률단체, 변호사협회, 법률사무소, 로스쿨 등 법조계 전반에 걸쳐 제대로 연구되지 않은 공익변호 활동을 분석한다. 그리고 한국법과 사회에 대한 보다 포괄적이고 미묘한 국제적 관점을 제공하기 위해 관련 분야에 대한 한국 법사회학 연구를 진전시킬 것을 촉구하는 것으로 마무리된다.



### ▶ 페트리샤 게디

법과 사회, 법조계, 공익변호사, 프로보노, 대한민국