

CONFLICT OF INSTITUTIONS:  
FOREIGN PORTFOLIO INVESTMENT AS AN IMPETUS FOR  
LEGAL EDUCATION REFORM IN KOREA

by

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### **Abstract**

In 2004, the Supreme Court of Korea endorsed a plan to completely restructure the country's legal education system from an undergraduate, formalist one to a graduate-level, "American-style" law school system. However, this plan was just the last of a series of similar proposals since 1995, each of which was rejected by the judiciary and Korean legal community as a whole. By providing historical and contextual evidence, this paper puts forward the argument that the Neoliberal reforms of the 1990s succeeded in attracting foreign portfolio investment, but had a limited impact on Korea's longstanding social and legal institutions. Foreign investors did not share the same informal norms or assumptions with their domestic counterparts, causing a variety of conflicts in the Korean financial system. As foreign portfolio investment continued to rise and peaked in 2004, these issues intensified and created demand for greater versatility in the Korean legal profession to help resolve some of these conflicts, making education reform inevitable. Thus, the Korean experience affirms the importance of society's institutional framework in the development of its legal system and illustrates how an already established system can evolve in response to major political and economic changes.

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## I. Introduction

The Republic of Korea today stands as a bulwark of democracy and Neoliberalism best known for its pop music, technological advancement, and automobile industry. One could be forgiven for forgetting that the foundations of modern Korea were built in the context of authoritarianism. First the Yi Dynasty (1392-1910), then Japanese colonial rule (1910-1945), and then a succession of dictatorships (1948-1987) have all established and reinforced many of the institutions that some development theorists have hailed as crucial in the country's rapid development.

But then, in the 1980s and 1990s, Korea underwent a series of transformations that uprooted this pattern of political repression and placed in its stead a working presidential democracy. This new political structure then sought to reshape the country's economic institutions by actively pursuing Neoliberal reforms. As defined by North (2003), "institutions" consist of three elements: formal rules, informal norms, and the enforcement characteristics of both. Formal rules include laws and regulations and are characterized by being specifically and clearly defined, often explicitly written out. Informal norms, on the other hand, are more nebulous and are simply "the way of doing things." They include social etiquette, beliefs, family values, and so on. A critical aspect of both rules and norms are how they are enforced, which, in the case of the former, would be determined by the legal system.

In the span of just two decades, Korea switched from authoritarian to democratic and from state-interventionist to progressively market-driven. One might assume that these developments signaled a comprehensive shift in Korea's institutional matrix. But, while the government did embark on a frenzy of formal rule changes in the late 1990s, it is difficult to

believe that the social norms and beliefs in a country as old as Korea could have shifted so quickly. And indeed, these changes were the product not of some sort of social revolution in Korea, but rather of intentional government initiatives.

These top-down reforms have continued into the 21st century. In 2007, the Korean legislature passed a bill adopting an “American-style” law school system, and over the following ten years, the old legal education system was phased out. But, here too, it is not entirely clear whether these reforms were caused by institutional changes in Korean society or even just the legal community. In fact, many academics and legal professionals opposed — and continue to oppose — the reforms on the grounds that they were fundamentally incompatible with Korean culture, social norms, and legal tradition.

This paper develops the thesis that the economic liberalization after the political transition of the 1980s and financial crisis in 1997 only had a limited effect on Korea's long-standing social and legal institutions. However, it did succeed in causing an influx of foreign portfolio investors, who did not necessarily share the institutional background or social assumptions of domestic actors in the Korean economy. Because of this institutional gap, the financial system faced information asymmetry and agency problems. While in some other countries, business lawyers play an important function in resolving these sorts of issues, the original, formalist legal education system in Korea did not promote this kind of lawyering.

Thus, two fundamental claims are made. First, the entrance of foreign investors led to an institutional conflict within the Korean financial system. Second, the problems caused by this conflict have been a driving factor behind Korea's recent legal education reforms, potentially making them inevitable.

The remainder of the paper is structured as follows. Section II reviews Korea's economic development from 1945 to the present day, highlighting the country's rapid economic growth under the developmental state and the Neoliberal reforms following the Asian Financial Crisis in 1997. Section III provides an overview of Korea's legal system, from the imposition of the German civil legal tradition by Imperial Japan to the Graduate Law School Act of 2007. Section IV provides an analysis of the institutions behind Korea's economic and legal development and how they may conflict with foreigner investors' expectations. Finally, Section V discusses the potential of an "American-style" legal education system to bridge some of the institutional rifts present in Korea today.

## **II. Economic Development**

### *Developmental State (1945-1980)*

In the wake of the Korean War (1950-1953), what remained of the Republic of Korea was left with the unenviable task of rebuilding not only its economy, but society as a whole. The conflict, one the most destructive in history, had decimated the Korean population, and the majority of those that had survived had been displaced. Much of what urban and industrial infrastructure the country had inherited from before the war had been destroyed. Needless to say, with barely any formal economy left to speak of, South Korea had one of the lowest GDP per capita in the world.

In spite of these bleak circumstances, the following decades saw the once-impooverished nation dramatically transform into one the largest, vibrant economies in the world. At the helm of this rapid development was Park Chung-Hee, a military leader who had seized effective

control over the government in 1961 and was formally elected president in 1963. Having served as a lieutenant in the Japanese puppet-state of Manchukuo and later as a constabulary officer in Korea under U.S. occupation, Park was influenced by both Imperial Japanese militarism and American economic principles as he implemented ambitious plans to modernize the still war-torn nation. His economic strategy, described as “guided capitalism,” was to establish a paternalistic system in which the government both disciplined and encouraged certain sectors or private enterprises through strict but transparent capital control policies.

The Park regime achieved this by seizing control over the banking sector while restricting capital inflows, effectively forcing firms to borrow from government-owned financial institutions. The government then leveraged its position as the sole provider of credit to pursue certain industrial policies, which it communicated to firms by changing the requirements for receiving loans. Specifically, because the Korean government sought to encourage exports to drive the country’s development, Korean creditors granted funding to sectors or firms based on export performance rather than on profitability or corporate governance practices.

This export-based credit strategy succeeded in “guiding” the Korean economy to develop in specific ways, but also had two unintended consequences. First, with credit easily accessible to them, company founders had little incentive to sell equity and instead secured their control by distributing shares to their relatives or close confidants. Second, because the largest Korean firms often had the greatest ability to expand their operations in response to changing industrial policies, the Korean economy gradually came to be dominated by family-run conglomerates known as *chaebol*.



*Post-Developmental State (1980-1997)*

Nearing the end of the Park Chung Hee regime in the late 1970s and the subsequent rise of his successor Chun Doo Hwan, the Korean population became increasingly vocal against authoritarian rule. Social unrest reached a boiling point in 1980, when government forces opened fire upon student protestors in Gwangju, leading to an armed uprising by the local population. Though the uprising was brutally quelled, the shock of the incident ultimately convinced Chun to gradually dismantle the autocratic systems put into place by his predecessor and prepare for democratic elections.

The scope of reform, however, was not confined to the political arena. With the Korean economy growing into one of the leading exporters in the world, the Korean government sought to liberalize the economy by lifting restrictions on foreign investment into the Korean capital market and privatizing several major banks. After Chun stepped down in 1987 and Seoul successfully hosted the 1988 Olympic Summer Olympics, the country eagerly pursued further Neoliberal reforms in part to meet the membership requirements of the Organisation of Economic Cooperation and Development.

With greater access to foreign capital markets and relatively lax regulatory environments, Korean firms, still heavily reliant on debt, now had greater access to alternative sources of credit from abroad. Though the government restricted *chaebol* ownership over Korean commercial banks, many firms established or acquired merchant banks, which were relatively unregulated, to tap into the international credit market. The *chaebol* then proceeded to finance their long-term projects using cheaper foreign short-term debt, making the Korean economy acutely susceptible to external shocks. Such a shock occurred in 1997.

*Financial Crisis & Reform (1997-1998)*

The 1997 AFC revealed structural weaknesses within the Korean development model, not least of which the monopolistic behavior of the *chaebol*. The public, and thus the newly democratized government, was forced to essentially balance two economic groups: Korean conglomerates that behaved monopolistically but were nonetheless Korean, and foreign investors who championed pro-market reforms but were nonetheless foreign. Neither enjoyed universal approval from the Korean public by any stretch, and throughout the post-crisis era, antagonism for either group was split among party lines.

At the onset of the crisis, the Kim Dae Jung administration rode the political momentum of the financial crisis to push for sweeping financial reforms, especially those that targeted the *chaebol*. Specifically, the government imposed new corporate governance rules and strengthened minority shareholder rights in hopes to encourage fiduciary responsibility in Korean firms and thereby weaken the grip of *chaebol* families on management and shareholder decisions. In addition, a new financial regulatory agency called the Financial Supervisory Commission (FSC) was formed as a quasi-independent branch of the Ministry of Finance & Economy (MOFE).

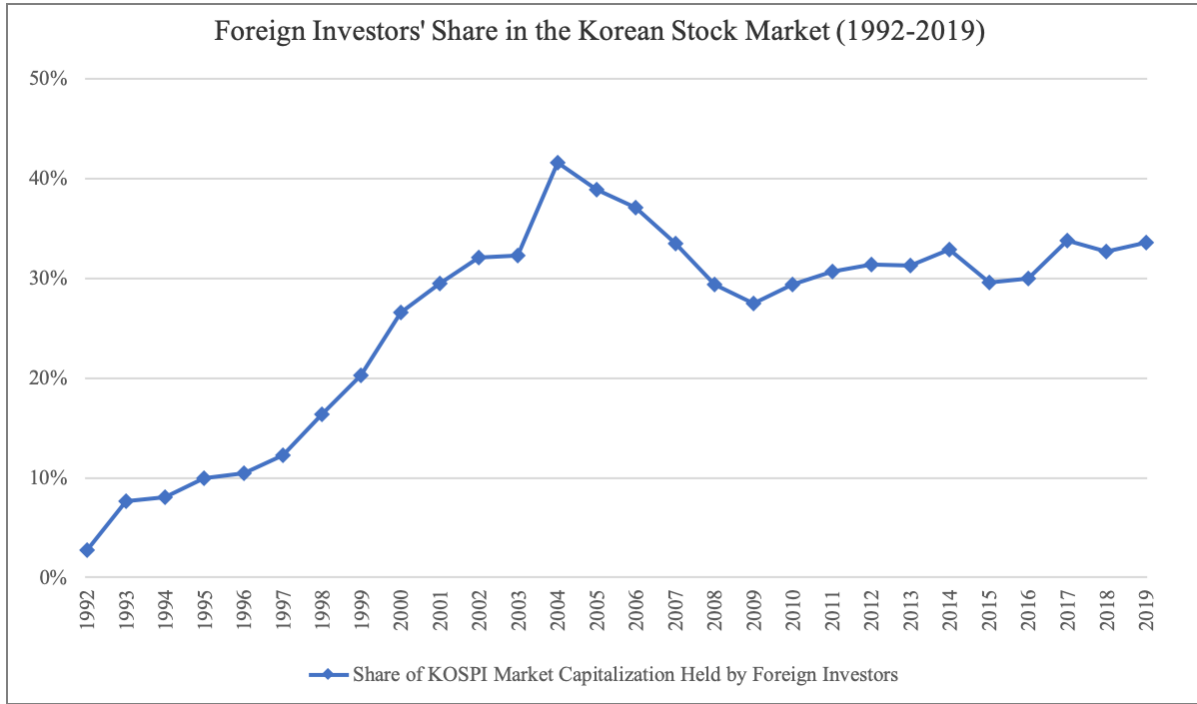
While these policy changes were, in some shape, floated by progressive parties even before the crisis, they were and still are commonly associated with international foreign institutions such as the IMF, whose emergency funds were contingent upon the successful implementation of these structural reforms. The conditionality of the IMF loans fueled speculation from conservative groups, including *chaebol*, that Kim's reforms were the product of foreign intervention in Korea's domestic affairs.

Though this political backlash did not completely stop Kim's reforms from being put into place, it did prevent the complete uprooting of the old economic system. Some *chaebol* such as Daewoo were allowed to fail while others were forced to sell or trade their subsidiaries and assets, but overall, large family-run conglomerates remained prominent figures in the Korean economy.

#### *Post-Crisis (1999-present)*

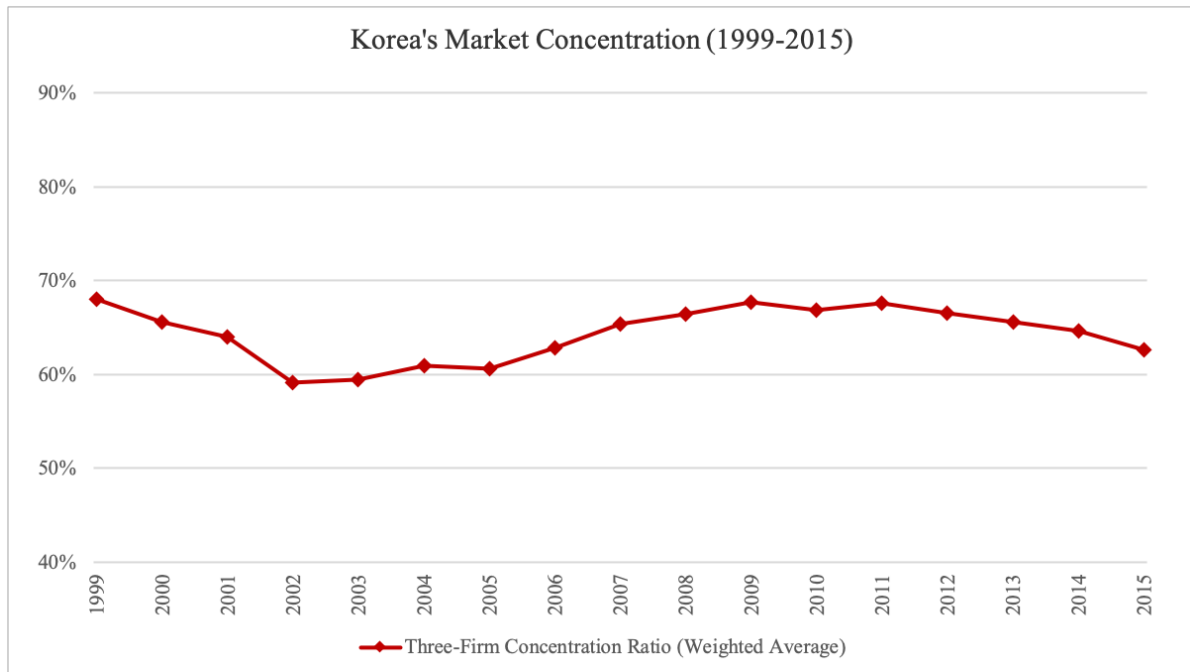
Despite being one the hardest hit by the crisis, the Korean economy sharply rebounded in 1999. By tightening corporate governance laws, increasing transparency, and strengthening the legal system, reformers sought to encourage foreign investment while dismantling the dominance of oligarchic *chaebol*, but to mixed results. As shown in Figure 1, the proportion of Korean equity held by foreign investors has rapidly increased since 1992, accelerating through the AFC and remaining at elevated levels thereafter. Meanwhile, Figure 2 illustrates the weighted average three-firm concentration ratio of Korean markets somewhat improved in the years after the AFC, from 68% in 1999 to 59.2% in 2003, only to steadily return afterwards.

Figure 1



Source: Korean Exchange (KRX)

Figure 2



Source: Korea Fair Trade Commission (KFTC)

### III. Legal Development

#### *Civil & Customary Law in Colonial Era (1905-1945)*

Korea's modern legal history began in the context of foreign intervention. As with other pre-modern East Asian societies, Korea under the Yi Dynasty (1392-1910) lacked comprehensive, codified private law. Under pressure from foreign powers, the Korean government made earnest attempts to modernize its legal system along Western lines in the 1880s and 1890s. However, due largely to the chaotic geopolitical situation of the region and the precipitous decline of the dynasty, these early attempts bore little fruit before becoming a protectorate of Imperial Japan in 1905.

Beginning in 1906, the Japanese resident-general of Korea, Ito Hirobumi, attempted to introduce a modern legal system modeled after Japan's, itself based on the German civil system. To oversee this project, he invited Ume Kenjiro, one of the principal Japanese legal scholars of the Meiji Era and major contributor to Japan's first civil code. As he had in Japan, Ume attempted to incorporate local customs into the formal law, codifying social norms and rules whenever possible and legitimizing informal practices as valid, albeit secondary, law.

Ume's vision, however, had assumed that Korea would remain legally independent. After annexing Korea in 1910, Imperial Japan shifted to a more aggressive and impositional approach toward reforming the colony's legal system along Japanese lines. However, customary law continued to play a large role in colonial jurisprudence, especially in tort cases or property disputes between Koreans.

*Legal System Under the Developmental State*

After the withdrawal of the Japanese in 1945 and American forces in 1948, the newly founded Republic of Korea initially maintained the colonial legal system. But, with the Korean War breaking out just two years later, the judicial system had little chance to establish itself. Even after the war ended in 1953, political turmoil plagued the war-torn nation, ultimately prompting the military, led by Park Chung Hee, to seize control in 1961.

Under Park's administration, the Korean judiciary served less as the defenders of the rule of law and more as maintainers of the status quo. Despite keeping the visage of democratic leadership, Park effectively dominated the government, keeping lawmakers and judges in line through intimidation. Ultimately, he would formalize his control by declaring martial law in 1972 and dissolving the National Assembly before, in 1973, revising the Korean Constitution to do away with presidential term limits and formalize his emergency powers.

Under the so-called Yushin Constitution, the already weakened judiciary found itself paralyzed. Not only did judges risk their jobs and possibly their lives if they ruled against the interests of the executive, but they were also constrained by the prevailing legal institutions of the time. Specifically, the emphasis on legal formalism in adjudication by the German civil legal tradition constrained Korean judges' ability to incorporate naturalist or normative arguments in their rulings. Thus, the Korean courts were obligated to uphold the Yushin Constitution and the laws made in accordance to it.

The legal education system, moreover, reflected this formalist paradigm. Each stage in one's legal training, from undergraduate study, to bar examination, and then professional training under the Supreme Court's supervision, all reinforced the concept of positivistic legal formalism,

serving less to encourage legal activism and more to produce “functional bureaucrats” (Kim 2012).

### *The NJE-JRTI System*

In spite of several constitutional changes and the rise and fall of authoritarian rule, the original Korean legal education system had remained relatively true-to-form since Korea’s liberalization in 1948. The system was defined by two major barriers to entry: the National Judicial Examination (NJE) and the Judicial Research & Training Institute (JRTI). The state-administered NJE tested examinees’ knowledge of Korean statutory law and legal principles, ensuring that successful examinees have a strong understanding of the legal system before receiving more practical training in the JRTI. Though there were no formal prerequisites to take the NJE, most examinees studied law as their undergraduate major, taking courses that generally were geared toward preparing students for the NJE through rote memorization of legal statutes, principles, and court reasoning, but little in terms of practical training.

Based on their exam scores, a minute fraction of applicants — a mere 1.8-6.5% from 1993 to 2016 — would be accepted into a mandatory, two-year program at the JRTI, managed by the Supreme Court. There, students would be trained in more practical skills and have the opportunity to take up clerkships and, after completing the program, would then be licensed to practice law on their own. However, unlike most law school graduates in the United States, the Korean legal professionals generally began their careers in public service as judges or prosecutors, only practicing as private lawyers later, after gaining experience and connections.

The students who had not passed the NJE would often take jobs as non-practicing legal “counselors.”<sup>1</sup>

This system had several consequences. First, while the prestige of the legal profession attracted many young Koreans to the field, the stringent standards imposed by the NJE and JRTI restricted opportunities for prospective students and the supply of lawyers in general. While selectivity presumably would ensure higher quality of legal practice, critics have argued that rejecting more than nine out of every ten students, many of whom invested considerable time and resources into studying law, excessively restricted job opportunities and supply of lawyers in the legal services market.

#### *The Graduate Law School Act*

As Ohnesorge (2007), the legal system in Korea only began to experience significant change after the country had experienced its fastest growth period and was subject to intense international scrutiny after the Asian Financial Crisis. Table 1 outlines the history of Korea’s legal education reforms.

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<sup>1</sup> The conventional translation for these non-practicing legal professionals is “lawyers,” as opposed to “attorneys-at-law” or “attorneys,” who are barred and can represent their clients in court. In the United States, the terms “lawyer” and “attorney” are used interchangeably presumably because most American lawyers are barred, but the Korean words for “attorney” (*byeonhosa*) and different types of “lawyers” (e.g. *byeollisa* or *nomusa*, meaning patent lawyers and labor lawyers, respectively) are not synonymous. To avoid confusion, non-barred Korean legal professionals will be referred to specifically as “legal counselors” in this paper.



Table 1

Timeline of Korea's Law School Reform	
1995	Kim Young-sam's Globalization Committee proposes replacing the NJE-JRTI system with a graduate-level law school system. The idea is met with backlash from the legal community, ultimately resulting in a compromise to simply raise JRTI acceptance quotas.
1998	Kim Dae-jung's New Education Unification Committee again floats the idea of legal education reforms but fails to get any traction.
1999	Seeing the response to the NEUC, the Judicial Reform Facilitation Committee forwards a partial reform of the old system, maintaining the NJE while replacing the JRTI. This proposal also fails.
2003	Now under the Roh Moo-hyun Administration, the Judicial Reform Committee reopens discussions of education reform, offering three plans. The most extreme was the Law School Plan.
2004	The JRC votes in favor of the Law School Plan, and in the same year, Korean Supreme Court endorses it.
2007	The National Assembly passes the Graduate Law School Plan.
2009-2017	The NJE-JRTI system is phased out. The last NJE is administered in 2017.

The first earnest attempt was made in 1995 under Korea's first progressive president, Kim Young-sam (1993-1998). Seeking to increase Korea's international competitiveness and political role, Kim touted *segvehwa*, literally "globalization," as his government's overarching objective.<sup>2</sup> Thus, early proposals for structural legal reforms were made in the context of larger reform initiatives.

However, these reforms faced considerable opposition from the legal community, who feared such fundamental changes would undermine their status, decrease the overall quality of

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<sup>2</sup> While it literally translates to "globalization," *segvehwa* was more Korea-centric in the sense that it entailed promoting Korea's status in the international economy and community while retaining its national identity. For more information, read Gills & Gills (2009).

legal professionals, and increase competition. Moreover, critics pointed to the institutional differences between Korea and the United States. They argued Korea's Confucian roots and German-inspired civil law system are incompatible with the American Socratic teaching method and common law tradition. For instance, whereas American law schools encourage students to question and debate, Korean society as a whole emphasizes conformity and student subordination to their instructors. Therefore, an American-style legal education system would be out of place in the Korean context. Further details on these objections will be discussed in the next section.

Kim Young-sam's successor, Kim Dae-jung, would try again to initiate legal reforms, this time through the New Education Unification Committee in 1998 and later, the more specialized Judicial Reform Facilitation Committee in 1999. The latter set forth the idea of a sort of hybrid system, in which the NJE would remain but the JRTI would be replaced by a graduate-level university law school program. This idea, however, failed for much the same reason as previous attempts.

Given the Supreme Court's position as gatekeepers to the legal profession through the JRTI, no drastic legal education reforms could be made without the judiciary's support. Thus, despite repeated attempts by successive presidential administrations, it would not be until 2005 when reforms, dubbed the Graduate Law School Act (GLSA) would finally be approved by the Supreme Court and passed by the National Assembly in 2007.

#### IV. Institutional Conflicts

The success of the Korean developmental state has often been credited to pre-existent institutions of Korean society, particularly the Confucian concepts of filial piety, social hierarchy, and informal moral obligations. Moreover, as discussed above, Korean leaders such as Park Chung Hee were better able to wield the law to achieve their economic objectives partly because the civil legal tradition limited Korean judges' abilities to challenge the established order.

However, as focus shifted from economic growth to liberalization, the synergy between Korea's economic, social, and legal institutions faltered. Not only did the now-democratized government, alongside IFIs, implement structural reforms in the Korean economy, the ensuing influx of foreign portfolio investors clashed with the family-centered model of Korean corporate governance. Given how quickly these changes unfolded, Korean social norms had little time to adapt to the new regulatory and financial environment. Thus, the same, deep-rooted institutions that had once supported the country's incredible economic growth now impeded the development of an open, market-oriented economy in Korea.

The sequence of these events appears to run counter to the expectations of law and development economists. In their seminal paper, *Law and Finance*, La Porta et al. (1998) posit that a country's legal tradition (e.g. common law versus German civil law) can affect the composition of a country's financial system. According to their study, common law countries tend to be more market-friendly than civil law countries largely because common law systems generally provide greater investor protections. Other studies have come to similar conclusions. Based on time-panel data on 99 countries, Hoon et al. (2012) show that common law systems

tend to attract foreign portfolio investment (FPI) due to, among other things, their tendency to promote market-friendly regulations. And yet, Korea has promoted foreign investment while retaining its civil legal system and informal norms. In fact, rather than a certain legal system attracting greater foreign portfolio investment as empirical studies suggest, it seems that greater foreign investment has caused social strains that necessitated legal reforms in Korea.

However, the Korean experience is not surprising from a New Institutional Economics perspective. North (2003) argues that of the three components of a society's institutional matrix — formal rules, informal norms, and enforcement characteristics — only formal rules can be intentionally changed, but doing so without paying ample attention to that society's "background and cultural heritage" can create conflict between the new formal rules and old informal norms. In Korea, this conflict manifested itself in tensions between foreign portfolio investors, who entered Korea after market-oriented rule changes, and domestic managers and investors, who inherited the Korean cultural institutions.

### *Foreign and Domestic Tensions*

#### *Asymmetric Information*

Empirical studies suggest that domestic actors are generally better able to navigate and establish relationships within the institutional framework of a country than foreign investors. As a result, the distribution of information tends to vary across investor groups, putting disconnected foreigners at a disadvantage. Leuz et. al (2010) find that the prevalence of certain informal and legal institutions such as family-centered business structures and the civil legal system may cause information asymmetry issues and discourage foreign investors from entering the country.

This was especially true in Korea, where Confucian norms emphasized personal relationships, social hierarchy, and above all, the importance of the family-unit. These norms had a profound impact on how corporate organizations were structured and how business is conducted. Especially in the *chaebol*, the founders of Korean firms and their families dominate both management and shareholder decisions. Choe et al. (2005) find that asymmetric information negatively affects foreign investors' returns in Korea compared to that of individual domestic investors, on average.

#### *Fiduciary Duties*

As mentioned before, under Park Chung Hee's administration, the government fostered Korea's export-driven growth by extending credit to firms in targeted sectors based on their export performance. This system, however, promoted the consolidation of early Korean firms into family-centered conglomerates known as *chaebol*. Before the financial crisis, the founders of the *chaebol* also were the largest shareholders in their firms. Meanwhile, the majority of the remaining shareholders generally had close ties with the founders and were therefore less likely to question management decisions.

Given regular state intervention in the economy, one may assume that regulations would have been put into place to check the rise of powerful tycoons. However, beyond incentivizing them to expand in certain ways, Park's government seemed relatively uninterested in the internal corporate governance of private enterprises. If anything, the *chaebol* reflected the marriage of Korean Confucian family values with private enterprise that Park, and South Korea as a whole,

sought. Not only was upper management and ownership dominated by family-units in these firms, but the firms themselves kindled a sense of familial loyalty in their employees.

Thus, the institutional framework in Korea was very different than that of foreign investors, especially those from outside East Asia. In particular, the concept of managers having a fiduciary duty to shareholders would have seemed counterintuitive to Korean firms. The founding families generally controlled both management and the majority bloc of shareholders, making fiduciary duties superfluous at best. Even after regulations requiring corporate management to be brought in from outside the firm were put into place, many *chaebol* families responded by installing confidants as “outside” managers.

Given these institutional challenges in the financial market, the Korean government sought to strengthen minority shareholder rights in the aftermath of the 1997 crisis, but derivative litigation rates remained low. One of the main explanations forwarded was the lack of lawyers capable of handling these kinds of corporate disputes. The formalist legal education system, the argument goes, had prepared lawyers in applying legal statutes and principles as arbitrators and mediators, but not in managing the complex negotiations involved in derivative suits. It stands to reason, then, that as investors in the Korean financial market diversified since the 1990s, the demand for changes in the country’s legal curriculum continued to rise.

## **V. Legal Education Reform: A Solution?**

As illustrated by Korea’s legal development, the role of lawyers in an economy varies across time and different social contexts. Before the legal education reforms of 2007, one key difference between Korean lawyers and their American counterparts was that while the former

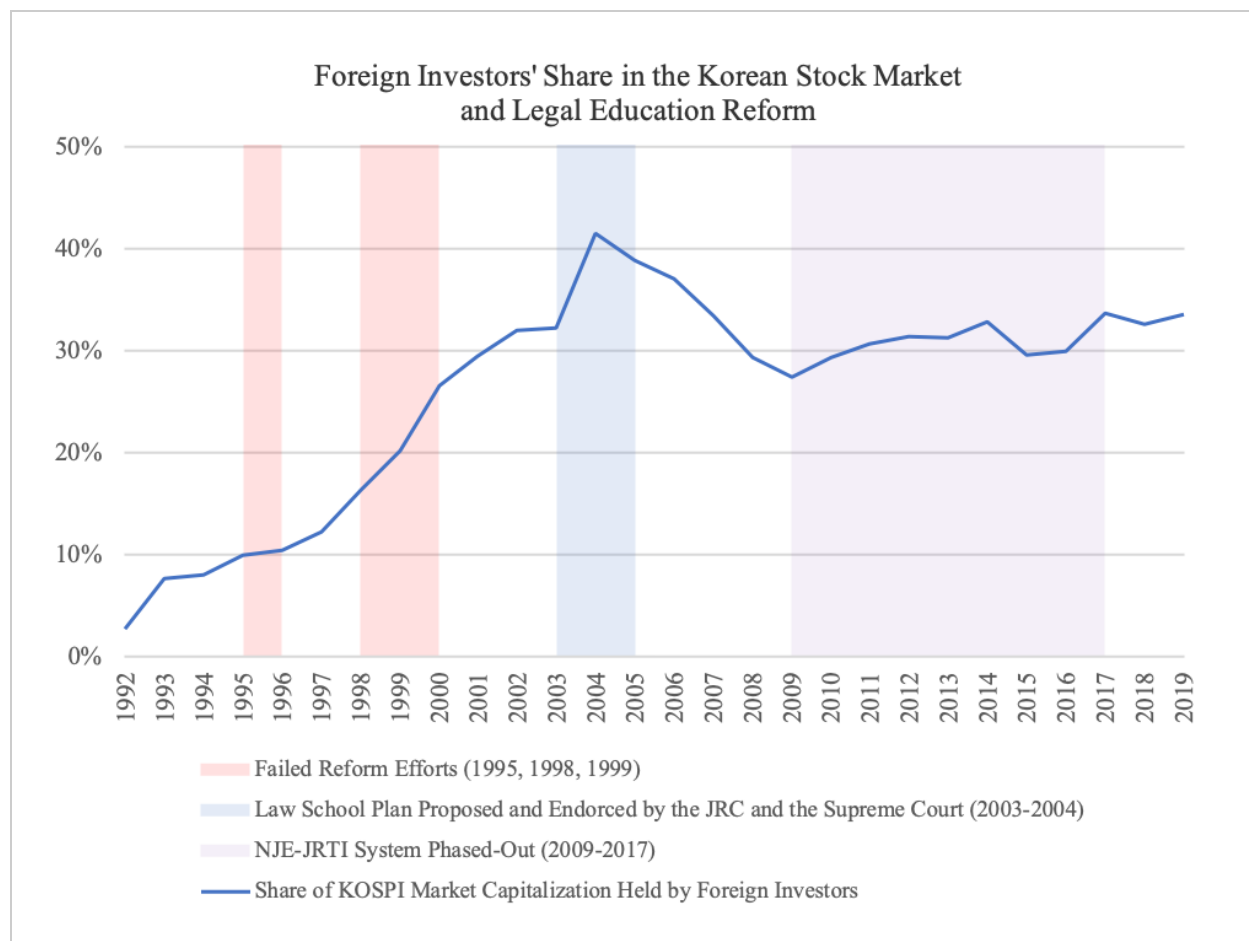
tended to focus entirely on litigation, the latter, who are both more numerous and diverse, tend to provide a wide range of legal services, acting as both legal representatives and consultants for their clients.

Since the Financial Crisis of 1997, Korea's financial sector has seen an imbalanced shift towards the market-ruled, more egalitarian vision that Neoliberal reformers had in mind. On one hand, regulation changes have allowed for far greater transparency and minority shareholder rights, which in turn, has encouraged foreign portfolio investment. But, on the other, management of the largest corporations continues to be dominated by families, while the *chaebol* comprise the majority of Korean publicly traded stocks by market capitalization.

The diversification of investors in Korea demanded two fundamental changes in the Korean legal system: one, a greater supply of lawyers who are able to navigate the complex, often hierarchical social structure within and among Korean businesses while also prepared to defend their clients and conduct negotiations; second, a court system that is more receptive to legal defenses and is not as strictly bound to the word or interpretation of the law.

Returning to data on the share of Korean equity held by foreign investors in Figure 3 below, it is clear that Korea's legal reform efforts had occurred throughout Korea's liberalization. But, it was only when foreign holding was at its peak, between 2003 and 2005, when proposals for comprehensive legal education reform was finally approved by the Korean Supreme Court.

Figure 3



*Source: Korean Exchange (KRX)*

In the five years between 1999 and 2004, the share of Korean equity owned by foreigners more than doubled from 20.2% to 41.5%.

Investors entered the Korean market with different cultural backgrounds and assumptions on how business should be done — i.e. informal business norms — running into the various issues mentioned in the previous section. Many, especially those from non-Asian common law nations, likely would have faced the greatest difficulty navigating the Korean financial and legal systems.



Given the formalist, theory-focused nature of the old legal education system, the ability of Korean lawyers to assist foreign investors was limited. Not only were attorneys few and far in between, but they also generally focused on litigation. For more specialized consultations, one would have to find a legal counselor, who despite being knowledgeable in their respective fields, cannot represent their clients in court. Thus, very few lawyers had the institutional awareness, personal connections, and the vocational training to accommodate investors in all the ways needed. American attorneys, by contrast, offer a wide range of legal services such as facilitating transactions, offering business advice, and resolving disputes both in and outside of the court.

Therefore, given the rapid rise in foreign portfolio investment and the persistence of *chaebol* control, the change in Korea's legal education system was inevitable. The GLSA called for a gradual replacement of the old NJE/JRTI system with one that, in many ways, resembles the American model. Select universities would be permitted to have graduate programs training students in practical skills. Upon graduation, students may then take the bar exam and practice law as lawyers as well as judges and prosecutors.

The Roh Administration's stance on the issue was in line with previous progressive governments: to globalize the legal system and increase access to professional legal services beyond the wealthy, connected minority. But, the executive's agenda cannot fully explain why the Supreme Court approved the JRC's proposal in 2004 then rather than before.

One, perhaps more obvious, answer is that legal education reforms were simply the next, albeit belated, stage in a broader trend in Korea toward a more open, market-friendly, American-esque institutional framework. However, this interpretation assumes that the underlying informal norms and enforcement characteristics of Korean society had actually

changed, but there is little evidence to suggest that such actually occurred. After all, beyond the formal rule changes, Korea still retained its legal tradition, Confucian social norms, and family-centered corporate governance practices.

If institutional change in Korean society could not have been responsible for the legal education reforms, the question then becomes, why did the Law School Plan pass in 2004, but not in 1995 or 1999? Many have often stressed the importance of the courts and the rule of law in fostering development, but rarely has the judiciary itself been considered as an organization of individuals with their own rules, norms, and enforcement methods. The rigor and exclusivity of the NJE-JRTI system, however, reinforced a sense of uniformity, camaraderie, and order within the Korean legal community that, in many ways, made it a sort of microcosm of the old Korean institutional paradigm. Kim (2001) states that, “This kind of hierarchy has been reinforced by the Confucian tradition in which seniority carries great privileges. Under the circumstances, cordial personal relationships, not convincing arguments or technical legal skills, play a major role in legal practice.”

Given the insular nature of the legal community, one may assume that the judiciary’s acceptance of the education reform plan in 2004 indicates that the informal norms of the legal community had evolved to be more amenable to the proposed law school system. However, the skepticism of the compatibility between an American-style law school system and Korea’s cultural heritage have not receded even to this day.<sup>3</sup> The more likely explanation, then, is that by

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<sup>3</sup> See Lee (2017), for more information on institutional conflicts in the Korean Law School system.

2004, the demand for more versatile, practically-trained lawyers due to the continued rise in foreign investment had finally outweighed the concerns of the entrenched legal community.

## **VI. Conclusion**

Legal institutions are often treated as separate, stagnant variables in determining a society's economic composition. However, Korea's legal system has changed dramatically across a relatively short period of time. By providing contextual information behind the ongoing evolution of Korea's legal system, this paper has attempted to illustrate how formal rule changes in the late twentieth century outpaced the shifts in other elements of Korea's institutional framework, particularly its social structure.

The Korean case is interesting because it did not occur in a vacuum. The reforms of the 1990s not only conflicted with Korean informal norms, but it also attracted foreign investors whose own cultural backgrounds and beliefs did not match with Koreans'. As the share of foreign holdings in the Korean stock market grew, the need for lawyers to play a greater role in facilitating interactions between investor groups — bridging the gap, so to speak — and promoting the rule of law became readily apparent. Thus, a simple revision of the old NJE and JRTI system as proposed by some of its proponents would not have been sufficient. The legal curriculum in its entirety needed to be reconsidered. By shifting away from the formalist training and to the “American” Socratic instruction style, it was thought that new Korean lawyers would be able to provide a wider range of legal services to their clients. The “Americanization” of the Korean legal education system, then, was a natural, and possibly inevitable, response to the institutional conflicts that existed in Korea at the time.

It is not yet clear whether the reforms have lived up to expectations. The graduate-level law school system was first rolled out in 2009 while the last NJE was administered in 2017, so it is unlikely that the composition of the Korean legal profession has changed enough to make any comparisons worthwhile. But, looking ahead, one could make some reasonable predictions on how the legal profession and Korean society could change. As future lawyers receive more training in skills applicable beyond just litigation, it is possible that the dichotomy between practicing attorneys and legal counselors will become less pronounced. In fact, as long as bar admittance rates remain at a high enough level, the need for legal counselors may decrease overall. Moreover, the increase in barred attorneys may result in the growth of large law firms similar to the ones found in the United States, a trend that Korea has already begun to see in the last few years.

Overall, as legal services become more attainable, shareholders and employees may be encouraged — or more accurately, less discouraged — to file actions against managers or majority shareholders. This in turn may help promote management accountability, dismantle the family-centered corporate structure, and even equalize the hierarchical social system in Korean firms. This change in business culture may then ripple out to other types of organizations and eventually Korean society as a whole.

But, if there is one lesson to be learned from Korea's extensive experience with reforms, it is to temper one's expectations. Formal rules may be visible, concrete targets to institute social change, but the significance of informal norms, as nebulous as they may be, should not be understated. And while laws and regimes can change overnight, changing the deeply embedded institutional framework of a society can take time to evolve.

### References

- Choe, H., Kho, B., & Stulz, R. (2005). Do Domestic Investors Have an Edge? The Trading Experience of Foreign Investors in Korea. *The Review of Financial Studies*, 18(3), 795-829. Retrieved April 7, 2020, from [www.jstor.org/stable/3598079](http://www.jstor.org/stable/3598079)
- Gills, B., & Gills, D. (1999). SOUTH KOREA AND GLOBALIZATION: THE RISE TO GLOBALISM? *Asian Perspective*, 23(4), 199-228. Retrieved April 25, 2020, from [www.jstor.org/stable/42704239](http://www.jstor.org/stable/42704239)
- Ginsburg, T. (2004). Transforming Legal Education in Japan and Korea. *Penn State International Law Review*, 22(3), 433-439.
- Ha, Y., & Lee, W. (2007). The Politics of Economic Reform in South Korea: Crony Capitalism after Ten Years. *Asian Survey*, 47(6), 894-914. doi:10.1525/as.2007.47.6.894
- Han, D., Will the Korean Law School System Succeed? (February 27, 2010). Available at SSRN: <https://ssrn.com/abstract=1653610> or <http://dx.doi.org/10.2139/ssrn.1653610>
- Jeong, Young-Cheol. (2010). The Asian Financial Crisis in Retrospect Observations on Legal and Institutional Lessons Learned After a Dozen Years. *East Asia Law Review*, Vol. 5. 31-102.
- Kee, T. (2008). Influences of Confucianism on Korean Corporate Culture. *Asian Profile*. 36.
- Kim, J. (2009). Socrates v. Confucius: An Analysis of South Korea's Implementation of the American Law School Model, *Asian-Pacific Law & Policy Journal*, 10(2), 322-353.
- Kim, K., & Kim, J. (2003). Revamping Fiduciary Duties in Korea: Does Law Matter to Corporate Governance? In *Milhaupt C. (Ed.), Global Markets, Domestic Institutions:*

- Corporate Law and Governance in a New Era of Cross-Border Deals* (pp. 373-399).  
NEW YORK: Columbia University Press. doi:10.7312/milh12712.16
- Kim, M. (2013). In the Name of Custom, Culture, and the Constitution: Korean Customary Law in Flux, *Texas International Law Journal*, 48(3), 357-391. Retrieved April 4, 2020.
- Kim, M. (2015). Travails of Judges: Courts and Constitutional Authoritarianism in South Korea. *The American Journal of Comparative Law*, 63(3), 601-654. Retrieved April 4, 2020, from [www.jstor.org/stable/26425431](http://www.jstor.org/stable/26425431)
- Kim, R. (2012). The “Americanization” of Legal Education in South Korea: Challenges and Opportunities. *Brooklyn Journal of International Law*, 38(1), 49-75. Retrieved from <http://brooklynworks.brooklaw.edu/bjil/vol38/iss1/2>
- Kwon, Y. (2013). Recent Reform in Korean Legal Education. *Journal of Korean Law*, 13(1), 1-39.
- Lee, H., Staats, J. L., & Biglaiser, G. (2012). The importance of legal systems for portfolio investment in the developing world. *International Area Studies Review*, 15(4), 339–358. <https://doi.org/10.1177/2233865912465604>
- Lee, J. (2017). The Crisis and Future of Korean Legal Education: Compared with the American Legal Education System. *Korea University Law REview*, Fall 2017(41). Retrieved from <https://ssrn.com/abstract=3074605>
- Leuz, C., Lins, K., & Warnock, F. (2010). Do Foreigners Invest Less in Poorly Governed Firms? *The Review of Financial Studies*, 23(3), 3245-3285. Retrieved March 28, 2020, from [www.jstor.org/stable/40604780](http://www.jstor.org/stable/40604780)

- Nam, H. (2004). U.S.-Style Law School ("Law School") System in Korea: Mistake or Accomplishment? *Fordham International Law Journal*, 28(3). Retrieved from <https://ir.lawnet.fordham.edu/ilj/>
- North, D. (2003). The Role of Institutions in Economic Development. *Discussion Papers Series*, 2003.2.
- Ohnesorge, J. (2007). Developing Development Theory: Law and Development Orthodoxies and the Northeast Asian Experience. *University of Pennsylvania Journal of International Economic Law*, 28(217). Available at SSRN: <https://ssrn.com/abstract=3480753> or <http://dx.doi.org/10.2139/ssrn.3480753>
- Porta, R., Lopez-de-Silanes, F., Shleifer, A., & Vishny, R. (1998). Law and Finance. *Journal of Political Economy*, 106(6), 1113-1155. doi:10.1086/250042
- Shin, W. (1997, July 31). Liberalization of Legal Services Market in Korea. 1997 Conference of International Association of Korean Lawyers. Seattle, Washington, U.S.A.
- Visser, D. (2005). Winston P Nagan & Daniel Visser "The Global Challenge to Legal Education: Training Lawyers for a New Paradigm of Economic, Political and Legal-Cultural Expectations in the 21st Century" (2005) 11 ILSA Journal of International and Comparative Law 1-29. ILSA journal of international law. 11. 1-29.