

The Impact of Culture on the Practice of Law in Korea

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Introduction: Development of the Korean Legal System

A basic understanding of Korean culture -- past, present and future -- is an important prerequisite for anyone who hopes to make sense of the practice of law in this sometimes baffling country, where tradition still weighs heavily but things are changing fast. It may seem a rather daunting task to try to get a handle on five millennia of cultural development. But since Korea is not well known to most outsiders, the effort to learn even the basics will surely pay off handsomely, both in terms of enhanced global understanding and, from a purely practical point of view, greater business and professional success.

Korean culture is undeniably unique, but it has been greatly affected by several outside influences. For example, most of the major religions of contemporary Korea are, in some sense, of foreign origin, though they have been clearly changed and Koreanized -- sometimes subtly, sometimes dramatically -- after being introduced. Something similar has happened with the country's legal system, which for centuries was a kind of hybrid consisting of many elements of the Chinese legal system, introduced more than a thousand years ago, together with the remnants of Korea's own traditional laws and procedures.¹

Since the beginning of this century one of the most significant imports, in terms of its impact on the local culture, has been the law -- specifically, Western legal thought and its related institutions. Much of this was initially imposed by Japan, which in turn relied heavily on the German civil law model. More recently, Korea has borrowed Anglo-American common law ideas and systems, especially from the United States.² But the result of such a heady mix is something distinctively Korean. And in this society, now experiencing rapid and fundamental cultural transformation, one of the biggest changes taking place involves the relationship between Korean culture and the law.

In what follows I have tried to provide a snapshot of where Korean society is now, and where it is headed. But as any amateur photographer knows, when everything is moving quickly the result can sometimes be a bit blurry. For the sake of clarity, however, and by way of introduction, one further comment may be in order. The end of 1997 brought with it some highly publicized economic chaos in Korea and the controversial rescue package of the International Monetary Fund (IMF). And all of this was happening at the same time that Koreans were going to the polls to elect a new government. It has been a difficult and confusing time for everyone in this proud nation, which has come so far so fast in terms of democracy and prosperity.

Basically, the nation's economic recovery is still in an early phase. It does appear, however, that the very worst of the crisis is now over. Koreans rightly insist that theirs is a culture of survival -- they have had to overcome countless invasions by other nations throughout their history -- and that they will get over this. Both the government and the people fully intend to make the necessary adjustments in the overall structure and inner workings of the economy, to meet the IMF requirements. But the many changes that must now be undergone are enormous ones and they will have their legal and cultural dimensions as well, affecting everything from foreign investment to labor relations. No one knows precisely what the Korea of the twenty-first century will look like, so my observations and comments must be understood as somewhat tentative. But though Korean society is going through a fundamental transformation just now, the basic underlying culture, I suggest, is here to stay. Which is why you need to know something about it.

(1) Aspects of Korean Culture that Affect the Practice of Law

(a) *Individual Rights and Collective Responsibilities*

In Korea, the traditional model of social composition is a more community-oriented, societal-rights-based one. Koreans regard the family, rather than individuals, as the basic unit in society. In Confucianism, there is a strong tradition of regarding the state as a kind of big family and the king as the father. Of course, there is no monarchy in Korea today. But old traditions die hard. In Korea, therefore, until recently it was very natural for morality, rather than law, to function as the basic social norm. Law, on the other hand, was traditionally seen as more or less restricted to matters of government administration, as well as the criminal field. As such it was seen as important, of course, but not of primary importance for daily life.

By way of contrast, the modern and Western way of social composition, which was introduced into Korea early in the twentieth century along with industrialization, is a much more interest-oriented, individual-rights-based system. Westerners thus have a tendency to start from the individual's rights or interests when attempting to resolve disputes. Therefore, the law has more central meaning and relevance in the West as a basic social norm.

In contemporary Korea, you get a curious mixture. Neither of the above ways of viewing society, collectivist or individual, is completely dominant. Indeed, part of Korea's uniqueness lies in the uneasy co-existence of these two points of view. Superficially, Korea now has a modern, Western, individual-rights-based legal system, and the Constitution clearly declares the Rule of Law. But sometimes the law does not function as a sufficient guarantee of people's interests. Instead, they seek other guarantors, strong patrons based on personal and informal relationships. Koreans generally tend to trust people more than laws, and so they invest much time and money in building up and maintaining various informal organizations and personal relationships.³

This means that the division between the public and private spheres in Korean culture is not always well defined. However, the country is now witnessing the increased privatization of the public sphere. The older informal approach has both strengths and weaknesses. But one problematic area is that of instability and unpredictability due to the lack of fixed rules. Because the informal relationships are personal, they can be enduring. But they are also human and therefore fragile, in regular need of maintenance and in constant danger of collapse. Objective rules may be somewhat more reliable, but of course they are not permanent either.

One example of where such rules are changing can be found in labor law, where until recently layoffs were quite rare. This was not so much a reflection of union power in Korea as an example of management's tradition of fairly benevolent paternalism. Whereas in, say, the United States the decision to let workers go might be seen as falling within the employer's legitimate discretion, such was not the case in Korea -- until now. Layoffs have always been severely restricted because employees are not just employees: they are members of the larger society, whose order and stability may well be impaired if people are put out of work. I would thus suggest that everyone now keep an eye on Korea, where the stipulations of the IMF bailout, however defensible from a purely economic point of view, have radically altered the rules of the game. The response of the losers could well be civic unrest.

Before leaving this topic, a word of caution is needed. The cultural differences between the individualist West and the collectivist East are real enough, but it is really more a question of emphasis and reversed priorities. Collective interests and group rights, while controversial, have long been accepted in the West. And individual rights, including human rights, do exist today in much of the East.

In Korea, though, "individualism" is often considered synonymous with selfishness, i.e., an unforgivable (and often unforgiven) tendency to disregard one's legitimate obligations to others: to friends, family, the company, the nation. Looking out too much for Number One is thus seen as anti-social, and ultimately destructive of both the larger society and the individual, who will someday be made to pay for his self-indulgence, and not just by being ostracized.

(b) *Language*

Although in traditional Korean society, Korean was the language of common life, almost all educated people used Chinese for writing, even though they spoke Korean. So it was very natural that academic life, as well as the executive and judicial processes, was heavily influenced by the use of Chinese letters.

But this situation changed dramatically at the beginning of Korea's modern history. The traditional institutions of learning and government were almost totally replaced by imported ones. In particular, almost all academic and legal terms were replaced by new

ones, most of which were devised in Japan through rough translation of the original German. As you might expect, this change brought about an even more serious disjunction between legal language and daily discourse in Korea.

The Korean mode of expression has certain unique features to note in this regard. While the Korean people themselves are fairly straightforward and direct by Asian standards, their actual way of speaking is typically quite subtle and oblique, and thus sometimes open to arbitrary and inconsistent interpretations. This indirect style of speaking is perhaps the main source of cross-cultural miscommunication, but it is further exacerbated by another factor: the large number of homonyms in Korean, words with the same sound and, at least in Hangeul (the Korean alphabet), the same spelling as well. Thus it is sometimes difficult even for Koreans to be sure what a given sentence really means. It is only by the use of Chinese written characters that such confusion can be eliminated at times, but not all Koreans are equally proficient at reading such characters. So both speaking and writing can result in some ambiguity.⁴

This further exacerbates the more universal problem of legalese, which is notoriously difficult for the layman anywhere to comprehend, with its unfamiliar vocabulary and typical complexity. Think, for example, of the tax code. Nowadays, there is a long overdue movement in Korea to simplify the language used in the courtroom. Unfortunately, there is a second trend that serves to complicate matters: the importation of Anglo-American legal terminology, especially in the field of commercial law. In any case, a couple of recent attempts to heighten public awareness and understanding of legal concepts are worth noting: one of the major Korean newspapers now prints a weekly cartoon to educate the people about the law; and lately Seoul bookstores have been carrying “comic books” designed to inform readers about areas such as real estate law and traffic violations.

In the West there is a fairly common misconception that lawyers deliberately make their language as obscure as possible, in order to dazzle (and perhaps deceive) the general public. But there is no need for conspiracy theories, given the inherent difficulty of legal concepts and terminology. Sometimes it is just very hard to keep things clear and simple. In Korean law the language problems are quite similar, but there is perhaps an even greater gap of understanding between professionals and laymen, due in part to the fact that there are so few lawyers in our society.⁵

Foreign investors in Korea often complain about what they regard as the vagueness, imprecision and unpredictable interpretation of many Korean contracts and business deals. There is a real cultural dimension to this situation. Koreans generally do not like to put agreements in writing at all, but when this must be done their preference is to keep things as simple as possible. This can sometimes create problems, but they can still be minimized with careful planning and expert drafting. And as I will explain in more detail later, it is especially advisable to get everything in writing, not just the general areas of agreement, to prevent some of the nasty surprises that might otherwise result from this and other basic cultural differences.

(c) Ritual and Religion

While Confucianism is not, strictly speaking, a religion at all but rather an elaborate code of social ethics, its impact on Korean culture, and specifically the legal culture, has been pervasive. This is not to deny the influence of other religions such as Buddhism, Taoism, Shamanism and more recently Christianity, but Confucianism -- with its emphasis on obedience to societal norms and family expectations -- is hugely important.

In the East, particularly in those countries most affected by the thought of Confucius, the basic rules of morality developed over time into an intricate system of laws. But the ultimate authority of heaven was thought to be embodied in the sovereign ruler, the king or emperor, rather than in the objective rule of law itself.

These days, however, the influence of Confucianism is noticeably diminished. For many Koreans, its basic conservatism has little appeal. The old system succeeded brilliantly in creating and preserving a stable, harmonious, well-ordered community. But it also served to legitimize an essentially static society with a rigidly hierarchical social order.

However, since morality and the law were seen as inextricably linked, the decline of Confucianism has led to a kind of lawlessness and, especially among the young, an unfortunate disregard for long-standing social norms. Such anti-social behavior is not necessarily criminal, but the result is a serious loss of civility that has some traditionalists quite worried. So this cultural shift is something of a mixed blessing.

One challenge to the inequality implicit in Confucian society has come from the West, specifically from Christianity, whose increasing popularity in Korea is somewhat surprising to outsiders. Roughly one third of Koreans are now nominally Christian, i.e., either Catholic or Protestant, which means the country comes second in Asia only to the Philippines in terms of the conversion rate, far ahead of both China and Japan. The church's popularity is the result of several factors, including its close historical association with the nation's independence movement, but one undeniable consequence has been the introduction of a somewhat more Western and therefore egalitarian view of society.

(d) Nationalism and Reactions to Outside Cultural Influences

Because of its geopolitical location, Korea has been invaded countless times throughout history by its larger, more powerful neighbors. And this historical fact has deeply influenced the Korean psyche to this day. It has led to an almost reflexive suspicion of all things foreign, for good historical reasons. And there is also resistance to some (by no means all) foreign cultural influences, combined with a very highly developed sense of nationalism.⁶ In this regard it is worth noting that Korea is almost the only Asian nation with virtually no racial or ethnic minorities. And it is this combination in Korea of unique demographics and tragic history that explains, for example, the virtual ban on the importation of Japanese cultural goods, a controversial policy that raises many issues

including legal ones. This policy, however, has recently undergone an initial liberalization and is expected to do so further in the near future.

But Koreans' attitudes to outsiders are complicated, and even somewhat contradictory. It is not, as is sometimes claimed, a simple case of anti-foreign sentiment. Rather, it is a kind of love-hate relationship, especially with the West. The appeal of everything from Hollywood movies to Italian fashion is unmistakable in Seoul. But there is also genuine concern among traditionalists about the growing tendency to uncritically embrace some of the worst aspects of Western popular culture. People worry about losing control of their own culture, as well as their political and economic sovereignty.

Following the IMF bailout, this feeling is, if anything, getting stronger. Nationalism is clearly on the rise, which is both good and bad. On the positive side, this can provide a unifying force for the society, which may help it to overcome adversity. But the downside to nationalism, particularly when overdone, can pose a serious obstacle to much-needed globalization. Historically, Korea's refusal to accept open trade with the West, which it saw as a threat to national independence, considerably delayed the country's industrialization. But by a terrible irony this delay in development made Korea all the more vulnerable to exploitation by more advanced nations. Nevertheless, in modern Korea almost every public issue still gets filtered through this prism of nationalism, even when it might be better for all concerned to place more importance on other issues, such as the economic benefits of freer trade or increased foreign investment. It is worth noting, however, that both government policy and the people's attitudes have recently shifted dramatically in favor of more openness.

The liberalization of the Korean economy is now well under way, and there will be no turning back. Still, there are pockets of resistance to this trend that must be acknowledged. A recent example involving consumer groups in Korea may illustrate the point. In response to the IMF situation and the foreign currency crisis, there have been widespread calls for austerity, including an economically questionable campaign against the purchase of imported goods, especially luxury items. In part this is just common sense and a sincere, commendable effort at belt-tightening, but nationalism is also at work here. Yet it is doubtful that such a movement will prove truly helpful to the nation, since Korea relies heavily on the export market and must not allow its international image as a fair-trading nation to be jeopardized.

The consumer movement has initially attracted considerable public support by appealing to Korean patriotism. This presents the new government with something of a dilemma, because such nationalism may not actually be in the nation's interests. Moreover, it may not be consistent with the world's more liberalized trade laws. But even if Korean nationalism is a dangerous distraction at times for Korea itself, it is a force that cannot be safely ignored and should never be underestimated.

It is important to note that while Koreans have always fiercely resisted the imposition on them of any alien culture, they have never been averse to adopting and adapting foreign

ideas and ways of life, from Buddhism to basketball, as long as this can be done voluntarily.

(e) *The Importance of Interpersonal Relationships*

Who you know matters everywhere, of course, from Auckland to Oakland and from Sydney to Seoul. But interpersonal relationships are especially important in Korea because of the tightly-knit and multi-layered culture. And it's not just who you know but how you know that person -- and how well you have kept up the relationship over time. For example, in Korea it matters where you went to high school, whom you went with, and when you graduated. The list of additional relevant factors is much longer: which region you are from, which college you attended, when you served in the military, etc. And these things continue to matter throughout your life, both personally and professionally, which means that you cannot expect to establish meaningful ties with a Korean overnight. These things take time, often a lifetime.

Koreans, like most Asians, are usually quite guarded with strangers. Even with people they know well Koreans are often very reluctant to share information. They tend to do business with those whom they feel they can trust. In the past this tendency made Koreans reluctant to deal with foreigners, though that is now changing. But until recently regional animosity and mutual mistrust ran so deep that some Koreans were even loath to get involved, socially or in business, with their compatriots from other parts of the country. This was related, of course, to the strong Korean tendency to shun dealings with strangers. Fortunately, the situation has improved a great deal. Moreover, Korean society does not have to contend with divisions based on race or language. And while there are several main religions, adherents of these different faiths co-exist quite peacefully and naturally.

Although today Korean businessmen have become somewhat more objective in evaluating risks and making decisions, having connections (or not having them) still makes a difference. Favors are often dealt out on this basis, contracts signed and opportunities given in the world of big business. Of course this system, which is based on the network of informal ties between business, government and the financial sector, has recently led to some serious economic problems. But, to be fair, it has also been the reason for much previous success.

Formal associations and credentials -- what school, what company, etc. -- are extremely important, but most Koreans, whether working class or high society, continue to evaluate each other at least as much on the basis of informal networks which may be composed of friends, family or regional affiliations, and the insider information such connections provide. Personal ties still matter and the main effects on the legal system are twofold. First, gaining access to justice, or even securing refuge from it, is still somewhat easier for those who are well-heeled and well-connected. And secondly, since Koreans typically prefer to resolve conflicts through informal channels without resorting to the legal system, the unusual and fairly drastic decision to sue someone often results in the permanent shattering of human relationships.

In a word, Koreans take it personally if you get legal with them. By way of contrast, in the West it is the impersonal nature of the legal system that often recommends it as the most appropriate means of settling personal disputes. And the possibility of settling out of court remains just that -- a real possibility -- in the West. In Korea, on the other hand, a statement of claim is tantamount to a declaration of war, the response to which is then usually No Surrender!

(f) The Power and the Glory: the Relevance of Social Status, Age and Hierarchy

There is no formal distinction based on social status in modern Korean law. But of course such distinctions, based on professional status, occupation, education or whatever, exist there as elsewhere. And they have enormous impact on everyday life. Traditional Korean society had very strict social rules about such things as respecting elders. The elaborate terms of respect in the Korean language, such as the careful employment of honorific suffixes, still expected and very much in use, are a reminder of this continuing reality. For foreign lawyers and businessmen, this age factor must always be kept in mind, and due deference to one's seniors must be shown.

But the traditional system of social hierarchy has largely collapsed. With the growth of the national economy and the rise in household income, a substantial middle-class with its attendant values and outlook has emerged. And as the transition to real democracy becomes more evident, there is an increasing impatience with the notion of a privileged class.

Almost all Koreans nowadays favor equal treatment before the law, and equal punishment, for all citizens. And while there remains a gap between the theory and the reality, that gap is closing fast. As evidence of this remarkable change, consider the fact that not one but two former presidents recently found themselves in prison for bribery. None of this would have been imaginable a few years ago.

So there is a strong current of egalitarianism in Korean culture. One surprising example of this is that the bar exam is open to everyone to write. It would be thought unreasonable and grossly unfair to restrict this opportunity to those who have studied law.

Nevertheless, genuine social and legal equality has yet to be achieved in Korea. The reality there, as elsewhere, is that in terms of power and privilege all men are created unequal, and to some extent they stay that way. To deny this uncomfortable truth would be to indulge in fantasy. And Koreans are nothing if not realistic. They are acutely aware that life is often a struggle, and that the relative strength of the combatants, whether measured in terms of wealth or social standing or political clout, usually determines the outcome. Korean society is very competitive, and the point of course is to win. Not many people are satisfied with being second best. (Silver medals at the Olympics, for instance, are widely regarded as evidence of failure.) So the many gradations of social status, power and

influence remain and must be taken seriously by foreigners because they are still taken seriously by Koreans.

Finally, a word or two about the power of money. For Koreans this is a very delicate subject and a cause of much inner tension, or cognitive dissonance, because of two seemingly irreconcilable ideas. On the one hand, the puritan streak in the Confucian tradition has not encouraged great respect for the businessman, whose station in society is generally seen as considerably lower than that of, say, the scholar or the teacher. Confucius taught that inordinate concern with the world of finance was undignified. On the other hand, in modern Korean culture business is everybody's business and commercial matters are often discussed openly and without embarrassment. The result is a kind of ambivalence, and at times uneasiness, about the whole fascinating subject of wealth.

(g) The Centrality of Family and the Changing Status of Women

Even if families are getting smaller in Korea -- fewer married couples live with their in-laws than in the old days, especially since so many of them now live in the city in high rise apartments -- family ties are still extremely important.

One of the distinctive features of traditional Confucian culture is of course patriarchy, which implies the lower status of women. In spite of some remarkable progress in the area of women's legal and social rights, full sexual equality has yet to be achieved in daily life. The idea of equality is now widely accepted and enshrined in the law but almost everyone, male and female, is still influenced to some extent by the older culture, which saw male and female roles as quite separate and anything but equal.

So there are limits. But gradual progress has produced some tangible results in the legal field as witnessed by the growth of the consumer protection movement, spearheaded by women, and the increasing number of female law students and female lawyers. Indeed, the number one student in the bar examination class is now often a young woman.⁷ A more controversial development -- not seen by all as progress -- is the undeniable hike in the divorce rate. But this largely reflects women's growing financial independence, a remarkable achievement. In the past, women did not dare to divorce because they could expect to find no source of income by which to support themselves.

This issue of jobs illustrates the limits of change, however. Generally, women are often the last ones to get hired. And they still typically occupy many of the lower positions in most companies, though they are by no means restricted to them nowadays. They sometimes face additional pressures and unrealistic expectations after getting married, and especially after having children. And now, with the economic crisis in Korea, there is understandable concern that women may be the first ones to be laid off in large numbers. The law does not condone such blatant discrimination, of course, but the enduring power of the traditional culture is still a relevant factor in determining who the principal victims of corporate layoffs will be. Some female observers are cautiously optimistic, but we will have to wait and see.

(h) *The Status of Lawyers*

In Korea all lawyers see themselves not so much as businessmen but as the modern equivalent of those traditional public officials who were called on to resolve disputes. These individuals wielded considerable administrative and judicial power in the region to which they were appointed. Modern lawyers feel that they have a similar obligation as public figures to enforce justice, and so their position is one involving great trust and responsibility.

But though lawyers are a powerful and prestigious group, up till now their role has been rather passive in both Korean political and business affairs. Only a decade ago, most attorneys were still former judges and prosecutors and this experience shaped and limited the nature of their practice. For the most part they got involved in traditional civil and criminal matters. Only a very limited number of lawyers used their professional skills in other ways, such as policy making, legislation drafting and business consulting.

Today the situation is quite different. With the rapid expansion of the legal profession in Korea and the increasing number of attorneys who have received part of their legal education abroad, the pattern of law practice is changing, albeit gradually. The emergence of large, full-service law firms reflects the structural transition that is taking place. At the same time, the lawyer's self-image is undergoing a transformation, from that of a legal technician -- highly skilled but somewhat narrowly focused -- to something more akin to the Western business lawyer. However, the extent of the change is not yet certain. There are still relatively few lawyers in Korea engaged in international business, and even those few tend not to get directly involved in negotiations the way their Western counterparts regularly do.

More lawyers are, however, becoming directly involved in politics and government nowadays. In the past, fewer 'lawmakers' (i.e., legislators) belonged to the Korean bar. It is an example of the recent trend for members of the profession to reach out beyond the self-contained practice of law itself into many other branches of Korean society, to connect more, and on more levels, with the people.

Unlike North America, where there is a kind of love-hate relationship between the general public and the legal profession, in Korea there is considerably less ambivalence. Lawyers are admired for their learning (and envied for their comfortable lifestyle) but they are not viewed with nearly as much suspicion as in the West. Certainly there is nothing resembling the fear and loathing that many American lawyers encounter. One rather astonishing and refreshing consequence of this is that there are virtually no nasty lawyer jokes in Korea! Instead attorneys are generally trusted and highly regarded. The fact that there are still relatively few members of the Korean bar -- although, as we will see, the numbers are going up -- only adds to their social prominence.

Many Korean parents would be very proud if their son or daughter became a lawyer, or married one, thus attaining a position of respect and security. But the profession as a whole, while certainly regarded as a desirable one, is not seen by the public as particularly glamorous. There are fewer courtroom dramas in Korean cinema than in the West, and there is no equivalent to “L.A. Law” on television. Nor was a legal background normally thought of in the past as a ticket into the larger world of politics. Rather, it provided entry into a highly exclusive and privileged world that few outside the profession really knew about, much less understood.

(2) Aspects of Legal Practice Affected by Korean Culture

(a) *Entry into the Profession*

There are stringent requirements for entry into the legal profession and it is the administrative branch of the Korean government, not the Supreme Court or the Korean Bar Association, that determines such matters as the number of subjects to be tested and the contents of the questions. Among the basic subjects covered are civil and criminal law and procedure, and constitutional and corporate law. The exam actually consists of three stages: the first of which is multiple choice. Those who pass this go on to write a test in essay format, and the successful students at this point are then invited to a final interview.

But perhaps the most important thing to know about the exam is that almost everyone fails. Previously, the number of people allowed to pass the annual exam was severely restricted. Only 300 made it. But since 1996 the number of those passing has been regularly raised. In 1998 the figure reached 700, a significant increase but still a mere fraction of the total number of test-takers.

About 30,000 applicants apply to take the exam each year. Because the competition is so fierce, many people take the test year after year. Many individuals, in fact, have done so more than ten times. This gave rise to the criticism that the whole endeavor is a colossal waste of human resources. In response to this objection, the Korean government now limits applicants to four tries.

The Korean bar examination is open to everybody -- you don't have to have studied law formally to be eligible -- so the background of applicants is quite diverse. At the same time, since the failure rate is so high many law college graduates never take the bar exam at all, preferring to accept employment with the government, a bank or a corporation, perhaps though not necessarily in their legal department. Such employees often handle a company's less complicated legal problems, working more or less like lawyers but without a license. However, the position of true in-house counsel is still fairly rare in Korea.

In a sense, the bar exam is the modern equivalent of the centuries-old Korean civil service exam, which gave the best and the brightest a chance to break into the inner circle of the

governing class, strictly on merit. Perhaps it is this unconscious connection in the public imagination that explains the prestige still enjoyed by the fortunate few who make it through the narrow door.

All those who do pass the bar exam then enter the Judicial Research and Training Institute, which is operated by the Supreme Court. Graduates of the Institute then have to choose a career as either a judge, a prosecutor or a practicing attorney. The first two options are generally considered more desirable in terms of prestige, because the Korean people still tend to view government officials as higher in status than those working in private practice. But which professional track one follows is mainly determined by one's grades. Not surprisingly, therefore, competition among students is very strong indeed.

Because the Korean bar is statistically one of the most difficult exams in the world, it effectively ensures that those who graduate are extremely bright and competent. But the question remains: competent at what? Some critics argue that it is really competence at taking exams that is rewarded, which is arguably not the most relevant or useful of skills to have in actual practice. There is undeniably a lot of emphasis on memorization, which has led one observer to coin the sardonic phrase, "meritocracy of memory" to describe the bar. Another objection is more social and political: that restricting the number of successful graduates limits the public's access to justice, inflates the salaries of practitioners, and only serves to reinforce the profession's already considerable elitism. It is, after all, still a very small club: there are roughly 3,500 practicing members of the bar, excluding judges and prosecutors, in this country with a population of nearly 45-million.⁸

One other cultural difference to note is that, unfortunately, there is not nearly enough connection or cooperation between the practicing bar and the legal academy in Korea. This is something that needs to change.

(b) Legal Education and the Training of Lawyers

Korea does not have graduate school level law schools like those in America or Canada. Instead, there are about seventy undergraduate departments or colleges of law scattered throughout the country's many universities. In these there is typically a requirement that at least a minimum number of credits must be earned through the study of law courses. But this number is not especially high, so students usually take many other subjects at the same time, such as literature, sociology or political science.

Korean law students are not subjected to the interactive, Socratic style of classroom discussion so favored in North America. Nor do they receive training in the common law case method of legal instruction and analysis. Instead, they attend lectures (rather silently and passively), study the relevant statutes -- Korea is, after all, in the civil law tradition of continental Europe, especially Germany -- and learn how to apply these general laws to particular fact situations by making careful use of previous Supreme Court decisions.

This may seem more mechanical, and less creative, than the Western style of legal education, and in one sense this is certainly true. The irony, however, is that Korean lawyers, once they start practicing, are often called on to be *more* creative than their Western counterparts. This is because they must compensate for a deficiency in Korean jurisprudence: there are still some significant gaps in Korean law, which as noted earlier is kind of a transplant from the West, or rather, from various Western and Eastern sources. The theory and the practice do not always match. And the imported terminology does not always adequately convey the concepts. There are also far fewer Korean precedents, since the system is only fifty years old, and some of these are of limited practical utility. So the Korean lawyer has to fill all these gaps, in a sense creating new law as he goes. For example, if there is no directly relevant Korean precedent, foreign case law can be introduced by counsel. And if the judges decide that it is on point, it can then be applied and used to further the development of Korean law.

In general, legal writing is still a neglected subject for Korean law students, which is unfortunate. It is only once they finish their studies and become lawyers that they really learn how to do this properly. Before then the practice and instruction they get on the subject is quite limited. Students at the undergraduate colleges of law do not learn how to write statements of claim and defense, nor do they practice writing judgments. Such exercises are given only at the next stage, the Judicial Research and Training Institute. There the students take part in a two-year course. During the first year, they learn how to draft indictments and write judicial opinions. They also take some humanities courses to broaden their intellectual horizons and further prepare themselves for future judicial work. The second year is devoted to on-the-job training and divided into four segments of two months each: in court, in the public prosecutor's office, in a law firm or lawyer's office, and finally working in another law-related institution of the student's own choosing such as the constitutional court, the Financial Supervising Commission, or even with a broadcasting company as a legal reporter.

In response to many complaints that the curriculum was too narrowly focused on the training of judges and prosecutors, the Institute has developed a graduate school format and begun allowing students to earn credits by taking courses that provide them with more specialized lawyering skills, necessary for an expanding profession in this age of globalization. Among the new subjects being taught are international trade, criminology, intellectual property, and comparative law including much relevant American material on civil, criminal and constitutional law.⁹

(c) The Structure of the Legal Profession

Along with about 3,500 practicing lawyers, Korea's legal profession consists of roughly 1,500 members of the judiciary, 1,100 public prosecutors and about 700 law professors. The lawyers who are actually in practice can be further divided into two main groups: trial

attorneys and business lawyers. The latter, of course, usually have their own area of specialty, but in any case their clients are generally the business community.

The majority of Korean lawyers work on their own and specialize in litigation. Some of these trial lawyers share office space, but in essence they remain sole practitioners. Business lawyers in Korea, by contrast, are usually employed by the larger full service law firms, of which there are only a small number in Seoul. In these firms the lawyers' working patterns are naturally very different. For instance, business lawyers often have to perform their work by collaborating with each other on large projects that require careful coordination as well as expertise. The various attorneys typically create a task force and then combine their resources in the most effective way.

The typical career track for judges is rather different than in some other jurisdictions. For one thing, they do not first work as practicing attorneys and then get promoted to the bench. On the contrary, they start out as judges after graduating from the Training Institute and then, for one reason or another, often move to private practice later. Because of this typical sequence, many Korean judges are quite young, often considerably younger than the people who appear before them and whose cases they are called on to decide. This tends to complicate things somewhat in an age-conscious society where the elderly have traditionally been afforded more respect and deference. In 1998, in response to this social concern the Supreme Court added a new requirement that graduates of the Institute must first serve three years as a kind of judge's apprentice before assuming full judicial responsibility.

Prosecutors in Korea also begin their careers at a relatively young age, but this situation more closely parallels that found in the West. That is, many highly accomplished law graduates start out by working in a prosecutor's office and then, after gaining some valuable practical experience, move into private practice.

The other group to consider briefly consists of a variety of law-related occupations such as patent 'attorneys' (really patent agents), judicial scribes and tax consultants. While there is no denying their useful contribution to society, their continued existence and influence is also related to the whole issue of government bureaucracy and the strong interest groups they represent.¹⁰

(d) Organization of Law Firms and the Range of Services They Provide

Becoming a lawyer is quite difficult in Korea. And until quite recently the regular career pattern allowed for few exceptions. As stated above, most passers of the bar exam first served as judges or prosecutors, and then resigned from such offices to become trial lawyers. However, about twenty to thirty years ago several attorneys came back to Korea after completing advanced studies in the United States and established Western-style law firms. Since the number of Korean lawyers is very small, there are not as many lawyers in Korean firms as in the major American ones, which usually employ hundreds of lawyers;

but there are between fifty and one hundred lawyers in the larger law firms, and about twenty lawyers or fewer in several smaller firms.¹¹

Law firm lawyers play the role of Western business lawyers as well as litigators. Although the case may be slightly different depending on the history and organization of each law firm, there are about five or six specialty groups in the larger law firms and two or three in the smaller firms. These specialty groups are as follows: the financial department dealing with banking, finance and securities; the corporate department dealing with corporate tax, labor law, drafting and reviewing contracts, and foreign investment; the maritime and insurance department; the intellectual property department dealing with registration, license and infringement of intellectual property, and unfair competition; and the litigation department doing traditional litigation.

Law firm lawyers establish teams of specialized attorneys, i.e., a task force for each project, and such teams are operated under the supervision of a partner or a senior attorney. Foreign attorneys work in these firms as counselors to assist in the communications with foreign clients and provide counsel concerning foreign law. The law firms' legal staff also includes paralegals, researchers and translators. Some firms also employ accountants directly or maintain close relations with one or more accounting firms.

The larger law firms, whose members often collaborate on the more complex cases, share two important characteristics: specialization and cooperation, both of which are of course essential. Thus while individuals may concentrate their practice on, say, corporate finance, they also work together as a team. Yet teams cannot perform effectively unless the members communicate well and openly with each other. In Korea, such teamwork between lawyers has not always been easy to achieve. This was not because of any reluctance among attorneys to be team players. Rather, it was simply a function of the arithmetic: since there were so few members of the Korean bar until recently, they did not have much experience working together. But that is now changing as the number of lawyers increases. One other positive development in terms of making a coordinated effort is the increasing use made of paralegals, based on the Western model. In Korea these individuals have already completed their undergraduate studies of law, but either did not take or did not pass the bar exam. Nonetheless, it is now widely recognized that they have a crucial role to play in serving clients.

(e) Methods of Gaining New Clients

There are still many adherents of the traditional idea in Korea that a lawyer is a public servant, not a businessman. As a result, most lawyers take a conservative and rather passive approach to managing their practice. They are not actively involved in attracting new business. Instead they just sit in their office and wait for clients to knock on the door or otherwise initiate contact. In other words, Korean lawyers typically do not advertise and are quite unfamiliar with the concept of legal marketing.

The four largest law firms and several smaller ones take care of most transnational matters in Korea. A law firm acquires foreign clients in any one of several ways: through clients with whom the firm already has an attorney-client relationship; by the referring of clients by their counsel; by the referring of clients by other law firms that usually refer clients to each other; and through the networks that exist among law firms.

The larger law firms acquire most of their transnational cases from local clients. You should note that Korean businessmen are not as accustomed to retaining attorneys as Western businessmen are. Nowadays, it is increasingly common for companies to consult with lawyers, but such companies still carry out more work without any lawyer's assistance. Corporate clients generally select a law firm based on reputation and ability, but some cases are still delegated to a lawyer or firm on the basis of other criteria such as blood (family), school ties, region or other personal considerations.

Lawyers have traditionally not advertised in Korea; it was not really necessary to do so because lawyers were so rare. The Bar Association regulations permit such advertising, but only to a limited extent. Domestic individual clients select lawyers through an acquaintance's introduction or the above-noted connections of blood, region and/or school. In the case of traffic accidents or industrial disasters, litigation brokers sometimes introduce lawyers to the victims and their families. Although such behavior is actually prohibited by law, there are occasional scandals involving close connections between lawyers and litigation brokers. Such is the case where a mere handful of trial attorneys, who employ such brokers, get the lion's share of, say, criminal cases. In any case, the Korean government has expanded the number of bar exam passers (to 700 in 1998) and the increase in the successful graduates has started to stir up the legal market. Traditional concepts and habits based on the paucity of legal practitioners are changing as a result.

There are now some law firms that are fairly aggressive in terms of self-promotion and lobbying for clients. The Korean Bar Association has a Professional Code of Ethics, of course, but its provisions do not regulate attorney behavior all that strictly. However, the Bar Association has started to investigate several ethics violations cases involving litigation brokers, and the lawyers who used such brokers have been severely reprimanded.

The notion of an ambulance chaser is very much a foreign one in Korea, or has been up to now. And most people would like to keep it that way. But some concerns have been expressed recently about the emergence in Korea of a similar phenomenon, particularly in the wake of traffic or industrial accidents. It is certainly not a problem yet, but it is something to watch closely as the overall influence of the West continues to grow. Meanwhile Korean law firms can undeniably learn something valuable from their Western counterparts about marketing themselves in an effective, yet dignified and professional manner.

(f) *Methods of Resolving Disputes*

In traditional Korean society, with the prevalence of Confucianism, the primary method of dispute resolution was mediation and arbitration, based on the judgment of respected older persons. These individuals were trusted to exercise their learning and wisdom fairly and honorably. Only a few traces of this system remain in modern Korea. Sometimes after a traffic accident, for instance, each party will select a credible and well-educated senior to represent him or her in discussions aimed at reaching an informal compromise. A more common situation arises in the field of family law, particularly in cases where divorce has become a real possibility. In a desperate effort to prevent that outcome and thus avoid the shame that it might bring to the extended family, various relatives of each spouse will get involved and, rather than taking sides, try to promote a reconciliation between the parties. Nowadays, however, their ability to actually prevent divorce is much diminished. If the couple want out, they are less likely than before to let 'helpful' relatives stand in their way.

Koreans generally still prefer any alternative to the disgrace of litigation. Thus the advantages of arbitration should always be seriously explored. In fact, the system in Korea is quite highly developed, and so it is a good idea to adopt a detailed arbitration clause in any contract negotiated between Korean and foreign parties. The advantages of arbitration include understandable, flexible and informal procedures, as well as increased confidentiality and reduced costs.

At the same time, however, individualism is on the rise in Korea and this affects the practice of law in many ways. In the past Koreans were usually reluctant to file a lawsuit because such action was widely viewed as detrimental to the overall harmony of society. And generally Koreans still view litigation as a last resort, something to be avoided if at all possible. But nowadays some people do not hesitate to litigate when they feel it is in their best interests to do so. Koreans sometimes sue foreigners as well, but they genuinely try not to sue anyone -- for a number of reasons.

Perhaps the most fundamental reason is that, unlike the situation in most Western nations, a lawsuit in Korea is not an effective way of encouraging the other side to compromise or settle out of court. On the contrary, the chances for an amicable agreement often go right out the window in Korea once a statement of claim has been served on someone. But the courts do recommend conciliation nowadays as a means of reducing the backlog of cases. Litigants are strongly encouraged to investigate whether all other remedies have been exhausted, or perhaps rejected prematurely. So settlements are becoming more possible, but a lawsuit is still not something you enter into lightly or just to get somebody's attention.

There are other serious disincentives to making a claim, such as the substantial filing fee that applies. On the positive side, this deters frivolous actions. But it also makes it difficult at times for all but the wealthy to go to court to get justice. There is also the matter of the lawyer's fees. These are actually quite reasonable in Korea when compared with those in, say, the United States, but of course clients do not always see it that way. Depending on the type of legal work being done, the fee structure will vary. Commercial lawyers in Korea now bill on an hourly basis, whereas litigation lawyers generally insist on a fixed fee at the outset -- the expense of which does deter some potential litigants from commencing an action -- as well as a second installment payable later only if the action is

successful. This system is viewed by most clients as both sensible and fair. One area in which their burden is becoming lighter is that of the recovery of lawyer's fees and court costs. These can now be made part of the claim and are recoverable, often on a percentage basis, for the successful litigant by order of the ruling court.

How do disputes get resolved in Korea without going to court? One observer put it this way: try endurance and patience first; personal compromise and arbitration second; and litigation, whether civil or criminal, only third. Since Korea is a signatory of the United Nations Convention for the Recognition and Enforcement of Foreign Arbitral Awards, arbitration offers some definite advantages – especially when compared to the more problematic recognition and enforcement of foreign judicial decisions. Additionally, since 1966 Korea has had a detailed Arbitration Act, which not only permits both parties to a dispute to set their own terms for arbitration but also provides for terms not specifically agreed upon by them.

The negotiation of any contract between Korean and foreign parties will thus be enhanced by agreeing at the outset of negotiations to adopt a detailed arbitration clause. Careful consideration of such a clause in a contract assures the parties that the arbitrators will be knowledgeable individuals in whom they can have confidence. And the practical benefits of employing this method of dispute resolution include understandable, flexible and informal procedures, confidentiality, and reduced costs.

(g) Communication Styles

The key point to remember here was first raised earlier in the section on language. Koreans do not want to lose face, ever, and so all communication with them must be done with this in mind. Frank discussion is not ruled out, however, since sometimes Koreans can be quite straightforward, even blunt, in conversation. But only sometimes. At other times, and in other social or professional contexts, they will feel the absolute necessity to be indirect or even vague. And as a foreigner you need to pick up on these cues, and know when to back off or wait for another opportunity to ask questions or demand answers.

Another point to remember is that Koreans want business to be pleasant and harmonious. As such, they usually hate to be the bearers of bad news. This means that they will often postpone the announcement of such news as long as possible. Sometimes this is done in the genuine though often unrealistic hope that things will change for the better in the interim, and then the bad news will not have to be delivered at all! Such an outcome would spare everyone much unpleasantness, but of course this tendency can also lead to terrible trouble -- especially when it is then too late to remedy a situation that might have been successfully dealt with sooner.

For foreign attorneys and businessmen who need to communicate with Koreans, it is always a good idea to insist on being told the bad news first. This still won't ensure that you get told the truth in a timely fashion, but it will improve the odds.

You should also keep in mind that most of the Koreans you deal with professionally find themselves in a somewhat difficult and stressful situation, having to communicate in what is for them a foreign language. This means that genuine, honest misunderstandings can easily arise at any moment, though they may not be detected or discovered until some time later. As a rule of thumb, therefore, and unless there are compelling reasons to the contrary, you will need to get everything in writing to minimize the possibility of future embarrassment or bad feelings on both sides. It might be regarded by some Koreans as a measure of the mistrust between parties for you to insist on committing every detail to paper. But it is worth it for everyone in the long run.

On this matter of trust, one other point to note is that Koreans, like most Asians, are generally not as comfortable as Westerners when it comes to making eye contact. To do so is not universally understood as a sign of the speaker's truthfulness. Instead, it is often considered quite bold and rude. Glancing away, on the other hand, is properly deferential and respectful. So a Korean's refusal to look you in the eye when talking should definitely not be misconstrued as a sign of insincerity. Moreover, when Koreans converse in any foreign language they occasionally pretend to have greater listening comprehension than is actually the case, either out of pride or embarrassment. At such times they have a tendency to nod their head in apparent agreement and say "uh huh," but you should not assume that they have completely understood your intended message, much less accepted it.

(h) Negotiations and Decision Making

It must be admitted that Koreans, by and large, have not fully developed the skills required for successful negotiation. In part they have history to blame for this. Historically the Korean people have been ruled by powerful kings and, more recently, by a rather ruthless colonial power. So there was not much opportunity to negotiate. Democracy is itself a kind of ongoing negotiation, and Korea has really only known democracy -- the real thing -- in the last decade or so. Some social critics might question whether it has truly been attained yet, though there is no denying that great progress has been made.

The authoritarian past has thus left its mark on the "negotiation" style of Korean politicians and businessmen and even lawyers. In short, compromise is sometimes viewed as a sign of weakness and there is not a lot of give-and-take in most discussions. Rather, it is often a case of winner-take-all, with the game being decided strictly on the basis of the power of the participants. And there is little room, and less perceived need, for compromise if you think you have the upper hand.

The relative bargaining power of the participants is traditionally the only relevant factor. But this means that an interesting situation can develop when the power balance shifts -- or is thought to have done so -- after the negotiations have been completed. The newly empowered party can demand that the deal be "renegotiated" and often he will not hesitate to do so.

Foreign investors sometimes feel some insecurity because of the fluid nature of Korean agreements, but this may simply be due to the Westerners' incomplete understanding of Korean culture. From the Korean perspective there is nothing dishonorable or even unusual about trying to improve the terms of a deal after the fact. This is simply a matter of common sense and expediency. Agreements, viewed from this perspective, should be loose and flexible so that such modifications can be made with a minimum of fuss and bother. The specific terms are considered merely theoretical, not writ in stone. The spirit of the contract is more important than the letter. But from a Western contractual law point of view such ideas are heresy.

No matter how carefully a contract has been negotiated, however, it has no force or effect until it has been agreed to by someone with the proper decision making authority. But in Korea this is not always a simple matter for foreigners to understand. The point to remember is that the power structure in Korean companies, as in the government, is highly centralized and concentrated at the top. Thus, even if one is dealing with the head of a particular department within a corporation, or with another fairly senior level manager, one should not expect to be able to sit down, negotiate and simply sign an agreement. In all likelihood, the Korean businessman will have to get final approval from the highest source.

The typical Korean company, up till now, has been effectively controlled by a single individual who acts as its president or chairman. Unlike foreign business practice, where the chief executive takes staff advice very seriously into account when making decisions, the Korean boss is often extremely autocratic and he feels no compulsion whatsoever to rely on his subordinates' so-called expert opinions. Thus, even the most reasonable terms of a contract seemingly agreed to by working level negotiators can sometimes be rejected at the last moment by the chairman. To an outsider such an abrupt change of direction might be totally unexpected, but my advice to you is to expect it. The foreign lawyer needs to be sensitive to this reality and prepare accordingly.

(i) Style of Agreements

As noted briefly above, there is a definite preference in Korea for simple agreements that leave future problems to be resolved by amicable negotiation rather than by predetermined and complex legalistic formulas. Koreans prefer this approach because they believe, reasonably enough, that it is impossible to accurately predict exactly how the respective positions of the parties will change over time. Also a Korean may feel that anticipating and specifically providing for every possible outcome indicates a lack of mutual trust. In fact, if a Westerner insists on drafting an agreement totally Western-style, covering absolutely everything in advance, he runs the risk of destroying such trust as has already been established. So some kind of balance between the sensibilities of East and West is required.

A Korean likes to think of a contract as a fluid rather than a fixed arrangement. As a result, even when a precise agreement based on the principles of Anglo-American law has been signed, the Korean party may sometimes later wish to alter it to suit new contingencies.

Whether the foreign party then agrees to the changes or not will of course depend on the respective bargaining strengths of the two parties.

Moreover, if certain precise requirements of a contract are seen as impeding the smooth practical execution of its overall intentions, those provisions may occasionally be treated as merely theoretical requirements, which can thus be ignored in the interest of expediency. The lesson that a foreign businessman or lawyer should learn from this is that Koreans do not see a serious incongruity between publicly stating and officially agreeing to one thing and privately agreeing to do something quite different. Therefore, one should ensure that any modification or waiver of a provision of a contract is clearly discussed and understood by both parties and unequivocally stated in writing.

As regards the style of agreements, one additional point deserves brief mention. Koreans not only prefer to keep contracts simple, they have traditionally tried to keep them short -- limited to one or two pages if at all possible. Of course, nowadays this cannot always be done. After forty years of industrialization, the Korean economy demands business contracts that are often just as complicated as those found elsewhere. And modern Korean businessmen understand the necessity of these longer, more detailed contracts and have become quite accustomed to them. But that still does not mean they like them.

(j) Interactions with Foreign Lawyers and Clients

The various points mentioned above concerning communication style, negotiating tactics and deal-making strategy are all relevant when it comes to interactions between Koreans and foreigners, whether they be lawyers or clients. Basically Westerners are comfortable with a lot of detail, and very uncomfortable with vague generalities. For Koreans, it is often the reverse; that is, those who are less experienced and sophisticated about contract negotiation do not like entering into detailed agreements.

There are several reasons for this. First, Koreans tend to be rather suspicious of their business partners and reluctant to provide for every contingency in advance. However, once they do believe in their counterparts, Koreans communicate with them not only openly and honestly, but sometimes rather indiscreetly and thus to their own disadvantage. Secondly, Koreans are generally not accustomed to being assisted by lawyers or other experts. As a result, they often have only a rough understanding of the provisions of contracts, rather than the kind of intimate knowledge that comes from examining them thoroughly. And thirdly, the managers of Korean companies are usually pressed for time and so try to conclude contracts in a hurry, without considering them carefully.

It is not really a question of who is right and who is wrong, so much as one of style. But it is nonetheless true that a solid working relationship, especially an intercultural one, requires both sides to be playing by the same rules. Which in turn requires that such rules be made explicit. For example, the degree of detail that should go into a contract must be mutually understood and accepted. So must such issues as how much scope there will be

for change in the contract later, and how much discretion should be left to the court in interpreting the agreement.

Once again the culture gap is narrowing, however. Remember that Koreans are starting to get used to Western-style contracts as the number of business deals between Korean companies and their foreign counterparts increases. In addition, the growth in the number of business lawyers whom Korean companies can consult makes negotiating and concluding agreements easier than before. Nonetheless, imperfect communication in English still occasionally gets in the way of successful contract completion. Mutual misunderstanding can occur on some subjects, especially in oral negotiations. Thus the practical value of full and accurate documentation cannot be overemphasized. In short, get it in writing -- all of it.

(k) *Lawyer Behavior*

In contrast with the usual practice of Western countries, Korea has traditionally expected its lawyers to be quite low profile, and so they are. They do not usually get heavily involved in business negotiations. Nor do they take the lead in advocating social change or championing issues of public policy.

In any case there are still only about 3,500 lawyers in all of private practice, and a mere fraction of them are involved in international business. Moreover, attorneys simply do not play a very significant role in the daily life and work of the average Korean businessman, who has as little to do with lawyers as possible. They certainly are not expected to handle business negotiations for clients; this is generally regarded as well outside their ambit of expertise.

Moreover, even if the Korean businessman really wants the lawyer's strategic advice, cultural limitations frequently inhibit effective face-to-face, detailed consultation. In fact, the inhibitions exist on both sides of the attorney-client relationship. If the client is, for example, the chairman of a large conglomerate, he will probably want to minimize his direct dealing with lawyers, but when such contact is unavoidable he will try to share as little information with them as possible. Moreover, he will not be quick to accept their 'expert' opinions since he likely operates on the principle that might be called Father Knows Best -- about everything. But for most Koreans there will be a general tendency to respect the opinions of the lawyers and acknowledge their professional expertise, unless there is some major disagreement. Otherwise, Korean clients may even refrain from asking their attorneys 'too many' questions because of their own limited knowledge of the law.

But there is also an obstacle to the free exchange of information that comes from the lawyer's side, and once again it is partly cultural. Until recently, at least, the prevailing opinion within the legal profession was that clients did not need to know, or want to know, about the technicalities of their own cases. It was generally thought best to leave such matters to the lawyers, who were often relieved not to have to explain things to their client in layman's terms -- no easy task. So consultation was typically minimal and quite general,

in stark contrast to the Western model wherein the lawyer wants to know all about his client's business and the client makes it his business to know a surprising amount about the law. Even today in Korea these two domains still remain quite separate and distinct. The point is that lawyers in Korea have traditionally not briefed their clients in any detail, or been expected to do so.

But once again things are shifting, both in Korean culture and in the practice of law, where the attitudes of lawyers reflect this social change. In the legal profession you see a much more aggressive and competitive style. This is especially true for business lawyers, who now take the initiative in many ways such as urging their clients to settle. And many trial lawyers are adopting a similar approach. It seems to be part of an overall trend toward Americanization. Fortunately, there is a growing number of Korean lawyers who have received or are currently undergoing overseas training. These lawyers will no doubt play an increasingly important role in bridging the gap between differing cultures and legal systems. With the advent of the IMF bailout and the related massive economic restructuring already taking place, Korean lawyers will be called on to play a much more active and creative role in guiding this traditional society into the twenty first century. And they will do it by working closely with members of the legal profession from throughout the world.

Conclusion

The impact of Korean culture on the practice of law has been enormous and the effects of this will continue to be felt for years to come. This modern society remains justifiably proud of its ancient traditions and determined to preserve many of them. But of course things are changing as well. In Korea today one can witness an ongoing conflict between old and new ideas, as well as an impressive attempt to harmonize Eastern and Western values.

Traditional Korean culture placed serious limits on the law and its practice. This Confucianist society saw no great need for lawyers, except in certain narrowly defined areas of life, and was rather proud of this fact. One result, however, was that the legal profession as a whole assumed a fairly passive role, leaving business to the businessmen and politics to the politicians. But in the wake of industrialization and globalization, the role of law and lawyers will inevitably become much larger. This trend toward greater legalization of the society and the economy may well be necessary, but it is not viewed by Koreans as an entirely welcome development, and who can blame them? There is an understandable element of ambivalence in the Korean attitude about the law and its increasing importance in everyday life. Few Koreans, for example, would wish to emulate the hyper-litigiousness of American society. Yet more lawsuits are being filed in Seoul these days.

As Korea undergoes these rapid and remarkable changes, the legal profession is trying its best to keep up with the latest developments -- social, political and economic. But it is not easy. In this time of transition the entire nation faces countless challenges and the real risk

of social unrest. As such, one of the key roles for Korean lawyers will be that of peacemaker and bridge-builder: between traditionalists and progressives, labor and management, the young and old, men and women, and the government and the people. By helping to resolve these conflicts, members of the Korean bar will also be creating a new culture.

In this age of global interdependence, Korean society must find compromise formulas that will allow it to absorb outside cultural influences and yet adapt them to local conditions. This is true of the legal system itself, where Western ideas, particularly American ones, are now gaining wider acceptance. It will require a delicate balancing act and the many necessary trade-offs will be both painful and difficult. How can Korea expand individual rights without abandoning collective responsibilities? How to promote women's rights while preserving the family? How to liberalize the labor market while protecting workers? And how to further open up the economy without sacrificing too much political sovereignty? Korea's lawyers will have a say in all these matters, and it will take all their intelligence and innovation to help the country arrive at workable and equitable solutions. They have a responsibility to educate the public about the law, and thus help to reform the social system. As Korean lawyers become both more active and more numerous they will surely do so -- as they should.

But though much is changing, Korea remains Korea, and so its unique culture must be understood by those who would do business there or practice law. For foreigners the language barrier naturally presents some problems, but even in English the Koreans' preferred mode of expression -- often indirect, generalized, or somewhat vague -- can complicate things. Moreover, although a greater measure of equality can now be found, Korean society is still very hierarchical. Status still depends in part on family connections, school ties, and even regional identity. Lawyers continue to enjoy great prestige, but as their numbers increase their precise role must be expanded as well: predictably, they will be called on by some foreign clients to get more directly involved, Western-style, in business deals. Meanwhile legal education is being redesigned to reflect new realities. The curriculum has been widened and more creativity is now demanded of law students.

At the same time, the large law firms will continue the trend toward specialization to meet the increasingly sophisticated needs of international clients. Alternative methods of dispute resolution will remain essential, but as Koreans grow less litigation-shy lawsuits will also become more common. Korean lawyers, especially those who have received part of their training abroad, will gradually adopt a more direct communication style. Intercultural negotiations will include more detail, with less scope for changing agreements after the fact. Finally, as Korean attorneys become more and more used to dealing with foreign clients and counterparts, the different cultures and legal systems they represent will begin to converge. Some differences will always remain, but the legal profession can play a more positive role in Korean culture by creatively combining the best of Western law and Asian values.

Despite the country's current difficulties, or perhaps because of them, Korea has now definitely embraced internationalism and the many opportunities this offers for the future.

And the country will continue to make its way confidently in the world. But it will do so, as much as possible, in Korea's own unique way. That will surely be something to watch, and to celebrate, as we all move into the next century.

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1) See Byung Ho Park, *Traditional Korean Society and Law*, in *Korean Law in the Global Economy* 1-20 (Sang-Hyun Song ed., 1996); William R. Shaw, *Social and Intellectual Aspects of Traditional Korean Law, 1392-1910*, in *Korean Law in the Global Economy* 20-47 (Sang-Hyun Song ed., 1996).

2) See Edward J. Baker, *The Role of Legal Reforms in the Japanese Annexation and Rule of Korea, 1905-1919*, in *Korean Law in the Global Economy* 75-98; Pyong-choon Hahm, *Korea's Initial Encounter with the Western Law: 1910-1948 A.D.*, in *Korean Jurisprudence Politics and Culture* 137-51 (1983).

3) A commentator illustrates a five level dichotomy using: 'Universalism vs. Particularism,' 'Impersonal vs. Personal Relationships,' 'Competition vs. Cooperation,' 'Individual vs. Collective Responsibility,' 'Conflict vs. Harmony.' (Dai-Kwon Choi, *Western Law in A Traditional Society Korea*, in *Comparative Legal Cultures* 249-74 (Csaba Varga ed., 1992).

4) In Korea, there is some controversy between proponents of the exclusive use of Hangul and proponents of the traditional commingling of Hangul and Chinese Characters. Recently, some people argue that Koreans should commonly use English in the Age of Globalization.

5) For a general overview of the legal profession in Korea, see sections (2) (a)-(c) below.

6) Concerning the development of modern Korean nationalism, see Chong-Sik Lee, *The Politics of Korean Nationalism* (1963).

7) The feminization of the legal profession has been a worldwide phenomenon in recent years. See Carrie Menkel-Meadow, *Feminization of the Legal Profession; the Comparative Sociology of Woman Lawyers*, in *Lawyers in Society Vol. 3: Comparative Theories* 196-225 (Richard L. Abel and Philip S. C. Lewis eds., 1989).

8) It would be very interesting to compare the views of Koreans with those of foreigners regarding the Korean legal education system. See Dai-kwon Choi, *Legal Education in Korea: Problems and Reform*

Efforts, 29 Seoul Law Journal (N0.2) 104-22 (1988); James M. West, Education of the Legal Profession in Korea (1991).

9) In Korea, many people support legal education reforms. Recently, as part of a general trend towards 'Globalization', there are some voices strongly in favor of introducing an American style system of legal education.

10) Concerning the current situation of paralegals in Korea, particularly the role of Judicial Scrivener, see Woong Shik Shin, *Judicial Scriveners in Comparative Analysis of Korean and American Judicial Systems*, in *Korean Law in the Global Economy* 349-52 (Sang-Hyun Song ed., 1996).

11) Korean lawyers working in law firms are often regarded as distinguished members of the Korean legal profession because of their educational and business background. They are often called *KUK-JE BYUN-HO-SA* (international lawyers). See Jason Comrie-Taylor, *The Demand for and Supply of 'KUK-JE BYUN-HO-SA' and Foreign Lawyers in Korea*, 25 *Korean Journal of International and Comparative Law*, 137-72 (1997).