

FROM DISSIDENTS TO INSTITUTION-BUILDERS:  
THE TRANSFORMATION OF PUBLIC INTEREST  
LAWYERS IN SOUTH KOREA\*

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*The nature of public interest lawyers in South Korea has transformed in recent decades. Under authoritarian rule in the 1960s, 1970s and 1980s, a sparse group of human rights lawyers defended the rights of political prisoners and laborers. With transition to democracy beginning in 1987, these lawyers formed a professional affiliation called Lawyers for a Democratic Society (Minbyun). As citizens' groups and social movements blossomed in the 1990s, civic-minded lawyers began to support more specific causes such as women's rights, consumer protection, environmentalism and economic justice. In 2002, Roh Moo-hyun, a Minbyun lawyer was elected President. However, public interest lawyers appear to have faded from public view since the advent of a liberal-democratic administration.*

*This Article asks a number of questions with respect to the transformation of public interest lawyers from the 1990s to date. What makes a "public interest lawyer" in South Korean society? What role do they have in public interest law groups? What new implications have arisen for public interest lawyers during and after a reformist government? Why does it appear that public interest lawyers have faded from public view? This research intends to show that public interest lawyers in South Korea have gained social and political empowerment during the democratization process, and thus have become more effective, lower-profile institution-builders with respect to advancing the practice of public interest law.*

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\* *Editor's Note:* The identities of persons interviewed by the author as part of her empirical research are intentionally not disclosed. Please contact the author directly for questions regarding her research data.

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## I. INTRODUCTION

The South Korean legal profession is in the midst of upheaval. Starting in spring 2009, legal education must take place at graduate law schools instead of at the college level and the Supreme Court-managed Judicial Research and Training Institute for those who pass the national judicial exam. Presidential judicial reform committees in past administrations had pushed for an increase in the number of legal professionals and for three-year graduate legal education partly in response to public perception that access to legal services was inadequate.<sup>1</sup> This proposal finally became reality when legislation passed to transform twenty-five undergraduate law colleges to three-year graduate law schools throughout the nation, averaging between forty to 150 students per school.<sup>2</sup> Among the ongoing transformations of the Korean legal profession, the changing role of public interest lawyers has yet to be analyzed. As the legal profession undergoes changes in training and size, this is an opportune time to investigate the impact that public interest lawyers have had in Korean society.

In the first several decades of South Korea's existence after the Korean War (1950-53), lawyers who fought for social and political causes numbered in the dozens only. Although they were a minority within the legal profession, these lawyers maintained a relatively high profile as "human rights lawyers" for defending political prisoners or striking laborers in opposition to the state, especially under the authoritarian rules of Park Chung-hee (1961-1979) and Chun Doo-hwan (1980-1988). Under succeeding civilian administrations, many of these same lawyers grouped under the banner of Lawyers for a Democratic Society (*Minjusahoe-reul uihan byeonhosa-moim*, or *Minbyun*) to

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<sup>1</sup> Globalization Promotion Committee, *Survey Results of Nationals Regarding Judicial Reform*, in GLOBALIZATION OF LEGAL SERVICE AND LEGAL EDUCATION, at 12, 528 (1995).

<sup>2</sup> Act on the Establishment and Operation of Graduate Law Schools, Law No. 8544 (2007). A phase-out period will continue for a few years so that students currently enrolled in law colleges may still take the existing judicial exam and receive training at the Judicial Research and Training Institute.

continue to defend the rights of those deemed in violation of the National Security Law or were protesting their working conditions. As democratization progressed under the presidency of Kim Dae-jung (1998-2003), *Minbyun* lawyers aligned themselves with visible social movement groups such as the Citizens' Coalition for Economic Justice (CCEJ), Korean Federation for Environmental Movement (KFEM), Green Korea United, and the People's Solidarity for Participatory Democracy (PSPD, or *Chamyeoyeondae*). Many of the same lawyers continued to connect with citizen advocacy organizations during the liberal reformist government of Roh Moo-hyun (2003-2008), himself a former *Minbyun* attorney.

Although the activities of public interest lawyers had been domestically reported over the decades in South Korea,<sup>3</sup> their institutional impact on the reconfigurations of state, market and civil society has not been explored in depth.<sup>4</sup> How have Korean lawyers mobilized institutions for social reform? The dynamics of public interest lawyering in South Korea can be better understood by determining how public interest lawyers have allied with social movements and built institutions through networks to consolidate their power and agenda.

This Article traces the evolving roles of Korean public interest lawyers throughout the past twenty years to understand how Korean lawyers have mobilized movements and institutions for social reform. First, the relatively new concept of cause lawyering is tested in its application to the South Korean legal profession. Second, an overview of the Korean legal profession provides context to the role and emergence of the Korean public interest lawyer. Next, the evolving roles of public interest lawyers as dissidents, institution-builders, and lawyer-statespersons are examined in order to answer several important questions: Who are the public interest lawyers in South Korea? What has been their traditional identity in South Korea? Where are they

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<sup>3</sup> See generally MINBYUN BAEKSEO: MINBYEON 10 NYEON-UI BALJACHWI [MINBYUN WHITE PAPER: 10 YEARS OF MINBYUN FOOTPRINTS] (1998) (chronicling the history of the *Minbyun*).

<sup>4</sup> Socio-legal scholar Terence Halliday argues that lawyers should be viewed as agents and principals who help shape the institutions they are in. Terence C. Halliday, *Lawyers as Institution Builders: Constructing Markets, States, Civil Society, and Community*, in CROSSING BOUNDARIES: TRADITIONS AND TRANSFORMATIONS IN LAW AND SOCIETY RESEARCH 242, 244-46 (Austin Sarat et al. eds., 1998).

ideologically located within the legal profession and within Korean society? And how and why has their profile changed under the liberal reformist administration during 2003-2008? The Article concludes with the recent state of public interest lawyering in South Korea and the challenges ahead in improving the course of public interest law. Ultimately, this research illustrates that public interest lawyers in South Korea have gained social and political empowerment during the democratization process, and thus have become more effective institution-builders with respect to advancing their social and political causes in the past two decades.

## II. “CAUSE LAWYER” V. “PUBLIC INTEREST LAWYER”

Initially, I must justify the use of the term “public interest lawyer” given the recent popularity of the term “cause lawyer.” Under a working group project of the Law and Society Association, political scientists Austin Sarat and Stuart Scheingold have edited and authored a series of volumes on cause lawyering.<sup>5</sup> Sarat and Scheingold eschew the label “public interest lawyer” because it invites disputation “over what is, or is not, in the public interest,” a slippery concept in itself.<sup>6</sup> They coin the term “cause lawyering” because “[i]t conveys a determination to take sides in political and moral struggles without making distinctions between worthy and unworthy causes.”<sup>7</sup> Yet defining “cause lawyering” is not straightforward either. To start with, Sarat and Scheingold admit the impossibility of providing a single, global definition and to think of cause lawyering as a dynamic concept in continuous reinvention.<sup>8</sup> The closest definition I find is this: “[a]t its core, cause lawyering is about using legal skills to pursue ends and ideals that transcend client service—be those ideals social, cultural, political,

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<sup>5</sup> CAUSE LAWYERING AND THE STATE IN A GLOBAL ERA (Austin Sarat & Stuart Scheingold, eds., 2001) [hereinafter CAUSE LAWYERING AND THE STATE]; CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES (Austin Sarat & Stuart Scheingold, eds., 1998) [hereinafter CAUSE LAWYERING]; STUART A. SCHEINGOLD & AUSTIN SARAT, SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING (2004) [hereinafter SOMETHING TO BELIEVE IN].

<sup>6</sup> SOMETHING TO BELIEVE IN, *supra* note 5, at 5.

<sup>7</sup> *Id.*

<sup>8</sup> Austin Sarat & Stuart Scheingold, *Cause Lawyering and the Reproduction of the Professional Authority: An Introduction*, in CAUSE LAWYERING, *supra* note 5, at 3, 5.

economic, or, indeed, legal.”<sup>9</sup> The authors concede that studying cause lawyering is problematic in terms of both definition and concept.<sup>10</sup> In fact, one example would be that the definition does not distinguish between a cause lawyer or a public interest lawyer, or, for that matter, an activist lawyer, radical lawyer, protest lawyer, rebellious lawyer, progressive lawyer, civil rights lawyer or social justice lawyer.<sup>11</sup> Thus, “cause lawyer” can be viewed as largely synonymous with the rest of the more conventional titles.

The difficulty of using the term “cause lawyer” becomes quickly apparent when applying it outside the American system. In South Korea, there is no such thing as a “cause lawyer.” The closest thing South Korea has to cause lawyers are “human rights lawyers” (*in-gwon byeonhosa*), also arguably translated as “civil rights lawyers,”<sup>12</sup> under which labor and defense lawyers are usually categorized, and the new, locally minted phrase translated directly as “public interest lawyer” (*gong-ik byeonhosa*). *In-gwon byeonhosa* was the dominant label in years past, especially under authoritarian regimes, but the phrase has become less relevant with successive governments more conscientious about rights protection, and rights protection diversifying into various areas such as consumer protection, economic justice and environmental protection. The more generic job title of “lawyer” (*byeonhosa*) has been used to describe generally any lawyer assisting a citizens’ advocacy group, while *gong-ik byeonhosa* arrived with the recent creation of a public interest law firm, *Gong-Gam*.<sup>13</sup> Importantly, the transformation in label demonstrates a change in the nature of public-oriented lawyers in South Korea, a shift barely noted in law and society literature.

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<sup>9</sup> SOMETHING TO BELIEVE IN, *supra* note 5, at 3 (citation omitted).

<sup>10</sup> *Id.*

<sup>11</sup> See Carrie Menkel-Meadow, *The Causes of Cause Lawyering: Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers*, in CAUSE LAWYERING, *supra* note 5, at 31, 33 (reviewing literature and finding various labels applied to cause lawyers).

<sup>12</sup> Although *in-gwon byeonhosa* is more frequently translated as “human rights lawyer” than “civil rights lawyer,” one Korean legal scholar argues that the latter is the more accurate translation because lawyers advocating on behalf of defendants during authoritarian rule were invoking the rights of citizens under the South Korean Constitution rather than from an international standard of human rights. Interview with Professor of Korean Law, in Santa Clara, Cal. (Apr. 21, 2005) (on file with author).

<sup>13</sup> See generally Korean Public Interest Lawyers’ Group, *Gong-Gam, About Us* [sic], <http://www.kpil.org/eng/who/about.php> (last visited May 10, 2009) (giving brief history of *Gong-Gam*).

The history of public interest lawyering in South Korea also does not extend as deeply or as broadly as in the American tradition.<sup>14</sup> Given its civil law custom, South Korea has had a very small and tightly controlled cadre of legal professionals. The government continues to set the annual bar passage rate and to train them in the Judicial Research and Training Institute (JRTI), at least until the new law school system comes into full implementation. Until the 1990s, most successful bar applicants preferred higher status positions as judges or prosecutors rather than as private lawyers.<sup>15</sup> Career paths as lawyers, judges or prosecutors were largely pre-determined by the grades one received at the JRTI.<sup>16</sup> Since most legal professionals have historically served the state, their employer, few dared to oppose state-perpetrated violations under the military rule of Presidents Park and Chun. The few lawyers who did so at the time are now considered the first generation of *in-gwon byeonhosa*.

Additionally, there is the problem of restricting “cause lawyering” to lawyers. In the United States, one is foremost an attorney, so that becoming a judge, prosecutor or law professor does not preclude that title. In South Korea, one has had to choose upon graduation from the JRTI whether to become a judge, prosecutor or lawyer, while the majority of those opting for a career in legal academia do not take or pass the bar exam.<sup>17</sup> Retiring judges or prosecutors can then practice as lawyers, but rarely does it happen the other way around. It would be safe to say that lawyers do the majority of public interest lawyering in South Korea. Nevertheless, the phrase “cause lawyering” or “public interest lawyering” needs to be used conscientiously in the South Korean context so that the legal activities of legal professionals who are not lawyers (*byeonhosa*) may also be considered.

Despite labeling issues, the project on cause lawyering has many merits. The *Cause Lawyering* volumes present a collection of articles

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<sup>14</sup> Sarat and Scheingold recognize that different legal traditions account for varying scopes of cause lawyering. See Sarat & Scheingold, *supra* note 8, at 6 (noting differences between roles of lawyers in, for example, civil law and common law legal traditions).

<sup>15</sup> Yoon Dae-Kyu, *The Paralysis of Legal Education in Korea*, in LEGAL REFORM IN KOREA 36, 43 (Tom Ginsburg ed., 2004).

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

<sup>17</sup> Dai-kwon Choi, *A Legal Profession in Transformation: The Korean Experience*, in REORGANISATION AND RESISTANCE: LEGAL PROFESSIONS CONFRONT A CHANGING WORLD 171, 174 (William LF Felstiner ed., 2005).

that frame many different aspects of public interest lawyering and help to identify strong, reemerging themes with respect to public interest lawyering, such as self-perception issues, the location of public interest lawyers, their help and hindrance to social movements and citizen advocacy groups, transnational alliance, and the differences in public interest lawyering against a repressive state or within a maturing democracy. I reference some of these works throughout this article as they relate to the South Korean legal profession.

In the end, I agree with Sarat and Scheingold's definition more than I do with their labeling. While the Korean legal system provides specific labels of "human rights lawyer" and the newer title of "public interest lawyer," I prefer to use the phrase of "public interest lawyer" or even "activist lawyer" in a broad sense to capture the spectrum of lawyers who have worked on various social and political reform issues. For the reasons stated above, I use "public interest lawyering" to mean, in the most general sense, the use of legal means to help achieve a social cause, and "public interest lawyer" as a lawyer who employs legal means to help achieve a social cause.

### III. THE PUBLIC INTEREST LAWYER IN THE CONTEXT OF THE LEGAL PROFESSION

The South Korean legal profession has an interesting and important role within civil society given its direct connection to law and legal reform generally. After all, the architects and implementers of laws are not just legislators and government agencies, but lawyers, prosecutors, judges and legal scholars. Legal professionals are the ones who can decipher the laws for the public, but they are also the ones to initiate practical changes in the law to reflect the demands of the public. Given the "gatekeeping" role of lawyers to legal discourse and activities,<sup>18</sup> the role of lawyers can be instrumental in the mobilization of law by citizen advocacy organizations. Thus the question at hand is: what roles have public interest lawyers played in representing the concerns of South Korean civil society? We cannot reach the answer without first understanding the make-up of the legal profession as it relates to Korean society generally; only after we understand this infrastructure can we see

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<sup>18</sup> See generally, Donald J. Black, *The Mobilization of Law*, 2 J. LEGAL STUD. 125, 133 (1973) (describing lawyers' various gatekeeping roles in public and private law).

how public interest lawyers have distinguished themselves from the rest of the legal profession in partnering with citizen movement organizations.

The South Korean legal profession, regulated by competitive law school entrance exams and stringent bar exam requirements, has historically comprised a small but very elite group.<sup>19</sup> This group was government-trained in the Korean civil law tradition, leading one to that the legal profession would not structurally permit much room for public interest lawyers who might champion causes against the government. After passing the rigorous bar exam usually taken after law school studies, successful applicants historically studied and trained for two years in the Judicial Research and Training Institute before choosing a career as judge, prosecutor or lawyer.<sup>20</sup> Before 1981, JRTI graduates generally found jobs as judges or prosecutors,<sup>21</sup> leaving only a small group of retirees to enter private practice.<sup>22</sup> Thus, judges and prosecutors, who were located within the state, made up the majority of Korean legal professionals. Beginning in 1981, however, the bar passage quota was raised from 100 to 300 persons; then again from about 1996 to 2002 this quota was increased by about 100 annually.<sup>23</sup> Thus, in the 1981-1995 period, about one-third of the yearly JRTI graduates found positions in the courts or public prosecutor's office, leaving two-thirds to private practice on an annual basis.<sup>24</sup> The yearly quota for bar passage is currently about 1,000, which amounts to just over three percent of bar applicants passing; of those, one-fifth can be hired by courts or prosecutors, and the remaining four-fifths enter private practice.<sup>25</sup>

The bar exam and JRTI training process are indicative of two major traditional characteristics of the Korean legal profession: state service and elitism. The trait of state service is changing, however. With the number of attorneys increasing, in recent years only one-fifth of JRTI

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<sup>19</sup> See Choi, *supra* note 17, at 175 and tbl. 2 (discussing small size of Korean legal profession, defined to exclude academics, and showing historical numbers of legal professionals); Yoon, *supra* note 15, at 39 (“Korean legal professionals enjoy prestigious respect and power while in office, and financial affluence while in private practice.”).

<sup>20</sup> Choi, *supra* note 17, at 174.

<sup>21</sup> Yoon, *supra* note 15, at 37.

<sup>22</sup> DAE-KYU YOON, LAW AND POLITICAL AUTHORITY IN SOUTH KOREA 131 (1990).

<sup>23</sup> Yoon, *supra* note 15, at 38-39.

<sup>24</sup> *Id.* at 37.

<sup>25</sup> *Id.* at 40 and tbl. 3.2.

graduates find positions as judges or prosecutors, compared to at least one-third a decade ago and everybody two decades ago.<sup>26</sup> Normally, judicial trainees have viewed judgeship and prosecutor positions as first and second tier choices, while becoming a private attorney has been almost the default position for those who did not get the top grades necessary to secure one of the former positions. However, attaining a position in a prestigious law firm has become another attractive option, in part due to lucrative salaries.<sup>27</sup> Transactional commercial practice is also another inviting field for those not interested in courtroom litigation or prosecution. Regardless of motivating factors, the increased bar passage rate means that the majority of JRTI trainees must now seek jobs in the private sector. The one exception is that lawyers are now entering state service in executive and legislative capacity rather than in the judicial branch, which will be discussed more in Part VI.

On the other hand, the elitist personality of the legal profession has changed very little. Although law school and bar exams are merit-based in that basically anyone can take the exam (with the pre-qualification now that 35 law-school subject credits must first be obtained), special status is immediately conferred upon entering law school and especially on passing the bar exam. Alumni relations at both the law school and JRTI levels create a special club of legal members, especially considering that most JRTI candidates graduate from the same schools.<sup>28</sup> Seoul National University Law College is the most prominent in that nearly half of the JRTI candidates graduate from there,<sup>29</sup> while other law colleges like Koryo, Yonsei, Sungkyunkwan and Hanyang law colleges follow. Thus, legal scholars claim that the Korean legal profession suffers from a “guild mentality.”<sup>30</sup> Legal scholar James West also noted the importance of graduating with an LL.B. from Seoul National University:

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<sup>26</sup> *Id.*

<sup>27</sup> *See id.* at 39 (noting that “practicing lawyers [were guaranteed] large incomes and affluence” because of scarcity).

<sup>28</sup> *Cf.* Yves Dezalay & Bryant G. Garth, *International Strategies and Local Transformations: Preliminary Observations of the Position of Law in the Field of State Power in Asia: South Korea*, in RAISING THE BAR: THE EMERGING LEGAL PROFESSION IN ASIA 81, 94-96 (William P. Alford ed., 2007) (noting that imbedded hierarchy of legal professionals’ status begins in feeder high schools).

<sup>29</sup> Jae Won Kim, *The Ideal and the Reality of the Korean Legal Profession*, 2 ASIAN-PAC. L. & POL’Y J. 45, 49 n. 20 and accompanying text (2001).

<sup>30</sup> *Id.* at 51; Dae-Kyu, *supra* note 19, at 36, 45.

Failure to obtain admission to the law department of SNU already entails that one's expectation of passing the bar is dramatically diminished. Even if the odds are beaten after graduation from a less august university, one's career opportunities may be prejudiced by permanent exclusion from the SNU alumni network that for many years operated almost as a *nomenklatura* of the Korean legal profession, linking judges, prosecutors and lawyers to overlapping alumni networks in the higher civil service and in the private sector.<sup>31</sup>

Thus, it is not difficult to understand the phenomenon of this "old boy's network" when looking at the set-up and make-up of the legal profession. By 2006, for a South Korean population of 48 million people, there were only about 7600 attorneys;<sup>32</sup> in 2003, there were about 2000 judges and 1500 prosecutors.<sup>33</sup> Law professors average almost 1000 nationwide.<sup>34</sup> While law professors are not usually included as being part of the legal profession since they usually do not take the bar (although a small number have),<sup>35</sup> their role in legal education and law reform necessitates that they be included within the category of legal professionals.

The Korean legal profession has traditionally been a male-saturated field, though that is beginning to change with greater female representation being achieved in recent years. Before 1981, only one woman passed the bar annually, if that.<sup>36</sup> In 2000, 151 women passed, amounting to about 19% of all successful bar applicants.<sup>37</sup> In 2002, about 24% of those passing the bar were women, while female lawyers represented 5.5% of all practicing attorneys.<sup>38</sup> The percentage is higher in the judiciary where female judges represent 8% of all judges, and they are gaining further ground considering that in 2003 women made up 90

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<sup>31</sup> JAMES WEST, LEGAL EDUCATION IN KOREA 26 (1991).

<sup>32</sup> This figure was computed by adding the numbers of lawyers from each city district in South Korea as listed on the homepage of the Korean Bar Association's website, at Korean Bar Association, <http://www.koreanbar.or.kr> (last visited May 10, 2009). If one includes "associate" bar members, the number is higher at 8,381. However, the author opts for the more conservative figure under the assumption that "associate" members may not be actively practicing as lawyers. In 2003, the number of private attorneys was 5915. Yoon, *supra* note 15, at 41.

<sup>33</sup> Yoon, *supra* note 15, at 41.

<sup>34</sup> Choi, *supra* note 17, at 175.

<sup>35</sup> *Id.*

<sup>36</sup> Kim, *supra* note 29, at 49.

<sup>37</sup> *Id.* at 50; Choi, *supra* note 17, at 183.

<sup>38</sup> Choi, *supra* note 17, at 175, 183.

out of 224 apprentice judges,<sup>39</sup> and that by 2007 they held 104 out of 187 judicial apprenticeships.<sup>40</sup> Meanwhile, more women are entering law schools, but women on law faculties are extremely underrepresented. Seoul National University hired its first female law professor in August 2003, with other law colleges like Korea University and Sungkyunkwan University following suit in only the past two years. Because there are very few female law professors to hire to begin with, universities face challenges gaining more female representation on law faculties.

These factors of prestige, alumni origin and gender imbalance all raise the issue of whether legal elites can adequately serve the interests of the public. Traditionally, civil servants by virtue of their positions were considered to be in service of the public by fulfilling their state duties. The majority of legal professionals (i.e., judges and prosecutors) were public servants until the 1990s. Compulsory military service for males also falls under public service. Under the Public Service Advocates Act of 1994, male JRTI graduates who have not fulfilled their military service typically work at legal aid agencies to meet this requirement.<sup>41</sup>

Outside working in the capacity of judge or prosecutor, the public service ethic has not been the norm for legal professionals. This may be changing, however. As of 2000, the Attorney-at-Law Act requires a certain number of hours of pro bono work as stipulated by the Korean Bar Association,<sup>42</sup> currently set at thirty hours annually.<sup>43</sup> Furthermore, the South Korean government and bar associations have also organized settings for lawyers to work on behalf of underrepresented groups like the poor or foreign workers. The Korea Legal Aid Corporation is a prominent example. Under the Legal Aid Act of 1987, the government established and funds the private, nonprofit corporation for people in need.<sup>44</sup> However, with only one lawyer for every 6300 citizens, and with judges and prosecutors overwhelmed with their caseloads, it is a

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<sup>39</sup> *Id.* at 184 tbl. 2.

<sup>40</sup> Byun Sun-goo, *New Faces of Justice*, JOONGANG DAILY, Feb. 22, 2007, available at <http://joongangdaily.joins.com/article/view.asp?aid=2872663> (last visited May 10, 2009).

<sup>41</sup> Public Service Advocates Act, Law No. 4836 (Dec. 31, 1994).

<sup>42</sup> Attorney-at-Law Act, Law No. 1154 (Sep. 24, 1962), amended by Law No. 6207, art. 27 (Jan. 28, 2000).

<sup>43</sup> Korean Bar Association's Provisions on Public Interest Activity, art. 3(1). Local bar associations have the option to reduce the requirement to 20 hours, though, as the Seoul Bar Association has done. Korean Bar Association Regulations, art. 9(20).

<sup>44</sup> Legal Aid Act, Law No. 3862 (Dec. 23, 1986), amended by Law No. 4837, (Dec. 31, 1994).

serious issue whether average Korean citizens really have adequate access to the law.

There is no straightforward answer to the question of what the legal profession's role is in South Korean civil society. Legal professionals, including lawyers, prosecutors, judges, law professors and other legal staff, are found in public and private sectors, and cut across the state-society divide in general. For example, judges and prosecutors are civil servants and may transfer to private practice later, while attorneys and legal staff can be found working in private and/or public capacity, either in law firms, legal aid agencies or other special interest groups. Meanwhile, law professors can be located in public or private universities but may serve as consultants to the government, businesses or non-governmental organizations. Thus, the role of the legal profession within civil society is multifaceted. But I now focus the discussion on those lawyers who have advocated behalf of citizens with grievances, in many cases against the state, to see how they have achieved social and legal reform.

#### IV. "HUMAN RIGHTS LAWYERS" AS DISSIDENTS

During authoritarian rule under successive presidents Park Chung-hee and Chun Doo-hwan, a small group of human rights lawyers (*in-gwon byeonhosa*) consistently defended political prisoners and striking laborers. For these several decades, South Koreans understood the law to be an extension of state power.<sup>45</sup> One primary example was President Park's *Yusin* doctrine enacted by constitutional amendment in 1972, which gave the President essentially unconstrained power to rule without judicial or legislative checks.<sup>46</sup> During his administrations, lawyers who defended dissidents were themselves labeled as such by the state. These included key figures like Yi Byeong-nin, Han Seung-heon and Cho Yeong-nae to name a few.<sup>47</sup> These individuals were especially noted for their advocacy of students and workers who had been detained in large-scale arrests and prosecuted by the state for violating laws on

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<sup>45</sup> YOON, *supra* note 22, at 200.

<sup>46</sup> See YUSIN HEONBEOP [RESTORATION CONSTITUTION] (1972) (making eligibility for president so stringent that Park was essentially the only eligible candidate).

<sup>47</sup> See generally PARK WON-SUN, YEOKSA GA IDEUL EUL MUJEO RO HARIRA [HISTORY SHALL ACQUIT THEM] 76-131 (2003).

national security and assembly.<sup>48</sup>

After Park was assassinated in 1979, mounting public protests in the next republic led to the watershed year of 1987.<sup>49</sup> In response to citizen demands, Chun's successor, Roh Tae-woo, amended the Constitution with the opposition party to include direct elections, a single five-year presidential term, more legislative powers, more individual guarantees and the establishment of a Constitutional Court.<sup>50</sup> Within a year, around 50 human rights lawyers formed the Lawyers for a Democratic Society (*Minbyun*).<sup>51</sup> At this time, *Minbyun*'s main area of focus was human (or civil) rights protection, especially defending those the government abused under the pretext of the National Security Law or laborers who protested their working conditions.<sup>52</sup> Between 1988 and 1994, forty percent of *Minbyun*'s cases (over 580 in total) dealt with the National Security Law or the Law on Assembly and Demonstrations.<sup>53</sup>

On the whole, these lawyers were an anomaly within the legal profession. Representing political prisoners or laborers, these lawyers were stigmatized as troublemakers or even pro-communist by the state.<sup>54</sup> Furthermore, despite the transition to democracy in the late 1980s, the "misfit" label lingered well into the early 1990s, as noted by Korean legal scholar Ahn Kyong-whan:

[The Ministry of Justice] claims that many "dissident lawyers" are the byproducts of the desperate competition among Institute graduates, and it is therefore desirable to take preventative measures to avoid the production of these "undesirable" dissident lawyers. Their reasoning is that these young civil rights lawyers are unsuccessful applicants for jobs as judges or public prosecutors. It seems to be based on the assumption that unemployment among intellectuals is the prime cause

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<sup>48</sup> *Id.* at 181.

<sup>49</sup> See e.g., Jang Jip Choi, *Political Cleavages in South Korea*, in STATE AND SOCIETY IN CONTEMPORARY KOREA 13, 37-40 (Hagen Koo ed., 1993) (discussing political and historical context of 1987 uprisings).

<sup>50</sup> See DAEHANMINGUK HEONBEOP [CONSTITUTION OF THE REPUBLIC OF KOREA] (1987), translated at <http://english.court.go.kr/home/english/welcome/republic.jsp> (last visited May 10, 2009); see also YOON, *supra* note 22, at 96-106 (summarizing the different constitutions of the South Korean republics).

<sup>51</sup> IAN NEARY, HUMAN RIGHTS IN JAPAN, SOUTH KOREA AND TAIWAN 84 (2002).

<sup>52</sup> See generally MINBYUN WHITE PAPER, *supra* note 3 at 15-71 (discussing early history of *Minbyun*).

<sup>53</sup> NEARY, *supra* note 51, at 85.

<sup>54</sup> PARK, *supra* note 47, at 18.

of social disturbances.<sup>55</sup>

Human rights lawyers during the administrations of Park and Chun did, however, find institutional refuge within the Korean Bar Association by acting as members of its Human Rights Committee.<sup>56</sup> It was in fact Yi Pyeong-nin, one of the human rights lawyers mentioned above, who had headed both the Korean Bar Association and Seoul Bar Association for consecutive terms during the late 1950s and through the 1960s.<sup>57</sup> In the early years of *Minbyun*, its members spoke frequently as representatives of the Human Rights Committee of the Korean Bar Association because this offered more institutional legitimacy.<sup>58</sup> As *Minbyun* gained its own reputation this became less necessary.

In 2007, *Minbyun* had 550 members.<sup>59</sup> This represents about seven percent of the attorney population of about 8,000 in the same year.<sup>60</sup> Women account for 10 percent of *Minbyun* membership, which is a greater proportion than the percentage of women in the legal profession overall.<sup>61</sup> Membership includes any attorney who works part-time (or even less) on social justice issues, so the number of those who work full-time voluntarily on social movement causes would be considerably less. Although many public interest lawyers are concentrated in *Minbyun*, it should be remembered that this is a professional association and that most of its members work in either small or large practices and offer their services on a *pro bono* basis.<sup>62</sup> Furthermore, *Minbyun* does not necessarily have a monopoly on public interest lawyers because some

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<sup>55</sup> Kyong Whan Ahn, *The Growth of the Bar and the Changes in the Lawyer's Role: Korea's Dilemma*, in *LAW AND TECHNOLOGY IN THE PACIFIC COMMUNITY* 119, 123 (Philip S. C. Lewis ed., 1994).

<sup>56</sup> Letter from *Minbyun* member M281206 to author (Dec. 28, 2006) (on file with author).

<sup>57</sup> PARK, *supra* note 47, at 159-160.

<sup>58</sup> Correspondence with *Minbyun* member M281206 (Dec. 28, 2006) (on file with author).

<sup>59</sup> Letter from *Minbyun* officer M130407A to author (Apr. 13, 2007) (on file with author).

<sup>60</sup> Korean Bar Association, <http://www.koreanbar.or.kr> (last visited May 10, 2009).

<sup>61</sup> This number was calculated based on the 2004 membership directory of *Minbyun*. MINBYUN-LAWYERS FOR A DEMOCRATIC SOCIETY, HOEWON MYEONGBU [MEMBERSHIP DIRECTORY] (2004).

<sup>62</sup> This is consistent with findings by Louise Trubek and M. Elizabeth Kransberger who remind us that public interest lawyers can be found across the divide of public interest and private law practice. Louise Trubek & M. Elizabeth Kransberger, *Critical Lawyers: Social Justice and the Structures of Private Practice*, in *CAUSE LAWYERING*, *supra* note 5, at 201, 201.

private-practice lawyers work on citizen campaigns or public interest issues without having membership in *Minbyun*.<sup>63</sup> For that matter, not every lawyer who is a *Minbyun* member necessarily works consistently on public interest issues. As mentioned earlier, some merely pay dues and contribute little else to the association.<sup>64</sup> *Minbyun* lawyers range in motivation, practice site, and time actually spent on pro bono activities. This became more evident as they migrated to different causes in the early 1990s.

## V. PUBLIC INTEREST LAWYERS AS INSTITUTION BUILDERS

Public interest lawyers have different opportunities and priorities when fighting against an authoritarian regime that restricts basic human rights than when pursuing a variety of causes in a more liberal regime. The nature of public interest lawyers shifts with democratic change. In his article on how law checks power in the different branches of government and within the legal profession itself, Richard Abel summarizes: “Cause lawyering is most successful when a confident government is engaged in social change and most often frustrated when a frightened government is desperately scrambling to retain power.”<sup>65</sup> We see these examples worldwide. Comparing public interest lawyers in Indonesia and Malaysia, Daniel Lev writes that “while the cause of Indonesian lawyers has been to create a law state [*negara hukum*], complete with an autonomous and effective judiciary, that of Malaysian lawyers has been to defend one in place.”<sup>66</sup> For a study on Latin America, Stephen Meili compares public interest lawyering in Argentina and Brazil. He finds that public interest lawyering has been more difficult in Argentina, its success depending on factors like the strength of grassroots social movements, the level of violent, arbitrary repression by the government, and the availability of “financial, intellectual and professional support” both domestic and international.<sup>67</sup>

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<sup>63</sup> I know of several lawyers and many law professors who work on public interest cases without membership in *Minbyun*.

<sup>64</sup> Interview with an active *Minbyun* member, in Seoul, S. Korea (May 13, 2003) (on file with the author).

<sup>65</sup> Richard Abel, *Speaking Law to Power: Occasions for Cause Lawyering*, in CAUSE LAWYERING, *supra* note 5, at 69, 103.

<sup>66</sup> Daniel Lev, *Lawyers' Causes in Indonesia and Malaysia*, in CAUSE LAWYERING, *supra* note 5, at 431, 446.

<sup>67</sup> Stephen Meili, *Cause Lawyers and Social Movement: A Comparative Perspective*

Korea is no exception. As citizens' groups and social movements blossomed in the 1990s, more lawyers began to migrate to different causes. No longer as concerned about political freedoms, lawyers were now able to find more specialized niches in which to work as social equity came to the fore in such areas as rights protection for consumers, women, prisoners, the disabled and the poor, and in public interest areas like the environment and economic justice. For example, in the wake of the 1997-99 Asian financial crisis, attorneys held key leadership positions in the high-profile group Citizens' Coalition for Economic Justice (CCEJ). Environmental organizations like Korea Federation for Environmental Movement and Green Korea United created public interest law centers.<sup>68</sup> Other public interest organizations such as the YMCA and the Korean Federation of Trade Unions (*Minju Nocheong*) have teams of legal counsel to push their respective agendas as well. But perhaps the most notable citizens' group is People's Solidarity for Participatory Democracy (PSPD), founded by Park Won-sun, one of the initial members of *Minbyun*, who later also formed *Gong-Gam*, the first public interest law group in South Korea.

Voted in public polls as the most influential NGO in Korean society for four consecutive years (2002-2005),<sup>69</sup> PSPD distinguished itself from other NGOs by expressing its primary reliance on legal mobilization as a reform strategy.<sup>70</sup> This is not surprising given that half of its 16-member steering committee and one-third of its 54-member operations committee consisted of lawyers and law professors, with the rest being other professionals like doctors, journalists, social scientists, religious leaders, and full-time activists.<sup>71</sup> Furthermore, nearly every

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on *Democratic Change in Argentina and Brazil*, in *CAUSE LAWYERING*, *supra* note 5, at 487, 511-12.

<sup>68</sup> CHA BYEONG-JIK, *NGO WA BEOP* [NGOs AND LAW] 182 (2002).

<sup>69</sup> 2005 *Hanguk, nuga umjigi-neun-ga* [*Who's Moving in Korea 2005?*], SISA J., Oct. 25, 2005, at 60.

<sup>70</sup> Hong Il-pyo, *Chamyeyeondae undong bangsikui guseonggwa byeonhwa* [*Formation and Transformation of PSPD's Movement Method*], in *CHAMYEO WA YEONDAERO YEON MINJUJUI UI SAE JIPYEONG: CHAMYEO YEONDAE CHANGSEOL 10 JUYEON GI-NYEOM NONMUNJIP* [NEW HORIZON FOR CITIZENS PAVED BY PARTICIPATION AND SOLIDARITY: 10-YEAR ANNIVERSARY ESSAY COLLECTION OF PEOPLE'S SOLIDARITY FOR PARTICIPATORY DEMOCRACY] 107, 118-121 (Hong Seong-tae ed., 2004).

<sup>71</sup> *CHAMYEOYEONDAE* [PEOPLE'S SOLIDARITY FOR PARTICIPATORY DEMOCRACY], *CHAMYEOYEONDAE 10 NYEONUI GIROK, 1994-2004: SESANG EUL BAKKUNEUN SIMIN UI HIM* [PEOPLE'S SOLIDARITY FOR PARTICIPATORY DEMOCRACY 10-YEAR RECORD, 1994-2004: THE POWER OF CITIZENS TO CHANGE THE WORLD] 17, 37 (2004).

subcommittee of PSPD had at least one lawyer as a volunteer. By 1999, 116 lawyers were volunteering their services for PSPD.<sup>72</sup> With lawyers at the helm, PSPD was aggressive about resorting to legal measures—such as litigation, legislative petitioning, opinion letter writing, consulting, and legal awareness-raising—for reform agendas such as improving social welfare laws, protecting minority shareholders rights within *jaebeol* conglomerate structures, and a myriad of other causes such as government transparency, citizen consumer rights, and tax reform issues.<sup>73</sup> The caveat here is that legal mobilization was not the single campaign method upon which PSPD relied. PSPD lawyers and staff pursue a sophisticated combination of legal and non-legal means to raise social awareness, such as a multi-pronged approach using not only litigation but also legislative petitioning, conferences, demonstrations, lobbying and media (including internet) campaigns.<sup>74</sup> This is consistent with patterns elsewhere in the world. Public interest lawyers in the United States involved in various movements “repeatedly talked about litigation as an ancillary tactic that was most effective in tandem with other movement efforts, as one dimension in a larger strategic approach to reform politics.”<sup>75</sup> Activist Randy Shaw and more recently McCann also recognize the benefits of legal activism as a complementary measure to achieve social causes.<sup>76</sup> In interviews by McCann and Helena Silverstein, activists and lawyers attested that litigation, whether won or lost, is important for consciousness-raising and for leveraging purposes in alternative dispute resolution.<sup>77</sup> This research also supports the fact that public interest lawyers are not out to push litigation as the only effective means of social reform and that they are more sophisticated in

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<sup>72</sup> PARK, *supra* note 47, at 533.

<sup>73</sup> See generally the PSPD blog, <http://blog.peoplepower21.org/English> (last visited May 10, 2009) (describing PSPD’s various achievements and projects); see also Hong, *supra* note 70, at 121 (describing PSPD’s founding philosophy of using the law and the legal system as a means of social activism).

<sup>74</sup> Hong, *supra* note 70, at 118.

<sup>75</sup> Michael McCann & Helena Silverstein, *Rethinking Law’s “Allurements”*: A Relational Analysis of Social Movement Lawyers in the United States, in CAUSE LAWYERING, *supra* note 5, at 261, 267.

<sup>76</sup> *Id.* at 261; see generally RANDY SHAW, THE ACTIVIST’S HANDBOOK: A PRIMER 196-211 (1996) (discussing when resort to litigation can further social causes).

<sup>77</sup> McCann & Silverstein, *supra* note 75, at 267. For a more intensive study of the effects of legal mobilization, see generally MICHAEL W. MCCANN, RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION (1994) (discussing case study of legal mobilization in pay equity context).

knowing when or when not to employ legal strategies.<sup>78</sup>

Extensive legal mobilization as a strategy within PSPD leads us to another phenomenon, that of institutional isomorphism, or the pattern of an organization becoming similar to another organization upon which it depends.<sup>79</sup> We can see that this has happened in South Korea as some citizen advocacy groups began to take on the characteristics of the legal profession.<sup>80</sup> Using the example of PSPD, with lawyers leading, citizens' organizations rely on more legal, formalistic measures to accomplish their goals, whether by way of legislative petitioning, legislative drafting, or litigation. This occurrence speaks to whether lawyer participation takes away creative alternatives from citizen advocacy groups. However, institutional isomorphism can work both ways. Is it social activists who come to resemble lawyers, or lawyers who begin to resemble social activists? Public interest lawyers are a creative, critical minority, who work very closely with citizen advocacy groups to campaign and litigate vigorously on rights protection for the accused women, workers, consumers, minority shareholders as well as on other issues like environmental protection, information disclosure and social welfare. While citizens' groups need lawyers' legal skills to petition the legislature, draft laws, and otherwise ensure procedural checks on the legal processes of governmental and business institutions in preventing abuse of citizens' rights, public interest lawyers are not confined to legal functions. Public interest lawyers do much more than litigate and negotiate: They are simultaneously activists, board members, organizational managers, fundraisers and street protesters.<sup>81</sup> They spend "their time actively generating movement publicity, rallying existing or potential movement supporters, coalition building, and political strategizing."<sup>82</sup> The distinction is not always so clear when, for instance, lawyers of an NGO assert that they identify themselves first as

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<sup>78</sup> McCann & Silverstein, *supra* note 75, at 267.

<sup>79</sup> See generally Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, in *THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS* 63, 66-76 (1991) (giving definition and background on isomorphism).

<sup>80</sup> In one informal discussion with a PSPD staff member in 2004, the member said that he and others questioned whether they, as non-lawyers, were becoming too "legal" and less "creative" in their thinking and campaigning. Interview with a PSPD staff member, in Seoul, S. Korea (Oct. 15, 2004) (on file with the author).

<sup>81</sup> PARK, *supra* note 47, at 540-41.

<sup>82</sup> McCann & Silverstein, *supra* note 76, at 261, 270.

activists, and second as lawyers. Park Won-sun had said, “I am an activist first, a lawyer second.”<sup>83</sup>

With the emergence of civil society in South Korea, public interest lawyers and NGOs have aligned themselves with each other to mobilize their resources for their agendas. Throughout the 1990s particularly, with civil society wielding a greater voice vis-à-vis the state, non-governmental organizations (NGOs) like PSPD and environmental groups like KFEM and Green Korea United gained more institutional legitimacy. With leaders on board, including attorneys, academics and other policy consultants, NGOs like these have become “power elite[s] in Korean politics.”<sup>84</sup>

Thus, we see that public interest lawyers are in fact much more than just lawyers. They are institution builders and networkers. Dezalay and Garth speak of a group of private lawyers in South America as “opportunistic institution builders.”<sup>85</sup> Though they assign this label to ambitious corporate lawyers who profit from building their contacts and client rosters, the concept of “opportunistic institution building” is not too far off the mark for public interest lawyers as well. This is in fact consistent with the notion of professionalization, which Magali Larson describes as “the process by which producers of special services sought to constitute *and control* a market for their expertise,” adding that professionalization is also a “collective assertion of special social status and a collective process of upward social mobility.”<sup>86</sup> Although the concept of professionalization can be easily applied to the legal profession as a whole, it can arguably still apply to a section of the legal profession, be they lawyers working in the private *or* public sector. All of this is to say that public interest lawyers operate in the interest of themselves and their organizations, in particular where their self-interest and NGO causes intersect but also in terms of prioritizing organization survival.<sup>87</sup> The concepts of institution building and professionalization

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<sup>83</sup> Interview with Park Won-sun, in Seoul, S. Korea (May 8, 2004).

<sup>84</sup> Lee Jae-Hyup, *Negotiating Values and Law: Environmental Dispute Resolution in Korea*, in LEGAL REFORM IN KOREA, *supra* note 19, at 199, 211.

<sup>85</sup> See YVES DEZALAY & BRYANT G. GARTH, THE INTERNATIONALIZATION OF PALACE WARS: LAWYERS, ECONOMISTS, AND THE CONTEST TO TRANSFORM LATIN AMERICAN STATES 198-219 (2002) (discussing corporate law firms in Latin America).

<sup>86</sup> MAGALI SARFATTI LARSON, THE RISE OF PROFESSIONALISM: A SOCIOLOGICAL ANALYSIS, at xvi (1977).

<sup>87</sup> See MICHAEL W. MCCANN, TAKING REFORM SERIOUSLY: PERSPECTIVES ON PUBLIC INTEREST LIBERALISM 204 (1986) (stating that activist professionals act in pursuit

may subvert the common idea of public interest lawyers as altruistic, social heroes, but it offers a more balanced view of public interest lawyers and their activities overall.

As civil society gains more political power, so too do its members, including public interest lawyers. Hence, lawyers once called “dissident,” who are elite by virtue of passing the bar, have actually attained greater status within the sector of civil society. This has become especially true as they became leaders of citizen movement organizations. *Minbyun* lawyers helped to legitimize citizen movement groups with their professional status and expertise.<sup>88</sup> This type of social empowerment often led to political opportunities for *Minbyun* lawyers to enter government positions.

#### VI. “HUMAN RIGHTS LAWYERS” TURNED LAWYER-STATESPERSONS<sup>89</sup>

Although South Korea has had lawyers serve in executive capacity in the past,<sup>90</sup> the influx of public interest lawyers into state positions came with the election of a former *Minbyun* labor lawyer, Roh Moo-hyun, in 2002. Previously, very few lawyers worked outside the judicial branch in executive or legislative capacity but today lawyers are found across all governmental branches. In 2003, 38 of the 269-member National Assembly were licensed attorneys, representing 14% of all assembly members.<sup>91</sup> More recently, in February 2005, the number of licensed attorneys still numbered about 34 out of the 299-member National

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of prestige, for self-interests and for sake of attracting sustainable funding sources).

<sup>88</sup> For a discussion of how professionals contribute to social movements, see generally *id.* at 56.

<sup>89</sup> A lawyer-statesman is generally understood to mean one who is both a lawyer and a government leader, as often described in the case of American figures Samuel Adams, Patrick Henry and Abraham Lincoln. Former dean of the Yale Law School, Anthony Kronman, expands upon the literal definition, defining the lawyer-statesman not in terms of working in official state capacity but as someone who should embody the morals of a noble doer. ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 3-4 (1993). Because Kronman addresses the American legal profession and its characteristics specifically, I refrain from using his conceptualization in South Korea’s case and instead use the conventional definition, with the single exception that I use the term “lawyer-statesperson” for gender neutrality.

<sup>90</sup> For example, former Prime Minister and current politician Lee Hoi-chang was also a lawyer. JRTI graduates who work for the state in capacity of judges and prosecutors are commonly known as governmental lawyers (*Beopgwans*).

<sup>91</sup> Choi, *supra* note 17, at 176 n.6.

Assembly, or 11%.<sup>92</sup>

Representing a liberal reformist party and critical of the US-Korean alliance, Roh Moo-hyun had the backing of many progressive NGOs and the broad support of a younger generation of South Koreans, starting with the “386 generation” (people in their thirties who graduated in the eighties and were born in the sixties), many of whom had protested against the authoritarian regimes of Park Chung-hee and Chun Doo-hwan. Once in office, President Roh proceeded to fill top government posts with close colleagues who were also *Minbyun* lawyers, for example, Ko Yeong-ku as head of the National Intelligence Service and Kang Keum-sil as the first female Minister of Justice, thereby drastically raising the profile of *Minbyun*.

In 1999, Park Won-sun had critiqued the inward-looking nature of *Minbyun* and urged its membership to reach out more aggressively to the community.<sup>93</sup> At the time, nobody really expected the *Minbyun* to reach into the state to the extent that it did in the early 2000s. Media reports paint a picture of *Minbyun* as having a huge role in the reformist make-up of Roh’s administration.<sup>94</sup> Meanwhile, the movement of *Minbyun* lawyers into the government precipitated an identity crisis for *Minbyun*: though founded in opposition to the government, *Minbyun* now had members heading the state. This left *Minbyun* scrambling to differentiate itself from the administration. Despite *Minbyun* lawyers assuming top state posts, some legal activists are skeptical about the influence lawyer-statespersons have considering that their identities become more aligned with those of government bureaucrats than of lawyers.<sup>95</sup> The new criticism was that it was no longer *Minbyun*, but *Gwanbyeon*,<sup>96</sup> because “*gwan*” stands for “government,” the implication is that these are lawyers who act on behalf of the government instead of citizens.

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<sup>92</sup> Yi Min-cheong, Na gukhoe-uwon-i-ya byeonhosaya? [*Are You My National Assembly Representative or a Lawyer?*], OHMYNEWS, July 25, 2005, available at [http://www.ohmynews.com/NWS\\_Web/View/at\\_pg.aspx?CNTN\\_CD=A0000270367](http://www.ohmynews.com/NWS_Web/View/at_pg.aspx?CNTN_CD=A0000270367) (last visited May 10, 2009).

<sup>93</sup> PARK, *supra* note 47, at 541-42.

<sup>94</sup> See, e.g., Kim Kyung-ho, *Lawyers’ Group “Brain Pool” for Roh*, KOREA HERALD, Mar. 28, 2003 (discussing various high level *Minbyun* members in Roh administration).

<sup>95</sup> Interview with an active *Minbyun* member, in Seoul, S. Korea (May 13, 2003).

<sup>96</sup> Ahn Kyeong-hwan, *Jo Yeong-nae Pyeongjeon* [A Critical Biography of Jo Yeong-nae] 296 (2006).

The dynamics between lawyers and the state have changed on several levels. Having lawyer-statespersons in government has raised the visibility of activist lawyers in general and helped to build cooperative networks between government and civil society, but cooptation and conflict exist too. Lawyer-statespersons are co-opted in that their identity becomes more state official than lawyer, while their status as lawyers is no guarantee to garner respect within or outside the government by other legal professionals or state officials in general. For instance, President Roh's nominations for the head of National Intelligence Service and the Ministry of Justice were highly controversial because of the reformist agenda or ideological positions of the candidates. When President Roh nominated Ko Yeong-ku, National Assembly members criticized his views and past actions such as rewriting the National Security Law and campaigning to release a North Korean spy in 1992 when working as a human rights lawyer.<sup>97</sup>

The nomination of Kang Keum-sil also provoked heated debate. Because the Ministry of Justice works on the strict basis of seniority for positions, the appointment of a younger, junior-level woman appalled many senior prosecutors who threatened resignation en masse.<sup>98</sup> A dozen did quit upon her assuming the minister title, but the inner rebellion eventually quelled when Kang agreed to consult with the Prosecutor General on other appointments within the Ministry of Justice.<sup>99</sup> As Kang's appointment demonstrates, it is not easy to reform government practices, especially of those as tradition-bound as the rank-and-file prosecutor's office within the Ministry of Justice. Additionally, this case speaks to internal dissent within the ranks of the legal profession: one of prosecutors (the esteemed governmental lawyer) against the *de jure* neophyte lawyer-statesperson (or *de facto* "dissident" lawyer). We find that *Minbyun* lawyers in government are a minority and that conservative elements in the governments constrain their progressive platforms.

The most profound shake-up is that once-dissident attorneys helped to lead the state under Roh Moo-hyun's presidency. When the liberal

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<sup>97</sup> Hwang Jang-jin, *NIS Nominee Upholds Revised Security Law*, KOREA HERALD, Apr. 23, 2003.

<sup>98</sup> Kim Kyung-ho, *Prosecutors Oppose 'Junior, Liberal' Minister*, KOREA HERALD, Feb. 22, 2003.

<sup>99</sup> Soh Ji-young, *Prosecutors Divided Over Challenge to Seniority System*, KOREA TIMES, Mar. 9, 2003.

*Yeollin Uri* party displaced the conservative Grand National Party as majority in the National Assembly in 2004, this presented the once dissident lawyer in a whole new light: as lawyer-statesperson. Previously, “human rights” attorneys were diametrically opposed to an authoritarian state; however, public interest lawyers are now *within* the state and tend to cooperate with the liberal reformist government. This has had certain repercussions on the condition of public interest lawyering.

## VII. THE CHANGING NATURE OF PUBLIC INTEREST LAWYERING: THE LAST FIVE YEARS

Public interest lawyering changed under the Roh Moo-hyun administration in two distinct ways: first, protest litigation by PSPD dropped drastically after 2004; second, a different set of lawyers began to adopt legal measures to counteract the reformist policies of the Roh administration.

Interviews with PSPD and *Minbyun* members help to shed light on how the dynamics of public interest lawyering began to change. PSPD filed a combination of 10 lawsuits and criminal charges in 2005, four in 2006, and three lawsuits in 2007, totaling only 16 in a three-year period compared to its active litigation schedule of years past (194 cases during 1994-2004).<sup>100</sup> PSPD and *Minbyun* members attribute this to several reasons: One of the original PSPD members answered simply, “*Gong-Gam*,” as the reason for the decline in PSPD litigation.<sup>101</sup> Park Won-sun had created the public interest law firm, *Gong-Gam*, in 2002 under the auspices of the charity Beautiful Foundation, which he founded after leaving PSPD. One former PSPD attorney said that cases had recently started to be funneled to *Gong-Gam*, a “cousin” of PSPD, and that litigation had declined since “most of the test cases have resulted in an outcome” and that other advocacy methods have taken on a bigger

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<sup>100</sup> Interview with P090407, Apr. 9, 2007, Seoul, S. Korea. See also Sosong Jaryoshil [Litigation Archives] at the PSPD website, available at <http://www.peoplepower21.org/?sub=sue> (last visited May 10, 2009) (listing cases).

<sup>101</sup> Interview with LP100407, Seoul, S. Korea, Apr. 10, 2007 (on file with author). As one Public Interest Law Center staff explained, “Litigation has reduced very much. PSPD used to push more litigation, but now there is less because *Gong-Gam* takes cases and also NGOs resort to litigation themselves.” Interview with P090407, Seoul, S. Korea, Apr. 9, 2007 (on file with author).

role.<sup>102</sup> Two other *Minbyun* members echoed that while PSPD and its lawyers started with test cases, PSPD is now concentrating more on policy-oriented measures and probably will continue to do so into the future.<sup>103</sup> A Public Interest Law Center staff member, alluding mainly to the departure of lawyers who had originally established PSPD, contemplated that “it has been ten years since PSPD started. There is a different generation of lawyers now. . . . Maybe PSPD is at fault for not knowing what to do next” in terms of legal strategizing.<sup>104</sup>

These comments and observations evidence a marked departure from the busy litigating schedule of PSPD during the 1990s. The early 2000s appears to be a crucial turning point with the emergence of *Gong-Gam*, but the comments about less test cases and pursuing policy-oriented measures versus court litigation signify that there are more legislative and administrative access points with the government to pursue initiatives on an implementation level, such as by having PSPD members sit on various government committees. Implicit is that there are now methods to communicate with the current administration without having to resort to courtroom battles. This pattern signifies a maturation of the legal mobilization process such that matters are not just litigated for purposes visibility and the occasional victory, but for follow-through on policy implementation with the more reformist administration in power since 2002.

Meanwhile, this more liberal government has caused severe backlash from conservative forces. The most obvious attack came in the form of impeachment against President Roh for party-biased statements in violation of the Constitution.<sup>105</sup> Backlash also came from conservative groups within the legal profession. A new coalition of lawyers, *Lawyers with Citizens* (*Simin gwa hamkkeha-neun byeonhosadeul*, or *Si-byeon*), formed officially on January 25, 2005 with the aim of monitoring and criticizing government policies.<sup>106</sup> Starting off with about 40 lawyers

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<sup>102</sup> Interview with M130407, Seoul, S. Korea, Apr. 13, 2007 (on file with author).

<sup>103</sup> Interview with M130407b, Seoul, S. Korea, Apr. 13, 2007 (on file with author).  
Interview with LP110407, Seoul, S. Korea, Apr. 11, 2007 (on file with author).

<sup>104</sup> Interview with P090407, *supra* note 101.

<sup>105</sup> While the Constitutional Court found that President Roh’s statements violated the Constitutional prohibition against siding with political parties while in office, the Court decided that his actions were not grave enough to impeach him from office. Impeachment of the President (Roh Moo-hyun) Case, 16-1 KCCR 609, 657-58, 2004 Hun-Na 1 (May 14, 2004).

<sup>106</sup> Agenda Research Group, *Lawyers with Citizens*, AGENDANET available at

and with current membership of 150, *Lawyers with Citizens* was especially active in organizing constitutional litigation against the executive bid to relocate the administrative capital of Seoul to Chungcheong Province in 2003.<sup>107</sup> *Lawyers with Citizens* also filed a constitutional suit in July 2007 protesting the government move to reduce media press rooms within government offices as a violation of the public's right to know the goings-on of the government.<sup>108</sup> In September 2007, *Lawyers with Citizens* threatened to sue *Cheongwadae* (Blue House) for election violations in reaction to *Cheongwadae's* filing a slander suit against Lee Myung-bak, the opposition party's presidential candidate at the time and current President of South Korea.<sup>109</sup> *Minbyun* lawyers have claimed that *Lawyers with Citizens* is "a political organization," suspicious of the notion that it could qualify as a public interest law advocacy group.<sup>110</sup> This may seem an apt description considering that the activities of *Lawyers with Citizens* so far are to combat any new unilateral moves by the executive branch.

*Lawyers with Citizens* also symbolizes a new trend with respect to public interest lawyering: while Korean public interest lawyers have traditionally been progressive lawyers struggling against the state, this is no longer the case. Even conservative groups of lawyers now use the powerful language of "citizens" to present themselves as representatives or agents of the general public interest as opposed to merely the interests of the select elite. For example, the use of name "Lawyers with Citizens" implies that lawyers are acting on behalf of citizen interests. Public interest lawyering is no longer in the domain of *Minbyun* members only. There has been a shift in ideology, such that now any group of lawyers disagreeing with the incumbent administration can use

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[http://agendanet.co.kr/zb41pl7/bbs/view.php?id=pol\\_sub1&no=37](http://agendanet.co.kr/zb41pl7/bbs/view.php?id=pol_sub1&no=37) (last visited May 10, 2009); *Simin gwa hamkkeha-neun byeonhosadeul "georiro naseogessda"* [*Lawyers with Citizens "We'll Take to the Streets"*], THE DAILIAN, Jan. 26, 2006, available at [http://www.dailian.co.kr/news/n\\_view.html?id=31402](http://www.dailian.co.kr/news/n_view.html?id=31402) (last visited May 10, 2009).

<sup>107</sup> *Relocation of the Capital City Case*, 16-2(B) KCCR 1, 2004 Hun-Ma 554, 566 (consolidated) (Oct. 21, 2004).

<sup>108</sup> *Lawyers File Appeal on Government's Press Room Reform*, KBS WORLD RADIO, July 10, 2007, available at [http://english.kbs.co.kr/news/newsview\\_sub.php?key=2007071021](http://english.kbs.co.kr/news/newsview_sub.php?key=2007071021) (last visited May 10, 2009).

<sup>109</sup> See generally Editorial, *Cheong Wa Dae and "Fuss Marketing,"* DONG-A ILBO, Sept. 7, 2007, available at <http://english.donga.com/srv/service.php3?biid=2007090762998> (last visited May 10, 2009) (criticizing Cheongwadae for filing lawsuit and calling for post-election prosecutorial investigation).

<sup>110</sup> Interview with M130407B, Seoul, S. Korea, Apr. 13, 2007 (on file with author).

the law to challenge the state. No matter what their political background, lawyers who find themselves at odds with the state can mobilize the law as a weapon to fight the state.

Still, challenges remain. Public interest law in South Korea has strong political overtones. *Minbyun* lawyers have traditionally dominated the field of public interest law due to a history of fighting human rights abuses perpetrated by state and businesses in collusion. *Minbyun* lawyers gained in reputation by aligning with strong citizen movement groups, but the election of Roh Moo-hyun as president and other *Minbyun* members in political office forced a re-questioning of *Minbyun*'s priorities and seeming alliance with the government. With groups like PSPD waning on the legal front and others like *Lawyers with Citizens* forming to protest government policies, one quickly realizes that public interest lawyering is not ideologically linear. The question that looms for the Korean legal profession, however, is how to reinforce the concept of public interest lawyering as more of a professional ethic of legal service rather than as a publicly perceived political tool. This task appears to lie with the new graduate law school system in training a new corps of legal professionals.

#### VIII. CONCLUSION

The nature of public interest lawyers has changed drastically in the past twenty years in South Korea. An exploration of the legal profession shows that, on the whole, lawyers make up an elite class. Traditionally, judges and prosecutors were the *crème de la crème*, with few lawyers entering private practice. Judges and prosecutors were extensions of state authority, while private lawyers mainly worked on client-based matters. Meanwhile, the handful of lawyers who devoted themselves to public causes in opposition to the existing administration were deemed "dissidents." These activist lawyers faced difficulty acting as effective agents of civil society considering the authoritarian rule during the 1960s, 1970s and early 1980s, and the relatively weak position of citizens' groups.

Although public interest lawyers have been a minority within the legal profession, they are not necessarily undersized with respect to their influence on society and politics. A transformation took place throughout the late 1980s and the 1990s as social movements became

stronger and the transition to democracy progressed. Citizen advocacy groups became powerful through alliances and with support from professionals. Public interest lawyers became instrumental leaders within NGOs. As citizens' groups gained greater political power, public interest lawyers were no longer "dissident" but now more socially and politically elite than ever before, helping to usher lawyer-statespersons into executive and parliamentary positions. With greater social and political empowerment coming from the growing strength of civil society, public interest lawyers in South Korea have transitioned from being dissidents to effective institution builders, advancing their causes and developing the practice of public interest law in the span of two decades.