

The role of legislation experts in Korea and how to train them: A practical point of view

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1. Introduction

Principle of the rule of law in modern administrative state starts with division of roles which is the government's execution based on acts passed by the legislature.

One of the reasons that Republic of Korea has achieved remarkable social and economic development in just 60 years after the establishment of the Republic of Korea in 1948 is the development of legal system.

Looking back, the Establishment of modern legal system in Korea started with implanting Japanese legal system during the period of Japanese colonial rule. Nevertheless, in making rapid economic development, various supplementations of foreign legal systems that suitable for each stage of development were required. Changing and developing legal system fit for the circumstances made a large contribution to develop Korean economy. Korean legal system has reached certain level of completion considering there is a recent movement to learn Korean legal system from developing countries like Vietnam, Myanmar, Cambodia and Mongolia.

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However, to evaluate lawmaking process in Korea, especially, a part that how much legal expert, specifically legislation expert involved in enacting and amending law, it seems like that a role of legal experts was relatively limited.

In my point of view, the reasons are as follows.

First of all, the absence of legislation experts who had systemic legal training needed. In the past, the only way to be a lawyer was passing the judicial examination (Korean bar exam), and there was no subject related to legislation in the examination. Furthermore, there was practically no chance to train on legislation systematically since colleges of law where a legal education is made and the Judicial Research and Training Institute where trains people in the legal profession about practicing law, have hardly dealt with 'legislation' in their curricula.

Second, the legislation had been made practically by the government, especially depending on personal ability of public officials. In light of Korea's legislative history, most of legislations were based on the bill suggested by the administration and the National Assembly only 'passed' the bill without significant modification. Therefore, there was a joke on Korea's legislation in the mid-1990s that it is "Ju-sa Legislation". 'Ju-sa' is the mid-level position of Korean government officials. Once people who was in charge of practical affairs in central administrative agency made legislative bill, the bill was confirmed as government bill without any advice or modification of other legal expert, especially lawyers, and the bill was passed in the National Assembly without significant modification.

Third, the very limited number of lawyers played a part in this tendency. Judicial examination in Korea had been very competitive and hard to pass. Less than 100 people passed Judicial examination before 1980, only 7-800 passed in late 1990s, gradually increased and it was decided to select 1,000 people a year from 2001. In 2005, the total number of lawyer in Korea was just 6,800. Since

the law school system has started, more than 2,000 people per year become lawyers nowadays. As many lawyers are active in the legal market, the legislative field which was paid little regard by lawyers in the past, the participation of experts is now possible and required.

Surroundings on legislation have changed a lot recently in Korea. Especially, after the year of 2000, bill proposals by congressmen have been rapidly increased in the National Assembly. It is remarkable that the pass ratio of government bills has reduced in half and bill proposals by assemblymen have been largely increased from 2004, 17th National Assembly.

Despite the changes of surroundings on legislation, the role of legislation experts in drafting and reviewing process of bills and the role of them in enacting and amending Presidential Decree, ordinance, are still limited. Considering that 'good administration' is started from the 'good law', the participation of legislation experts in legislation process have to be institutionally guaranteed to enhance the effectiveness and competitiveness of Korean government.

Personally, I had worked for the Ministry of Government Legislation for about 18 years and recently moved to private law firm in Seoul, dealing many cases derived from unreasonable regulation based on laws in Korea. I would like to look into problems of Korean legislative system from the viewpoint of practical lawyer's and find ways to expand role of legislation experts in Korea.

2. Characteristics of the Korean Legislative System

Many people all around world used to say the Republic of Korea is a "very dynamic country". I totally agree with that and the legislative system in Korea is not an exception.

1) A large volume of law

There are more than 4,000 present laws and ordinances including Acts, Presidential Decrees, Enforcement Rules²⁾ as of April 2013. Generally 1, 2, 4, 5 and 6 of the legal hierarchy in Korea are called ‘law’ and their numbers are 4,289 as of April 1, 2013.³⁾

	Hierarchy in law	Numbers in current laws
1	The Constitution	1
2	Acts	1288
3	Treaties	
4	Presidential Decrees	1501
5	Ordinances of the Prime Minister	65
6	Ordinances of Minister	1103
7	Rules of Congress, Court and Constitutional Court, etc.	320
8	Municipal ordinances & rules	

These 4,000 laws are administered by the central government and considering 70,000 Municipal Ordinances or Municipal Rules enacted by more than 200 local governments, the numbers of general laws are enormous. These laws have to go through legislation expert.

2) Frequent amendments of law

Laws and ordinances in Korea are amended frequently. Let’s look at the table below.

The numbers of amendments⁴⁾

year	Acts	Presidential Decrees	Ordinances of PM and Ministers	total
2012	455	802	739	1996
2011	722	897	726	2345

2) Enforcement Rules exist in the format of “the Ordinances of the Prime Minister” or “the Ordinances of Ministers”.

3) Web site of the Ministry of Government Legislation: www.moleg.go.kr (statistics on April 1, 2013)

4) Web site of the Ministry of Government Legislation www.moleg.go.kr

2010	516	637	613	1776
2009	580	726	652	1958
2008	492	729	666	1887

About 1900-2000 laws change every year. It means 5 laws are amended every day and about 30-40% of entire laws are changed annually even for a little bit. In this regard, it is near impossible to get correct updated information of Korean Law by the conventional format of legal information: the printed statute book or the daily official gazette published by the government. For better understanding, the Ministry of Government Legislation launched the internet service to provide information on June 1998. Korean law service 'www.law.go.kr' has gained popularity to have average 5.5 million visitors and 100 million hits monthly.⁵⁾

3) Importing foreign legislation and devising creative new legislation in many aspects

Korean legal system has disadvantages to amend so frequently to follow dynamic social and economic change in Korea. On the other hand, Korean legal system has evolved in the way to rapidly make new legal system that is required and enforce the system at first, compensate defects afterwards with later amendments.

A notable example is the Administrative Appeal system. The Administrative Appeals Act of Korea was enacted in 1985 and did endure tests with various changes by 9 big and small amendments since then. The model of Korean Administrative Appeals Act is the Japanese Administrative Appeal Act in 1952. Japanese Administrative Appeal Act was enacted 1952, and have come into force since then without significant changes. Since 2006, there have been discussions to amend Japanese Administrative Appeal Act but it never reached the actual amendment in the Japanese National Assembly. It shows the

5) Press release of the Ministry of Government Legislation ,April 1, 2013

significant contrast between Korea and Japan's legislative environment.

In the legal field for the protection of personal information, there were individual laws to protect personal information according to the source of personal information, such as “the Act on the Protection of Personal Information Maintained by Public Agencies (1995)”, “the Use and Protection of Credit Information Act” (1995) and “the Act on Promotion, etc. of Utilization of Information System”. These laws regulated private and public sector respectively. They unified into “the Personal Information Protection Act (2011)” on September 30, 2011 and the Act regulates both private and public personal information in certain range. This Act is considered as the most powerful regulation in the world and it represents a change of Korean legal system in fast response to new legal demands.

In addition, a case of enacting “the Framework Act on Low Carbon, Green Growth” on January 1, 2010 to legally support ‘low carbon, green Growth’ policy which the Lee Myung-bak administration promoted for sustainable development, and a case of enacting “the Internet Multimedia Broadcast Services Act” on January 17, 2008 apart from existing “the Broadcasting Act” to legally support rising internet multimedia broadcasting that came out from fusion of broadcasting and internet communication, are another examples.

3. Trial and error: Analysis of legislative blunders caused by enacting law without systematic approach

As I mentioned, the Korean legal system have changed fast. When there are changes on circumstances around policies, Korean legal system have flexibly responded to the needs by frequently changing law.

In changing these kinds of legal system, participation of experts are necessary who are familiar to enact and amend law. However, there are many errors once laws take effect, since laws are made only to fit the demand of government

policies. Indeed, one of the big reasons is that cultural circumstance around Korean legal system which is “Change law first, fix it later when problem rises”. But if there were participation of experts who could anticipate carefully of collateral effects of adopting new law, a lot of administrative and social expenses might have been saved since the mattered law could have better quality.

I would like to look into cases that caused social, administrative costs due to reckless change of legal system.

1) Government funded labor training program costs refund case

The Employment Insurance Act stipulates that the government support occupational ability development training program and the training costs of workers are covered by the local labor government agency.

If a person has received support in a false or other fraudulent manners, the Minister of Employment and Labor may restrict the support or order the return of the supporting training costs received (Article 35 of the Employment Insurance Act).

Enforcement Decree of the Employment Insurance Act amended on October 18, 2007, stipulates a return of ‘all’ occupational ability development training costs received for one year (Article 56 of the Decree). This regulation was devised to punish vicious employers who used false application to get the government support.

While the law was in operation, the fact was disclosed that in some companies’ document listed workers who had been impossible to participate the training program. For example, training costs were given to workers for taking training program held in a certain period when they were not in Korea for overseas business trips or traveling abroad. When the fact was disclosed, the local government agency ordered the companies to return an entire year-long

support that they fraudulently received following the Employment Insurance Act.

Some big companies faced huge problem since they had to return enormous money under Article 56 of the Enforcement Decree of The Employment Insurance Act. Large companies who had significant number of workers had received training costs about billions of won. For example, GS-Caltex Corporation had to return 344 million Korean Won which was a thousand times for 31,000 won of fraudulent support. LIG Insurance Corporation ordered to return all 753 million won(8.7 thousand times) for 80,000 won of fraudulent support. One other company are known to ordered to return 10 billion won.

Korean government admitted that returning training costs received for a whole year was punitive and too excessive, so amended the Enforcement Decree of the Employment Insurance Act on December 30, 2008 only to return costs that actually fraudulently received. In amending the Decree, however, supports received between 2007-2008 periods had to follow the former decree. Therefore, public officers who took charge of these kinds of cases at the local government agencies, mechanically executed the law and ordered to return training costs received for a whole year, and a lot of companies filed lawsuits against the government. Companies have won since 2012. Some local courts ruled for the companies but lawsuits haven't finished yet because there is no Supreme Court ruling on this matter.

2) The Act on Special Cases concerning Adoption

Korean government amended “the Act on Special Cases concerning Adoption” in August, 2012. The purpose of the amendment was to provide an institutional strategy to protect adoptee's rights and interests.

First, “the period for the consideration of adoption” system was introduced. A week's consideration period must be given for biological parents to wait a week before signing over a baby for adoption. The concerning government agency

has to give sufficient information on the supports that biological parents could get if they choose to raise the child by themselves, and the legal effect of adoption. The consideration period also aims protection by care of biological mother and new born baby who are weak to infection. The government pay child care benefits for this period.

As Korea is infamous for her 'export' orphans to foreign counties such as USA or European countries, the government added a rule to induce more adoption domestically from Korean foster parents. The new law stipulates that it is the government's duty to find adoptive parents domestically first. Only if adoptive parents are not found in Korea notwithstanding with the government's effort, overseas adoption will be allowed. Also, anyone who wants to adopt child needs permission from the family court, and strengthen qualifications of adoptive parents is set. Who have history of child abuse, domestic violence and drug or alcohol addiction cannot be adoptive parents, and Adoptive parents have to take training course in adoption agencies.

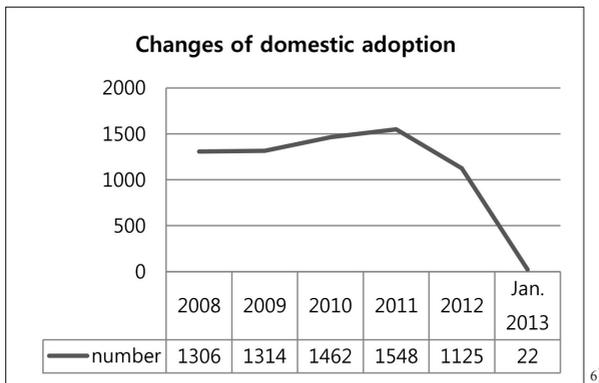
The amendment was enforced with good intention which provides legal protections on adoptee's rights and interests. As a result, however, the number of adoptee is decreased and the number of abandoned children was increased.

The biggest problem of the amendment is that sentiment on adoption which Korean people share was not reflected in the amendment process. Traditionally most of adoptive parents in Korea do not want to be known that they adopted children. Adoption process had changed in complicated way by the amending law and both biological and foster parents needs family court's permission to adopt children, now it is impossible to adopt children secretly and register adoptee into family relations documents as their own children like before.

Especially, to get permission of the court, adoptee has to be registered in his/her biological parents' family relations documents (the official government documents of personal information), but the under-aged single mothers are

reluctant to record in documents that they gave a child birth. Therefore, they tend to abandon children not to disclose their personal information without following adoption process.

From August 2012 when the amendment came into force, to December 2012, total number of permitted domestic adoption was 25 cases, average 5 cases per month. It is 1/24 compare to average 1400 children (120 adoption per month) were adopted domestically in a year between 2006 and 2011.



The amendment was made to protect adoptee's rights and interests, but it has brought unwanted result to discourage adoption and increase of abandon children. This case shows the danger of changing laws without in-depth study and prediction of the result of the legal change.

3) The SSM(Super Supermarket) regulation

January 2012, Korean government amended "the Distribution Industry Development Act" making legal basis to regulate so-called 'SSM(Super-Supermarket)'. In past, many people bought groceries in conventional markets naturally formed in the area nearby their home. About 20 years ago, some big

6) Statistics by the Ministry for Health, Welfare and Family Affairs on February 2013. Only 25 children were adopted during August and December, 2013. The amended act was enforced on August 5, 2012.

companies started large-scale distribution business of selling groceries in convenient environment and cheaper prices. More and more people shop in large distribution facilities that big companies run.

There were a regulation in opening 'big store' that has area more than 3,000 square meters, registration to City Mayor or the head of Si/Gun was necessary. On the other hand, there was no special restriction on opening stores smaller than that. Big distribution companies started opening new type of stores so called 'Super Supermarkets(SSM)' competitively which has areas between 1,000 and 3,000 square meters which are not to regulate by law. The number of SSMs such as "Homeplus express" of Samsung Tesco, "E-mart everyday" of E-mart and "GS supermarket" of GS Retail increased vastly, small merchants such as merchants of conventional market and small self-employed shop owners around residential areas were being economically hammered.



In 2012, there were 363 big stores, 1,069 SSMs⁸⁾. Since Major distribution companies gained commercial supremacy of the entire country's distribution business, public opinions rose that government should protect people who work for small and medium sized distribution companies. Korean government and the National Assembly amended the Distribution Industry Development Act to regulate SSM after years of discussion. The Act was amended finally in the way

7) Retail Magazine, 2011, Agency for Traditional Market Administration

8) Asia Economic News, May 27, 2012

that business hours of big stores and SSMs are limited to the extent between 0AM to 8AM or closed 1-2 days in a month by the standard set in the Municipal Ordinances of the local government, and if the stores violate the ordinance, fine less than 30 million won will be imposed.

There were various legal discussions on this kind of regulation on distribution industry and enacting those in the law. There was legal dispute whether it is constitutionally right that the government interfere private enterprise's business, and on the other hand, there is criticism that the regulations like administrative fine that less than 30 million won which is below than daily sales, and partial limitation of business hours do not affect actual SSM business. This point of view is that the new law was made so late that many SSMs already proliferated all over the country during the debate at the National Assembly and there is no special measure to abolish the already-opened SSMs. Also, the argument is persuasive that the market trend was already changed and the consumer's right to choose modern, large distribution company should be respected.

Notable thing in the amendment process, a provisory clause was inserted that says "except large stores that 51 percent of revenue generate from the agricultural and marine products" in the National Assembly standing committee discussion when the bill of the Distribution Industry Development Act was reviewed in January 2012. As a result, the only large store belong to this provisory clause, 'Hanaro Mart' that the National Agricultural Cooperative Federation operates is free from the regulations. The number of stores of Hanaro Mart is more than 2,100 nationally. There is a criticism that the provisory clause is a result that assemblymen were mindful of nation-wide voters from the National Agricultural Cooperative Federation in the National Assembly.

The Distribution Industry Development Act was discussed for years. Its legislative purpose was to protect working class and self-employed small business owners, but contents of the Act enacted became almost fruitless. This

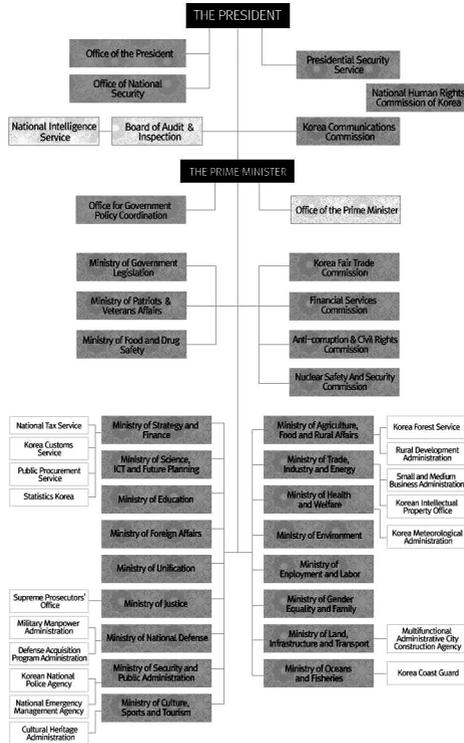
case shows time-wasting in legislation process by failing policy adjustment in the National Assembly.

4) Side effects from the reckless governmental reorganization

Sometimes, the legal instability is caused by frequent amendment and government reorganization. There have been more than 30 big government reorganizations in central ministry level since 1948.

In recent days, government reorganization tends to happen with the new President's inauguration. Lee Myung-bak administration abolished the Ministry of Information and Communication, combined the Ministry of Education & Human Resources Development and the Ministry of Science and Technology into the Ministry of Education, Science and Technology, established the Ministry of Strategy and Finance by combining the Ministry of Finance and Economy and the Ministry of Planning & Budget and abolished the Government Information Agency.

Park Geun-hye who was inaugurated as President in February, 2013, established "the Ministry of Future Creation and Science", "the Ministry of Food & Drug Safety", revived "the Ministry of Maritime Affairs and Fisheries" which President Lee had abolished, reorganized "the Ministry of Security and Public administration", "the Ministry of Agriculture, Food and Rural affairs", "the Ministry of Industry, Trade and Resources" and "the Ministry of Land, Infrastructure and Transport".



The Structure of Park Geun-hye Government⁹⁾

However, amending government organization and structure is not that easy job than it looks. For example, the Lee Myung-bak administration's amendment in 2008 to the government organization was the largest since 1948. As a law-governed country, Korea's government organization is defined according to the laws, and hence, government reorganization requires various amendments to Acts and subordinate statutes and new enactments as well. For the completion of the government reorganization, a total of 113 Acts and subordinate statutes, including the Government Organization Act, had been enacted and amended.

9) From the Blue House webpage : www.president.go.kr

With the promulgation and entry into force of these Acts and subordinate statutes on February 29, 2008, the government reorganization has been officially completed legally.

These kind of governmental reorganizations need systematic approach and long preparation, but the recent reorganizations usually start with only 1-2 month of off-the-cuff proposal and being discussed in the National Assembly in haste. Since governmental reorganization accompanies a long list of amendments of law and subordinate rules, the reorganizations often bring legal problems afterwards.

In 2011, the Fair Trade Commission imposed disposition of penalty surcharge to 4 Automated Teller Machine (ATM) manufacturing companies for bid rigging. The company violated the Monopoly regulation and Fair trade Act, is restricted bidding participation in public contracting during a certain period of time pursuant to Article 27 of the Act on Contracts to which the State is a Party.

The Korea Post Information Center which was institution under the Korea Post, which is attached to the Ministry of Knowledge Economy at that time, ordered the above 4 companies above to restrict bidding participation for months. However, during governmental reorganization of Lee Myung-bak administration in 2008, “the Regulation on Devolution and Entrustment of Administrative Competence” was amended, which is a Presidential Decree that stipulated delegation of disposition to restrict bidding participation. It was delegated to the head of Korea Post Information Center before, but it changed to the head of Korea post who hold a higher link. The head of Korea Post Information Center gave the disposition without knowing the amendment correctly, in following lawsuits some companies won by arguing that the head of Korea Post Information Center did not have the authority to give the disposition.

Governmental reorganization is very complicated work and could cause

various side effects. Therefore, it should not be carelessly amended without a methodical study and support of legislation experts.

4. Who wants legislation experts? : Analysis on the demand side

There had been actually no chance to train properly or have chance to practice legislative work when selecting lawyers at the bar examination or at the Higher Civil Service Examination, which is the exam to be a high ranking government officer. Most of lawyers consist of attorneys, judges and prosecutors in past did not the legislative work.

As the Constitutional Court in Korea was established by the constitution amendment in 1987, the true meaning of judging 'unconstitutional law' started. The Constitutional Court's ruling gave attentions on legislative legitimacy itself in applying law. Especially in constitutional litigation, due process in legislation process began to matter and the constitutionality of omissions in legislation was stated to be judged. Some researchers in the field of studying legislation said this was the time when the 'legislation' itself began to be important field¹⁰⁾. When we consider the demanding side of the legislation experts, they can be categorized as follows.

1) Experts in the administration

The role of the Ministry of Government Legislation, one special agency dedicated to all legislative process in the executive, was the most important in traditional legislation process. Korea established the Ministry of Government Legislation when setting up government in 1948 and controlled legislation internally. The function and the idea of the Ministry of Government Legislation supposed to be benchmark the Cabinet Legislation Bureau of Japan, but unlike the Cabinet Legislation Bureau where only examines bills of laws and Cabinet

10) Cho Jeong-chan, the way to develop the study of legislation, Monthly Legislation, December 2009, p.82

Orders (which is the counterpart of the Korean Presidential Decrees), the Ministry of Government Legislation has extended function to review proposals of the government ministries' Enforcement Decrees (Rules).

The Ministry of Government Legislation, under the Prime Minister, overall controls the government's legislative work, examine every legislative bills and treaties before bringing into the State Council to prevent contradiction and contravention with other statute. The Ministry of Government Legislation also monitors the suggested bills by the congressmen and the bills that passed the National Assembly so that the President can exercise a veto power if there is a violation of Constitution. In this legal process, functions of the Ministry of Government Legislation are very important, and had worked efficiently in the administrative leading, development-oriented era in the past.

Each administration's actual execution function has to have legal basis by law and every governmental business has own separate law. In many cases, deputy directors are hands-on workers and they execute in government ministries and usually make foundation works for the draft of administrative laws they execute. Each government ministries have Legal Affairs Director and they screens proposals of Administrative Statutes at their initial stages but role of legal affairs division is usually not big enough.

2) Experts in the National Assembly

The National Assembly rose to the center of state-level policy administration with advance democratic transition in Political area. The power to legislation has become the most important part of the National Assembly. The numbers of legislative bills from assemblymen have skyrocketed. Portion that actually pass the Assembly plenary session is increasing, portion that the government bills led to enact as amendment or alternative is increasing, which used to pass in original bill form by the executive. It shows that demand on legislation experts in the National Assembly is constantly growing.

Role of legislation investigators and specialized committeemen positioned in each standing committee in the National Assembly has largely increased, legislation supporting departments like the Proceedings Bureau is expanded. Moreover, the Legislative Counseling Office is functioning actively to support assemblymen's legislation. Assemblymen's assistants and aides, who have professional license or qualifications, work actively in proposing or reviewing bills. In addition, the National Assembly started National Assembly Research Service on November 2007 to assist legislation systematically.

Portion of legislative bills from assemblymen is increasing rapidly as you can see in the table below. On the other hand, the government bill passing rate is decreasing constantly. Increase of legislative bills from assemblymen have positive side that the National Assembly functions as 'the legislature', but there are concerning voices that quality of the bills might decline and the bills could pushed through if the number of legislative bills from assemblymen become an only concern.

The Changes in the Korean National Assembly in Government Bills & Assemblymen's Bill¹¹⁾

	Total bills	Assemblymen's Bill			Government Bill		
		Submitted	Passed	Ratio	Submitted	Passed	Ratio
13 th Congress (1988-1992)	938	570	171	30%	368	321	87%
14 th Congress (1992-1996)	902	321	119	37%	581	537	92%
15 th Congress (1996-2000)	1951	1144	461	40%	807	659	82%
16 th Congress (2000-2004)	2507	1812	514	27%	595	431	72%
17 th Congress (2004-2008)	7489	6387	1350	21%	1102	563	51%
18 th Congress (2008-2012)	13913	12220	1661	13.6%	1693	690	40.8%

11) Hong Wan-Sik, The Study on the establishment of the legislation education center in the National Assembly, Special hearing at the National Assembly on November 16, 2012, p5.

Interesting thing is that the number of assemblymen who are lawyers is increasing. Currently 43 people from 300 assemblymen (14.3%) are lawyers in the 19th National Assembly, but I cannot agree with the argument that the lawyers are over-represented in our legislature.¹²⁾

3) Local Government, Local Councils

The numbers of enactments of Municipal ordinances & rules are increasing gradually recently, as the self-governing in local governments became more vitalized. The number of local legislation is not only increasing in quantity but also the examples of creative legislation or bills with the regional characteristics and the voices of local people are reflected are increased.

The current status of municipal legislation¹³⁾

year	2005	2006	2007	2008	2009	2010	2011
Municipal ordinances	41,554	43,184	45,979	48,341	51,214	53,242	55,996
Municipal rules	20,981	20,701	21,204	21,899	22,634	22,778	23,047
total	62,535	63,885	67,183	70,242	73,848	76,020	79,043

As stated above, it is obvious that the number of Municipal ordinances & rules are growing, but there is a long way to go to ensure professionalism of people who are in charge of legislation in Local Government and Local Councils. The function and role of enacting local statutes become more and more important since the society is getting diversified, field and spectrum of local public administration is getting specialized. The matter of training local council members and their aides are still remained as tasks.

4) Private enterprises and law firms

Private sectors, where government regulations affect directly, got out of

12) According to Kyunghyang Daily News, January 31, 2013, there were 25 assemblymen at the 4th Congress but 54 assemblymen, at the 17th Congress, 59 assemblymen at the 18th Congress and 43 assemblymen at the 19th Congress who are lawyers and lawyers are over represented compared to other business areas.

13) Statistics of the Ministry of Public Administration and Security

passive legal application, started to participate legislation process actively, set forth their opinion to reflect their interest in legislation.

Recently, it is common that major companies hire in-house lawyers, have legal department to take charge of various legal issues. One of the reasons might be that the numbers of lawyers have grown by the introduction of new law school system in Korea, so companies hire in-house lawyers more widely than before. Moreover, role of these lawyers has changed from just dealing with litigations into the whole consultation of overall corporations' legal affairs, and demand on legislation experts are growing constantly.

Particularly, there is recent tendency around big law firms in Korea to compose special teams with lawyers of experiences in legislative affairs of the government or the National Assembly. These specialized teams named like 'legislative consulting' or 'Regulatory and Government Affairs' team, and they are consist of traditional lawyers and professionals who worked at the National assembly and government. They support enactment or amendment of certain administrative statutes, consult contingency plans on unreasonable administrative regulations to handle client's needs faster than the litigation process with relatively low budget.

5. Obstacles in training experts in legislation

1) Absence of proper legislation training institute

In the past, the ways to train legislation expert in Korea were to train the hands-on workers at the Ministry of Government Legislation, and standing committees & Legislative Counseling Office of the National Assembly internally with their senior staffs to build up needed capability during the daily work by doing their job. This kind of 'apprentice training' is learning from superior by working together and it tends to depends largely on the capability of the superior. Naturally it is not sufficient to raise experts that fulfill needs of every section of society.

The Ministry of Government Legislation recognized the problem, so established a training team which specializes in education on the legislative system. The institute runs programs regularly to educate public officials of central ministries and local government who are in charge of legal affairs. However, the programs are for public officials and public institution employee, so not enough to fill up every demand for experts. The Ministry of Government Legislation also runs an internship program for law school students but it does not have enough room for everyone wants to participate.

2) Absence of education program at law schools

Currently law schools, Colleges of law in Korea and the Judicial Research and Training Institute that train legal experts in academics and practices, rarely have practical legislation courses.

In colleges (undergraduate course), Konkuk University and Seoul National University open 'legislation' classes. At law school level, 12 law schools among 25 in Korea are known to open 15 legislation classes. However, classes in those 12 law schools, usually second-third year students' optional course, has been canceled one after another since students were reluctant to take the class¹⁴⁾. The main reason is that passing bar exam is the most important task to law school and students. As the "legislation' subject is not included among bar exam subjects, so the students usually only chose to take classes related to bar exam.

3) Lack of awareness on importance of legislation in institution/government

Except part of institutions such as the Ministry of Government Legislation or Legislative Counseling Office, it is hard to say legislation experts have high standing in central or local government agencies.

Every ministry has legal team, but the director of Legal Affairs Division is

14) Hong Wan-Sik at 10.

recognized as a position for who just promoted to a director level. Therefore, the director of legal affairs division, whose task is to understand working flow of entire ministry and to deal with overall legal affairs, often do not meet this expectation and work passively. Sometimes the legal affairs division relies on outside legal counsels or the Ministry of Government Legislation. Making things worse, most of ministries rotate positions regularly at the director-level frequently (about every 1-2 years), it is hard to develop professional capability in the legislative work.

Also, the government or the National assembly treat and pay legal experts same as other public officials. Considering public officials' salary is lower than private sector lawyers' generally, it is hard to motivate distinguished experts to work as legislation experts at the ministries or at the National Assembly.

6. How to secure more distinguished legislation expert?

Demand on legislation experts will expand in the future. Basically, every lawyers deal with statutory law and most of them are administrative law. A field of administrative regulations is expanding and a number of laws are enacted and amended in the National assembly and the administration constantly as if they are alive.

To make and fix administrative laws, to make strategy and prepare in response to change of administrative law are task for legislations experts. The legislation experts' job includes all such as to stipulate reasonable and good regulation in the legal text so that concerned people can keep the law well, interpret the already- made law rationally for the actual situations, and try not to result in unfair or discriminating applications.

1) Expand opportunity to learn legislation study

Law schools and the Judicial Research and Training Institute, two big channel to supply legal professionals in Korea, need to open more classes

related to legislation and teach it aggressively.

We should look at the purpose of Law school once again. The law school system started to train lawyers who have various backgrounds to fulfill various legal service demands by teaching professional legal theory and practice together since there were thoughts that it is hard to raise competent lawyers who have professional legal knowledge, international competitiveness and high work ethics through conventional bar exam system.

The all 25 permitted law schools in Korea planned to raise professional lawyers to provide various legal services with each school's specialty in a certain area of law. In reality, how much they have achieved? At laws schools in Korea, passing the bar exam became the ultimate goal just like conventional bar exam system. Thus the diversity in legal education is virtually ignored. As a result, legal areas that are not part of bar exam often neglected in schools and proper job training is not possible. Some of law schools opened classes related to legislation, but classes have been canceled for shortage of students.

Practical response is to add subject related to legislation to bar exam. Considering Science of "Public Administration" has developed ever since that subject became part of Public Administration Examination in the past, it is very important to include the 'legislation subject' into bar exam.

At the same time, practical training program that the Ministry of Government Legislation and the Legislative Counseling Office run nowadays, should be extended to more officials be educated and have chance to develop their professional knowledge. The Ministry of Government Legislation has a plan to establish the 'Legislations training center' (a special institution). It is notable that there is discussion to make a special graduate school at the National Assembly Secretariat for the legislation education. The specialized education institute is needed not only for the central government level but also for local government employees since they are the people who actually contact with the

public at the actual administrative fields.

2) Securing career for legislations experts

considering that the law school system was started with the idea to raise legal professionals who are able to work at every sphere of this society, it is important to train them as legislation experts and secure their career with proper standing.

According to statistics between 2007 and 2009, there were only 65 people from 3,000 graduates of the Judicial Research and Training Institute, started career as legislation experts at government agencies. It is necessary to consider appointing qualified lawyer who have experience legislation work for a while to secure career of legislations experts as the director of legal affairs division. Local governments need to hire legal experts, who have got professional education related to legislations and use them to review and interpret municipal statutes.

In hiring aides of the assemblymen, who actually participates legislation process in the National Assembly, higher qualification requirement should be applied to ensure professionalism. Among 300 of assemblymen, there are 40 or less lawyers but most of them are not considered as legislation experts. Therefore, I suggest there should be a legal requirement that legislations experts should be hired as at least one of assistants and aides of each congressman.

7. Conclusion

Enacting piecemeal law without systematic approach and study after only thinking of short term demand might cause unexpected side-effects once the law has come into force. These 'collateral damages' can be huge and we should amend law again to fix the problems with big social costs.

Conventional way to train lawyers was usually to presume existing laws and apply them by interpreting. However it is not a desirable legal education only to

teach interpretation and not to teach what is the good laws and how to make them¹⁵⁾. Since the modern society is becoming complicated, laws are being complicated as well so to asses quality of law is getting more important. Therefore, the most desirable way to solve this problem is to raise experts who are able to make good laws from the beginning, and let them do their job.

There are a lot of advantages to save time and social costs away from litigations caused by unreasonable law, if legislation experts are raised and they become actively work at the central government, local government, the National Assembly and private companies & law firm so that raise the quality of our legislation to the next level.

I welcome that law schools try to open specialized courses for the legislation, and the executive and the legislature try to establish a special training institute to teach practices for raising competent legislations experts. It is also important to provide an institutional assurance that these trainees are able to work at the place where they are needed.

Recently, some big law firms in Korea, including my law firm Lee& Ko, organized specialized team and solve disputes using knowledge in legislation area. The outcome of activities of these teams are started to publicized and if this tendency continues, demands on legislation experts will grow, and the number of legal experts who want to be part of this field will increase naturally.

15) HONG Wan-Sik at 1

