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RESEARCH NOTE

# Lawyers and law graduates in parliaments as a consequence of SMD electoral systems: a comparison of Japan, South Korea, and Germany

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## Abstract

This study addresses the question of why so many of the world's legislators are lawyers or law graduates. Drawing from previous studies on lawyer-legislators and electoral systems, it develops the argument that 'first-pass-the-post' single-member district electoral systems presume a principal-agent logic of representation and are therefore conducive to political parties selecting representatives with either occupational experience or educational training in the field of law. By contrast, proportional representation (PR) elections presume a microcosm model of representation incentivizing parties to select candidates representing diverse demographic and occupational backgrounds. This conjecture is tested by examining legislator backgrounds in three large parliaments with mixed electoral systems: Germany, Japan, and South Korea. As expected, single-member plurality elections are linked to a greater share of lawyers and law graduates in parliaments compared to those elected via PR even after controlling for several alternative explanations.

**Keywords:** Electoral systems; Germany; Japan; law; lawyers; parliaments; political selection; proportional representation; single-member districts; South Korea

An important question in the fields of political science and political economy is why some demographic and professional groups have more presence and influence than others in politics. Whether viewed from the perspective of 'political selection' (e.g., Besley, 2005) or 'descriptive representation,' (e.g., Pitkin, 1967), the occupational and educational backgrounds of legislators have significant consequences for public policy-making due to the role that professional socialization and educational training plays in shaping law makers' experiences, perceptions, interests, and behaviors.

In response, scholars have sought to better understand how institutions impact the degree to which occupational groups enter politics. For instance, research on Germany and Austria finds public servants more likely to become members of parliament (MPs) when they are guaranteed re-employment, receive compensation for holding their office in abeyance, and when ineligibility and incompatibility rules are not present (Braendle and Stutzer, 2010). In Russia, studies have found more businessman candidates in regions where democratic institutions (i.e., political parties, free media, and government transparency) are weak (e.g., Gehlbach *et al.*, 2010), and in China, entrepreneurs seem to participate more in politics in regions where markets are less developed (Li *et al.*, 2006). Meanwhile, the ratio between salaries for the US Congress and those offered in the private sector appear to impact both the average 'quality of entering politicians' and turnover in office (Mattozzi and Merlo, 2008: 599).

The high share of MPs with law backgrounds has also drawn considerable attention (e.g., Hain and Pierson, 1975; Besley, 2005: 54; Moliterno, 2009; Bonica, 2017; Robinson, 2017). Explanations for the prevalence of MPs with educational or occupational training in law tend to focus on the socialization

experience of law school (e.g., Miller, 1993, 1995), lawyers' professional networks and fundraising abilities (e.g., Bonica, 2017), the structure of the legal profession (e.g., Robinson, 2017), and restrictions in legislatures concerning legal representation of clients before state entities (Rosenson, 2006). A related factor is whether MPs are permitted to simultaneously work elsewhere while holding public office since attractive alternatives in the private sector may dis-incentivize lawyers from running for a political position (e.g., Gagliarducci *et al.*, 2010).

Despite these advances, previous attempts to explain the proliferation of lawyers and law graduates in legislatures have overlooked one of the most basic structural factors of a democratic polity – its electoral system. At stake here is the common usage of a 'first-pass-the-post' (FPTP) single-member district (SMD) electoral system in the institutional ensemble of many former British colonies including the USA where lawyers are particularly prominent in legislatures, a feature which stands in contrast to many other industrialized democracies where elections rely on some variant of proportional representation (PR) (e.g., Norris, 2004; Farrell, 2011).

As this article explains, a parliament's electoral system can play an important role in influencing the degree to which its membership is comprised of citizens with a background in law defined here as possessing either a university degree in law ('law graduates') or occupational experience working in the field of law ('lawyers'). More specifically, this article proposes that SMD elections are more conducive to the election of MPs with a background in law than PR systems. This presumed causal relationship stems from differences between whether electoral systems aim to achieve 'principal-agent' or 'microcosmic' models of representation (e.g., McLean, 1991; Farrell, 2011: 10–11). On the one hand, SMD elections presume a principal-agent model of representation which incentivizes political parties to select MPs with training in the field of law. On the other hand, PR elections presume a microcosmic model of representation which incentivizes parties to select MPs from diverse demographic and occupational backgrounds.

The rest of this paper is structured as follows. First, it reviews the scholarly literature on the causes and consequences of having a large number of legislators with an educational or occupational background in law. It then considers how FPTP-SMD and closed-list PR electoral systems may differentially impact the proliferation of lawyers and law graduates in parliaments with the former more conducive to MPs with a background in law than the latter. This conjecture is then tested and *prima facie* evidence is found in support of this relationship through an analysis of elections conducted in three large parliaments with mixed-member electoral systems combining SMD and PR tiers: Japan, South Korea, and Germany. The article concludes by discussing the implications of these findings and suggestions for future research.

## 1. Literature review

### 1.1. The proliferation of lawyer-legislators

Comparative research has repeatedly found that educated professionals comprise a large share of the world's legislators, and among white-collar occupations present in parliaments, lawyers are particularly prominent (e.g., Miller, 1995; Norris and Lovenduski, 1995; Norris and Franklin, 1997; Best and Cotta, 2000; Best and Vogel, 2014; Bonica, 2017). A glaring example of this phenomenon is the USA where the disproportionate influence of lawyers in politics was famously observed nearly two centuries ago by de Tocqueville (1838/2003). Since gaining independence in the late eighteenth century, lawyers have comprised 71% of US Senators and 62% of its House of Representatives (Bonica, 2017: 4) as well as 100% of Supreme Court judges, 59% of US presidents, 68% of vice presidents, and 63% of cabinet members (Robinson, 2017: 667). Lawyers have also comprised a high proportion of US state-level legislators estimated at 40% within state senates and 25% within state houses (Cohen, 1969: 569). As Robinson (2017) notes, lawyers currently constitute only 0.4% of the US population, but in 2015–16, lawyers (37%) were the largest occupational group in the US Congress followed by 'business and banking' (26%) and 'public service and politics' (23%).

Aside from the US case, lawyers are numerous in many other countries' legislatures including the UK and former British colonies (Podmore, 1977). In the 622-member German Bundestag (GBT),

Braendle and Stutzer (2016: 713) found more legal professionals (102) than any other category including educational professions and researchers (86) or public administrators (62). Lawyers have also been prominent in Canadian politics comprising roughly a fifth of legislators and almost three-fifths of Canadian Prime Ministers (22 of 30) (Chatoor, 2013: 4). Similarly, Braendle (2015: 9) found a strong presence of European Parliament members with a degree in law (20%), and a large-scale study conducted by *The Economist* (2009) has estimated that lawyers comprise about 20% of the world's politicians – a greater share than any other professional background including business (16%), diplomacy (12%), or the military (11%).<sup>1</sup>

A long-standing question among scholars has been whether legislators with a law background think and act differently than their counterparts without legal training (e.g., Eulau and Sprague, 1964). In the US case, due to American Bar Association (ABA) accreditation requirements, the high costs of obtaining a law degree, and the need to pass a bar exam, lawyers are more likely to be white, male, and affluent compared to non-lawyers (Shepherd, 2003; Michelson, 2013). Moreover, lawyers often 'come from more "elite" family backgrounds' and 'earn more than typical Americans' (Robinson, 2017: 694) resulting in a US Congress dominated by representatives from affluent households (see Carnes, 2013, 2018). Miller's (1993: 1) interview research found 'lawyers have more positive attitudes toward the courts' than non-lawyers and Eakins (2006) found lawyers in politics to be more ambitious than non-lawyers. Polsby (1990: 114) also identifies a critical mass effect whereby the 'occupational culture of Congress' in the USA is 'dominated by lawyers' ways and lawyers' jargon.' As Davidson (1988: 92) notes, 'oral debates and written reports display lawmakers' intense fascination with legal procedures, concepts, and terminology. And members often reveal a knack for turning substantive issues into matters of legal or procedural detail – perhaps a belated manifestation of legal training.'<sup>2</sup>

One alarming possibility is that lawyer-legislators may be systematically biased toward advancing their own industry and personal gains at the expense of general public interests (Kagan, 2001). While, in some countries like Russia, businesspeople commonly run as legislative candidates in order to 'enjoy unparalleled access to policy decisions' that help their businesses profit (Szakonyi, 2018: 325; see also Braendle, 2016), a study of roll call votes in the US Congress and state legislatures regarding the \$265 billion a year tort business found lawyers 'systematically less likely to vote in favour of tort reforms that restrict tort legislation but more likely to support bills that extend tort law compared to legislators with different professional backgrounds' (Matter and Stutzer, 2015: 357).

If lawyer-legislators share such biases, then why do so many lawyers enter politics in the first place? In the US case, lawyers hold many intermediate feeder positions for US state and national legislatures such as the positions of the state attorney general and public prosecutor (Shepherd, 2003: 654; Francis, 2014: 80; Robinson, 2017: 691). Another reason is their ability to 'enter and leave politics without damaging their legal careers' (Miller, 1993: 2). Lawyers can use legislative positions as stepping stones to advance their careers (Hain and Pierson, 1975), and even losing an election campaign can help increase their name recognition and network of contacts.<sup>3</sup>

<sup>1</sup>The claim by Braendle and Stutzer (2016: 700) that 'public servants' are the most highly represented professional group in parliaments aggregates a large number of occupational categories under the label of 'public servants' including those working in education as teachers and university professors, public administrators, social workers, members of the armed forces, police, and the judiciary. Hence, it does not contradict earlier findings that lawyers are often the most prevalent occupational group within legislatures.

<sup>2</sup>While the US case may be a bit *sui generis*, Kagan (2001: 3) warns that its lawyer-centric governance model of 'adversarial legalism' referring to 'policymaking, policy implementation, and dispute resolution by means of lawyer-dominated litigation' has harmfully led to 'American laws [that] generally are more detailed, complicated, and prescriptive' and 'methods of litigating and adjudicating legal disputes are more costly and adversarial' (ibid). However, as Robinson (2017: 719) observes, 'adversarial legalism itself is arguably produced in part by lawyers' prevalence in politics in the first place' as lawyer-legislators are more prone to support a 'lawyer- and court-centric vision of public governance' (ibid: 707).

<sup>3</sup>As Mattozzi and Merlo (2008) have argued, there is a difference between 'career politicians' who continue to serve in politics until retirement and 'political careers' whereby professionals temporarily serve in politics before returning back to the private sector. The latter may be suitable to many lawyers for whom previous experience as a legislator may be lucrative for future employment outside the legislature.

Some scholarship also suggests the socialization experience of obtaining a law degree is a strong factor in shaping law graduates' desire to enter politics. As Miller (1993: 4) notes, regardless of whether law graduates ever become practicing attorneys, law school socialization has a long-term influence and 'professional training produces changes in individuals which stay with them throughout their subsequent careers.' For instance, legal training may enrich a future politician's logic, reasoning, debating skills, and ability to persuade (e.g., Podmore, 1977).<sup>4</sup> Yet, it might also make them 'accustomed to representing clients' [private] interests against the interests of all others, including the public interest' (Moliterno, 2009: 1262). As Miller (1995) has argued, legal training also leads lawyers to approach problems differently by preferring a 'case-by-case approach in attacking a problem' and placing legal analysis over 'consideration of broader values' (Miller, 1993: 5). Law graduates might also be more likely to 'think of themselves as qualified to run' or have 'an elected official as a family member or as a friend' (Robinson, 2017: 687) thus providing them with more insider knowledge and self-confidence than other potential candidates. Relatedly, Eulau and Sprague (1964) found many who chose to enter law school already had an above average interest in politics. Nevertheless, a generally higher level of interest among law graduates for joining politics still does not explain the variation in MPs with a law background within and across countries – perhaps electoral systems do?

### 1.2. Electoral systems and occupational representation

As Besley (2005: 52) has argued, compared to inheritance, lotteries, and force, 'elections are now the most commonly used institution for selecting a political class, but enormous diversity exists across electoral institutions.' While scholars have not yet considered how electoral system differences impact the election of lawyers, the possibility of a systematic link between electoral systems and candidate selection methods has been identified by Hazan and Voerman (2006: 148) who propose that candidate selection methods will be more decentralized under SMD plurality electoral systems, but more centralized in multi-member districts. Partially confirming these conjectures, a study comparing the candidate selection methods of 512 parties in 46 countries concluded that on average 'parties competing in unitary systems will tend to adopt more centralized and exclusive selection processes, whereas parties under federal countries will adopt more inclusive and decentralized selection mechanisms' (Shomer, 2014: 543).

While there may be a link between SMDs and decentralized candidate selection procedures, SMD electoral systems exhibit other characteristics conducive to the selection of lawyer candidates. First, the literature on electoral systems has identified the differing character of SMD and PR in terms of competition structure and nomination patterns as the former is uninominal (district magnitude = 1), while the latter employs multi-member districts with correspondingly higher district and party magnitudes (e.g., Duverger, 1954; Rae, 1967; Taagepera and Shugart, 1989; Norris, 2004; Farrell, 2011). Moreover, a general finding is that PR (especially when using a closed-list) tends to be more inclusive of diversity than SMD when it comes to electing otherwise under-represented population groups such as women and young people (e.g., Matland and Studlar, 1996; Norris, 2004; Joshi, 2013; Joshi and Kingma, 2013; Reiser, 2014).

Second, SMD creates an adversarial winner-take-all contest. This incentivizes candidates in competitive districts to excel in matters such as persuasion, fundraising, and perseverance to out-compete adversaries. Of particular importance is a candidate's personal appeal linked to the 'personal vote,' whereas party reputation and ideology are relatively more important in closed-list PR systems (Carey and Shugart, 1995). As Herron *et al.* (2018: 451) note, candidates elected under SMD systems are often expected or motivated to 'work for local interests, while candidates under PR work for

<sup>4</sup>As Besley (2005: 49) has pointed out, a 'fiduciary model' of duty in politics corresponds to 'the idea that some people hold public office due to public service motivation' which may fit well with MPs who come from a law background. However, it is an open question as to whether MPs with a law background have more or less public service motivation than other MPs and whether they are more disposed to fitting a trustee model of public representation.

broader interests.’ For this reason, political parties often see law graduates and lawyers who have been trained to vigorously advocate on behalf of a narrow client base as attractive candidates for SMDs (Lawless, 2012; Francis, 2014).

Third, as Galasso and Nannicini (2017) point out, political parties’ top preference is often to select ‘loyal candidates’ (especially party elites and long-term party members) as evident in candidate nominations for the top of their PR-lists and for safe SMD seats. However, parties may experience a backlash from electorates in SMD contests if they do not choose ‘high-quality’ candidates (those with more education and higher incomes) such as lawyers, which were found more often to be representing competitive SMDs under Italy’s previously mixed electoral system (*ibid.*).

## 2. Causal logic and hypotheses

The discussion above highlights the propensity of lawyers and law graduates to enter parliaments when an FPTP-SMD electoral system is in place, and it illustrates that different electoral systems might lead to different results for political selection. Regarding the latter, electoral systems differ in character based on the degree to which they are linked to different logics or models of representation. A crucial distinction here is between ‘principal-agent’ and ‘microcosm’ models (McLean, 1991; Farrell, 2011: 10–11).

First, a principal-agent model of representation lies behind SMD elections because the district magnitude is only one. Under these circumstances, legal training will likely facilitate agentic representation because legal advocacy of the type embedded in the lawyer–client relationship studied in law school and practiced in the legal profession corresponds to a parliamentary representative who acts on behalf of a specific geographic constituency based on the incentive of re-election. For this reason, given the skills of those with a law background and the fact that entrance to a law degree program is often available only to those with a high level of intellectual acumen, political parties are likely to choose a sizable number of lawyers to serve as representatives under SMD systems.

By contrast, PR elections imply a microcosmic model of representation in which a legislature is supposed to resemble the population at large. As articulated by John Adams, this vision expects parliament to function like ‘an exact portrait, in miniature, of the people at large, as it should think, feel, reason, and act like them’ (quoted in McLean, 1991:173). As Farrell (2011: 10) points out, this is very ‘similar to the governing principle behind public opinion polls: that is, the notion of a representative sample.’ Hence under PR elections (especially of the closed-list variety), diversity of representatives across occupational and demographic groups is usually preferred by party elites in comprising candidate lists over concentration from a single profession in order to better inform overall decision-making and to demonstrate to different segments of voters that people like them will be included as representatives.

To sum up, SMD elections presume a principal-agent model of representation which I argue incentivizes political parties to select more MPs with training in the field of law than would be the case under PR elections. This leads us to the following hypotheses. Although the literature tends to conflate the two, I first distinguish between ‘law graduates’ (those with a university degree in law) and ‘lawyers’ (those whose occupation is in the field of law). My null hypothesis (H0) is that politics simply attracts law graduates and lawyers in general, so there should be no significant difference in their share elected under SMD or PR systems. By contrast, my first hypothesis (H1) is that despite differences across nations in their share of law-graduate MPs, in each individual parliament, law graduates will hold a greater share of SMD seats than PR seats.<sup>5</sup> My second hypothesis (H2) is that despite differences across nations in their share of MPs in law-related occupations (‘lawyers’), in each individual parliament, lawyers will hold a greater share of SMD seats than PR seats.

<sup>5</sup>Academic studies often use a law degree to identify MPs with a law background (e.g., Bonica, 2017; Robinson, 2017; Aldrich, 2018). Studies on the USA have also found a high overlap between occupational and educational coding of lawyer-legislators. For instance, Robinson (2017: 665) found 36.5% of the 114th US Congress had previously been a ‘lawyer’ while 39.1% had a ‘law degree.’

### 3. Methodology

To test these hypotheses, I examined three large national parliaments with mixed electoral systems combining both SMD and PR elections. This approach enables isolating the impact of distinct electoral systems in a context where two different elections are held side-by-side. It also serves as a convenient means to control for factors such as country-specific conditions, election timing, type and level of legislature, and partisan competition. In other words, mixed electoral systems allow one to compare election rates of lawyers and law graduates under different electoral systems while holding most other relevant factors constant.

My analysis begins with South Korea's unicameral parliament, the Korean National Assembly (KNA) (대한민국 국회 *Daehanminguk Gukhoe*), which employs a parallel 'majoritarian' mixed-member (MMM) electoral systems involving strict 'separation' between electoral tiers. This is a case where the two electoral tiers disallow dual candidacy. In other words, a candidate must either contest an SMD seat or be placed on a PR-list. They cannot do both simultaneously. I then replicate this analysis on the mixed-member electoral systems of the German Bundestag (GBT) and Japanese House of Representatives (JHR) (衆議院 *Shugiin*) which comprise the lower houses of their respective bicameral national parliaments. The GBT and JHR, respectively, have mixed-member proportional (MMP) and MMM systems involving contamination between their two electoral tiers by allowing dual candidacy.<sup>6</sup>

These three national assemblies share certain similarities. All have a large number of seats and are located in advanced industrialized democratic countries that are members of the Organization for Economic Cooperation and Development (OECD). In each of these parliamentary chambers, voters have two votes. The first vote is for an SMD seat based on a plurality FPTP formula, while the second vote is for the PR tier involving closed-lists compiled by political parties over which voters have no say in determining who the candidates are or in what order on the list.<sup>7</sup> In all three cases (Germany, Japan, and South Korea), the parliaments are genuinely influential institutions in national politics, and MP salaries are substantial and identical for members elected via PR-lists and SMD seats. Reported monthly salaries (and their US\$ equivalents) are 1,294,000 yen (\$11,570) for the Japanese National Diet (国会 *Kokkai*), 9,780.28 euros (\$11,145) plus an allowance of 4,339.97 euros (\$4,946) for the GBT, and 11,496,667 won (\$10,096) for the KNA.<sup>8</sup> In these three assemblies, law is a prominent background (occupation or university major) among current representatives as shown in Table 1. In the JHR and KNA, law is the most common university degree held by MPs. In the GBT, law is the most common previous occupation among its current MPs.

In the analysis that follows, I focus on statistically significant differences between MPs with law backgrounds in SMD and PR seats across individual parliamentary sessions. To assess legislator backgrounds, information was obtained from MP profiles on parliamentary websites regarding their occupational and educational backgrounds for MPs serving during the last four parliamentary sessions in each country.<sup>9</sup> Data were also collected on the current membership of the Japanese House of Councilors (JHC) (参議院 *Sangiin*) which forms the upper house of the Japanese Diet.<sup>10</sup> In all cases, MPs were coded as having a 'law background' based on their either having a university degree

<sup>6</sup>As a result, due to dual candidacy, many candidates who 'lose' in Japanese SMD elections still enter parliament since the major parties tend to add their 'best losers' (惜敗率 *sekihairitsu*) in terms of closeness to winning district seats onto competitive spots on their PR-lists (Reed and Thies, 2001: 383).

<sup>7</sup>A partial exception is the 'best loser' system applied in Japan's lower house, but as Shugart and Wattenberg (2001: 12) argue, 'from the point of view of voter choice, the best-loser list is no different from a closed list' since 'voters do not have the opportunity to select from among multiple candidates within their party's list.'

<sup>8</sup>Salary data sources [Korea ([http://news.khan.co.kr/kh\\_news/khan\\_art\\_view.html?art\\_id=201605082303005](http://news.khan.co.kr/kh_news/khan_art_view.html?art_id=201605082303005)), Japan ([http://elaws.e-gov.go.jp/search/elawsSearch/elaws\\_search/lsg0500/detail?lawId=322AC0000000080](http://elaws.e-gov.go.jp/search/elawsSearch/elaws_search/lsg0500/detail?lawId=322AC0000000080)), Germany (<https://www.bundestag.de/en/members/remuneration>)] were accessed on 25 October 2018.

<sup>9</sup>Data on Germany draws from Och *et al.* (2018). I would like to thank Malliga Och for sharing her historical data on the German Bundestag.

<sup>10</sup>The Japanese House of Councillors combines PR and SNTV (single non-transferable vote) electoral tiers, but within the SNTV tier some seats are single-member districts.

**Table 1.** Most common occupations/university majors among members of parliament

Election year	Indicator	#1 Field (%)	#2 Field (%)	#3 Field (%)
Japan 2017	University Degree	Law (36.6)	Economics (13.5)	Business (7.1)
South Korea 2016	University Degree	Law (20.5)	Political Sci. (10.7)	Pub. Admin. (10.1)
Germany 2017	Occupation	Law (18.7)	Economist (5.4)	Business (5.1)

Data Source: Compiled from member bios on parliamentary websites.

Note: 'Political Sci.' includes International Relations and Diplomacy.

in law or being listed on their respective parliament website as having a law-related occupation such as 'lawyer,' 'attorney,' 'judge,' 'jurist,' or 'legal advisor.' As MP background information is presented differently on parliament websites in each country, the coding of law backgrounds for South Korea and Japan are based on university degrees. For Germany, it is based on occupation.

#### 4. Analysis

My empirical analysis begins with the KNA where over the past four elections, 23.3–31.7% of KNA members have been law graduates. The KNA is an ideal case to test my first hypothesis, because it has a 'strictly' parallel electoral system that does not allow dual candidacy while combining FPTP single-member districts with a relatively high-magnitude PR tier comprising one nationwide constituency. In line with my expectations, as shown in Table 2, over the past four KNA elections, there has consistently been a much lower share of law graduates in its PR tier (6.6–23.3%) than in SMD seats (27.0–33.7%).

I then analyzed the lower houses of the parliaments of Japan and Germany which allow dual candidacy but nevertheless have a large number of both PR and SMD seats thereby offering a further opportunity to explore the plausibility of my hypotheses. In Germany, MPs with work experience in law-related occupations comprised 19.8–20.8% of the GBT over the past four elections, but resembling the pattern observed for law graduates in South Korea, the share of lawyers in the Bundestag's SMD-tier (21.4–31.0%) has consistently been higher than in its PR-tier (12.3–18.1%).

By contrast, there has been a greater share of law graduates ranging from 34.2 to 37.7% in the JHR over its past four elections. However, even in this law-heavy context,<sup>11</sup> where laws governing campaign periods (only 12 days) and permissible activities are fairly restrictive (Nemoto, 2018), and 'having a legal background increases the likelihood of an MP serving in a high-policy post' (Pekkanen *et al.*, 2006: 188), the electoral system is correlated with the election of citizens with educational training in law. In the JHR, the share of law graduates elected in SMDs (38.0–43.4%) has consistently been much higher than in the PR tier (27.2–31.3%).

Lastly, I examined the current composition of the JHC which (like the KNA) bans dual candidacy but practices staggered elections with half of its members elected every 3 years. Law graduates comprise a fairly high share (29.9%) of its 241 current members (as of February 2019) who are much more prevalent in SMD seats (32.3% of 65 SMD seat holders) compared to the PR tier where their share is only 20.8% (out of 96 MPs).<sup>12</sup>

#### 5. Discussion

Across all three countries and every election examined, we observed a regular pattern. There has consistently been a greater share of law graduates and lawyers in SMD seats than in PR seats in Germany, South Korea, and Japan. This gap exceeded 9 percentage points in 12 out of 13 assembly sessions and

<sup>11</sup>As Michelson (2013: 1092) notes, 'in Japan, licensed lawyers are outnumbered many times over by non-lawyers who do similar legal work.'

<sup>12</sup>Japan's House of Councillors has a 96-seat PR tier and a 146-seat SNTV tier. In the current parliament, 65 seats (44.8%) in the SNTV (single non-transferable vote) tier were elected as SMDs.



**Table 2.** MPs with law backgrounds (LBMPs) in parliaments with mixed electoral systems

Assembly and election year	SMD			PR			Difference	
	MPs	LBMPs	LBMPs%	MPs	LBMPs	LBMPs%	SMD-PR gap	$\chi^2$ test ( <i>P</i> -value)
KNA 2004	250	84	33.6	62	8	12.9	20.7***	0.001
KNA 2008	255	86	33.7	60	14	23.3	10.4	0.119
KNA 2012	265	72	27.2	61	4	6.6	20.6***	0.001
KNA 2016	244	66	27.0	54	9	16.7	10.4	0.112
GBT 2005	299	64	21.4	343	62	18.1	3.3	0.289
GBT 2009	299	77	25.8	351	58	16.5	9.2***	0.004
GBT 2013	297	92	31.0	357	44	12.3	18.7***	0.000
GBT 2017	299	77	25.8	411	64	15.6	10.2***	0.001
JHR 2009	300	114	38.0	179	50	27.9	10.1**	0.025
JHR 2012	300	130	43.3	180	51	28.3	15.0***	0.001
JHR 2014	295	128	43.4	180	49	27.2	16.2***	0.000
JHR 2017	289	119	41.2	176	55	31.3	9.9**	0.032
JHC 2016	65	21	32.3	96	20	20.8	11.5	0.101

*Data Source:* Author's dataset.

*Note:* Table includes the Korean National Assembly (KNA), German Bundestag (GBT), Japanese House of Representatives (JHR), and Japanese House of Councilors (JHC).

KNA members also include mid-term replacements. Asterisks mark statistically significant differences as measured by  $\chi^2$  tests, *P*-values: \* $<0.10$ , \*\* $<0.05$ , \*\*\* $<0.01$ .

was statistically significant as measured by  $\chi^2$  tests at the  $P < 0.05$  level in nine cases and at the  $P < 0.12$  level in 12 cases.<sup>13</sup> Overall these findings support my two hypotheses.

What we do not know yet, however, is whether candidates with a law background become MPs in these assemblies because of self-selection, party selection, or election by voters. One limitation of this study is its inability to identify which one of these causal mechanisms has the greatest impact, but theoretically, much of the literature on political recruitment (following Norris and Lovenduski's (1995) candidate supply-demand model) would suggest it is *party selection*. This is because lawyers are often present as MP candidates on the supply side, but on the demand side, political parties largely determine who the candidates are that voters can choose from by accepting or rejecting aspirant candidate's wishes to be nominated as candidates (ibid: 107–115). This in turn heavily influences the choices available to voters and whether citizens pursue candidacy in the first place.

The principal-agent logic embedded in SMD electoral systems also suggests that *party selection* plays a greater role than self-selection or selection through the electorate. As discussed above, due to their training and experience, there are good reasons to believe that candidates with a law background will be more inclined toward becoming legislators than the average person regardless of the electoral system. However, party leaders should be more likely to select candidates with a law background to represent a constituency when facing an SMD election than under PR-list elections since the latter incentivizes them to broaden and diversify the profile/backgrounds of candidates on the ballot. The role of party selection here is especially salient in non-competitive SMD-FPTP districts and in closed PR-lists where voters have no say over the actual candidates offered to them by parties because candidates and their ranking are determined almost exclusively by party elites. Another commonality amongst the cases studied here is that despite differing candidate recruitment methods across countries and political parties, scholars generally find party elites in control of candidate selection procedures in Japan (e.g., Yu *et al.*, 2014), Germany (e.g., Reiser, 2014; Zittel, 2018), and South Korea (e.g., Jun and Hix, 2010).

While the findings of this study will require subsequent validation obtained by investigating more cases both spatially and temporally and applying sophisticated techniques to control for other possible

<sup>13</sup>The relatively lower number of SMD seats (65) in the SNTV tier of the JHC and PR-list seats in the KNA (54 to 62) both inhibited the attainment of statistical significance in those two assemblies as measured by  $\chi^2$  tests (resulting in *P*-values slightly over 0.10 for some years) compared to the larger PR and SMD tiers of the JHC and GBT (see Table 2).

contravening factors, our hypotheses here have nevertheless received noticeable support under somewhat diverse conditions. As noted above, the assemblies we examined diverge in terms of their mixed-electoral system configurations. First, their share of PR-list seats ranges considerably from 50% in Germany and 38% in Japan to 15% in South Korea. Average district magnitude for the PR tier varies from 18 (ranging from 7 to 33) in the JHR to one nationwide district of 46 for the KNA and a 'de facto' national district of 656 for the GBT (on the latter, see Shugart and Wattenberg, 2001; Zittel, 2018). The legal minimum threshold of party votes for PR allocation also varies from 5% or three SMD seats for Germany and 3% for South Korea to none for Japan. As Germany has the most PR-list seats, it arguably has a much weaker personal vote among the three countries.<sup>14</sup> Germany also features 'overhang seats' (*Überhangmandate*) which 'actually increase the total number of seats in the chamber in order to allow all other parties to receive their full complement of list-tier seats despite the bonus obtained by some large parties' (Shugart and Wattenberg, 2001: 23).

Another source of variation is the presence of dual candidacy in the GBT and JHR where PR-list members of parliament from the largest parties are assigned by their parties to a district constituency to which they provide constituency service.<sup>15</sup> Hence, the widespread practice of dual candidacies in Germany and Japan (e.g., Klingemann and Wessels, 2001; Reiser, 2014; Nemoto, 2018)<sup>16</sup> introduces an element of 'contamination' between the two electoral tiers since 'dual candidacy systems can generate dually nominated list winners who lose in the nominal component but win seats via the list component' (Herron *et al.*, 2018: 447). In other words, because there is less separation between the electoral tiers in Germany and Japan, the types of candidates chosen to contest SMD seats may be similar to those on PR-lists.<sup>17</sup>

To sum up, there is considerable diversity amongst the assemblies examined here. Arguably, Germany with its high level of contamination between nominal and proportional electoral tiers, and the presence of dual candidacies in the GBT and JHR present a stricter, tougher test of my hypotheses than either the KNA or JHC where there is a clear separation of the two electoral systems allowing for a more 'controlled comparison' akin to a natural experiment (Herron *et al.*, 2018: 446). Nevertheless, across all four legislative chambers, the results were in line with my theoretical expectations about the link between electoral systems and MPs with a law background.

## 6. Conclusion

This paper offers the first academic study to address the question of whether electoral systems contribute to differential proportions of MPs with a law background by conducting an empirical examination of multiple parliamentary sessions in three advanced industrialized democracies with large legislatures that combine SMD-FPTP and closed-list PR electoral tiers: Japan, South Korea, and Germany. Across four chambers and 13 parliamentary sessions, we found more MPs with a law background in SMDs than in PR seats, and in a majority of individual parliamentary sessions, this difference was statistically significant.

Additionally, this study took into consideration mixed electoral system diversity by studying both parallel MMM systems and a compensatory MMP system. Across both systems, a much higher share of lawyer-legislators in FPTP-SMDs compared to closed-list PR seats was confirmed to be an empirical

<sup>14</sup>Moser and Scheiner (2005: 259) found in the nominal tier of mixed-member electoral systems, that 'the personal vote plays a central part...except for Germany, a heavily party-oriented system in which we find evidence of only a weak personal vote.'

<sup>15</sup>As Reed and Thies (2001: 401) note, in Japan, a candidate who loses an SMD election, but gets elected on a PR-list seat 'will continue to act as if he represents the [district] and plans to run there again in the next election.'

<sup>16</sup>In Japan, 'dually nominated list winners' or 'zombies' (Pekkanen *et al.*, 2006) have been increasing on the list component from 42% in 1996 to 67% in 2014 (Nemoto, 2018).

<sup>17</sup>Herron *et al.* (2018: 450) find that 'under any mixed-member systems – MMM or MMP – winning a constituency race guarantees a candidate a seat. Particularly for this reason, constituency seats may be perceived as more valuable prizes to acquire in the long term.'

regularity. South Korea with a clear-cut separation of its two electoral tiers offered the most direct test of the paper's main hypothesis, but the fact that Germany and Japan (which practice dual candidacy) provided almost the same exact results provides additional tentative support for the article's theoretical expectation that SMD is more conducive to law graduates and lawyers entering parliaments than PR electoral systems.

Regarding possible mechanisms (i.e., self-selection, party-selection, and voter-selection) that may explain the link between SMD and lawyers and observed differences between SMD and PR elections, it will be important for future research to delve into which of these mechanisms plays a stronger role than the others by studying the occupational backgrounds of the candidate pool.<sup>18</sup> It will also be useful for future research to extend the scope of this study to other occupational groups, countries, and time periods as well as to sub-national legislatures. A broader multi-country analysis could also probe the selection effects of complementary institutions beyond just electoral systems and it would be worthwhile to examine the effects of electoral system changes from SMD to PR or *vice versa* and look into diversity amongst law graduates since persons trained in law can function in various roles as a sole practitioner, member of a law firm, as in-house counsel, in work for the government, or work in a field other than law (Chatoor, 2013: 11). Lastly, another distinction worth considering in future research is the extent to which electoral systems are related to the election of MPs with a law background who formerly served as prosecutors, public defenders, and judges, or who hail from non-profit and activist backgrounds (Robinson, 2017: 680).

In conclusion, this study provisionally found single-member districts bringing citizens with a law background into legislatures at a greater rate than under PR elections even after taking into consideration national-level characteristics and factors such as election timing, partisan competition, and legislature size. Though these initial findings should be studied further in other contexts and with alternative methods, they tentatively suggest that SMD elections may be better suited for societies which aim to have a high share of lawyers or law graduates as legislators. On the other hand, it appears that those societies interested in minimizing or curtailing the share of lawyers and law graduates in their parliaments might be better served with PR electoral systems.

**Supplementary material.** The supplementary material for this article can be found at <https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/4KRXD3>.

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<sup>18</sup>This becomes more complicated when one recognizes that ultimately the candidate pool consists of all people eligible to run for office. When we look at applicants or nominees, we only see the tip of the iceberg since many potential candidates will de-select themselves if they feel that due to various biases party elites or voters will not select them anyway (Norris and Lovenduski, 1995: 12).

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