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In search of truth and justice : South Korea's delayed democratization

Daniel Sungmo Yang
Baruch College

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In Search of Truth and Justice: South Korea’s Delayed Democratization

DANIEL SUNGMO YANG
April 28, 2014

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Baruch College of the City of University of New York
in fulfillment of the requirements for the degree of
Bachelor of Arts in
Political Science with Honors

_________________________________________
Stephanie R. Golob
Associate Professor of Political Science
Chair/Advisor

_________________________________________
Thomas Halper
Professor of Political Science

_________________________________________
Myung-koo Kang
Assistant Professor of Political Science
# Table of Contents

**ABSTRACT** ........................................................................................................................................... 3  
**INTRODUCTION** .................................................................................................................................. 4  
I. Brief History of Correcting Past Injustice and Democratization ........................................................ 6  
II. Research Procedure ................................................................................................................................ 12  
III. Contribution to the Literature on Democratization ............................................................................ 23  
IV. Structure of the Argument .................................................................................................................... 30  

**CHAPTER 1 – CASES FOR PROSECUTION** .................................................................................. 31  
Introduction: Why Legal Justice Matters for Democratization ................................................................. 31  
  Guatemala .................................................................................................................................................. 34  
  Cambodia ................................................................................................................................................ 35  
  Argentina ................................................................................................................................................. 39  
Assessment: Transitional Justice, Prosecution, and the Case of South Korea ........................................... 42  

**CHAPTER 2 – 1940s: FORGOTTEN, UNFORGIVEN PAST** ........................................................... 45  
Introduction ............................................................................................................................................... 45  
  Figure 1: CHRONOLOGY 1940s .................................................................................................................. 48  
Veto-players ............................................................................................................................................... 47  
Impunity .................................................................................................................................................... 57  
Implications of Impunity for Korea’s Democracy ...................................................................................... 59  
Conclusion .................................................................................................................................................. 60  

**CHAPTER 3 – 1980s: SPRING DID NOT COME TO SEOUL** ............................................................. 62  
Introduction: 1979-80, Korea’s Next Critical Juncture ............................................................................ 62  
  Figure 2: CHRONOLOGY 1960s to 1980s ................................................................................................. 65  
Veto-players ............................................................................................................................................... 65  
Impunity During (and for) the Park Regime ............................................................................................... 70  
The Rise and Decline of the “Seoul Spring” ................................................................................................. 73  
Conclusion .................................................................................................................................................. 77  

**CHAPTER 4: JUSTICE DELAYED IS DEMOCRACY DELAYED - EVALUATING**  
**DEMOCRATIC TRANSITION AND CONSOLIDATION IN KOREA, 1987-PRESENT** .... 79  
Introduction ............................................................................................................................................... 79  
  Figure 3: CHRONOLOGY 1980s to Present .............................................................................................. 80  
Post-Chun Regime and the Critical Juncture of 1987: Towards Transition ............................................. 81
South Korea’s Democratic Transition, 1987-92: Transition without Justice..........................85
Almost but Not Quite: Trials and Truth Commissions of the 1990s........................................87
South Korea’s Truth and Reconciliation Commission..........................................................88
Any Justice by the TRCK? ....................................................................................................92
The Impunity Path and the Consolidation of Democracy ......................................................94
Table 1: Connecting Reconciliation and Democratic Consolidation ..................................95
Today.....................................................................................................................................100
Conclusion............................................................................................................................101
CONCLUSION .....................................................................................................................102
BIBLIOGRAPHY ..................................................................................................................108
ABSTRACT

South Korea’s democratization process appears to have begun in 1986, when President Chun responded to massive civilian protest and announced a direct and free election. But Korea’s\textsuperscript{1} road to democracy was much longer than meets the eye. Dated from the moment of Korea’s independence after the Japanese surrender, it took more than 40 years to arrive at those transition elections, and sustain a true, liberal democratization process.

This thesis asks: What delayed South Korea’s democracy? To answer this question, I argue that South Korea’s democratization has been delayed due to the lack of legal justice, truth finding and reconciliation processes at certain moments of South Korea’s modern history. Specifically, the thesis employs the methodology of process tracing and path dependency analysis, and identifies two critical junctures when impunity was allowed to stand, “veto players” – both internal and external — asserted their power, and democratization was held back. These critical junctures are 1) the post-World War II period, when the newly established South Korean government failed to prosecute pro-Japanese collaborators, and 2) the 1980’s, when dictator Park was assassinated and the interim government failed to hold the Park administration accountable for its wrong doings. A main theme that is pervasive throughout the thesis is that the U.S. policies played a major role in affecting Korea’s delayed democratization. Indeed it is the interaction of internal and external factors that accounts for the reinforcement of the impunity path over time. I then conclude by discussing the current state of Korea’s democracy, specifically evaluating the impact of the Truth and Reconciliation Commission, established in 2005, and its attempt to bring some means of justice after sixty years of impunity.

\textsuperscript{1} In this thesis, Korea and South Korea will be used interchangeably.
INTRODUCTION

In South Korea, there is a cultural literary concept called “Han.” It expresses a collective sentiment of deep pain and oppression, and for many Koreans, it expresses how Korean people are survivors of unending injustice and persecution. Korea, a country with a long history of 5,000 years, has been invaded by the Chinese, the Mongols, and the Japanese. During the Cold War, Korea was dominated by the super powers’ competition for spheres of influence, leading to a divided nation. These tumultuous events affected everyday Koreans to experience oppression and share a fragmented history. Even after the war, Korea was never truly free. Its political sphere was filled with more than 30 years of repressive authoritarian regimes, marked by numerous cases of human rights violations. Today, despite the country’s much-praised democratic transition, Korea is a nation of unresolved past injustices.

The hotly contested 2012 election of Park Geun-Hye as the sixth democratic president of South Korea was actually emblematic of its dark, unresolved past. As the daughter of the infamous dictator Park Chung-Hee, who led the nation with an iron fist from 1963 to 1979, Park and her road to the presidency posed a great deal of controversy. Although her father was famous for bringing in rapid industrialization and modernization in the aftermath of the Korean War, he also maintained a regime marked by numerous forced disappearances, mass killings, and indefinite imprisonment of innocent victims. During the campaign, lingering memories of the heydays of economic growth clashed against those of brutality and heinous crimes that her father and his regime had committed. Park’s election to the presidency recalled painful memories of iron fists that gripped the nation for nearly 30 years. And yet as a daughter of the infamous dictator and the nation’s first woman president, it seemed to underscore the consolidation of South Korea’s democracy based on reconciliation and modernity.
However, I will argue, these appearances are deceptive. Rather, even after 60 years of nation building and institutional change, Korea’s democracy is still incomplete because it failed to reckon with unresolved past injustices. Even though Korea has elected an eleventh president and a woman at that, and maintains forms of democracy, there are still remains of lingering impunity questions at the core of the society. A nation’s democracy cannot be fully consolidated unless its past problems and abuses are amended. As a result, South Korea’s democracy has been delayed and it is still not fully consolidated.

For some students and scholars who study transitions to democracy, Korea’s unresolved past injustice presents an interesting puzzle: Why did Korea’s democracy come about during the late 1980s and not during the early 1950s or the early 1980s? Especially in 1945, during its post-colonialism period, there was a robust consensus favoring the prosecution of its human rights abusers and collaborators of the Japanese regime. However, as this thesis will demonstrate, this was soon stopped due to pressure by what game theorists refer to as veto-players. Then again, after President Park’s assassination in 1979, the window of opportunity opened once more, but it soon closed again due to the lack of strong leadership and other forces that went against prosecution of wrongdoers from the Park regime. Time and time again, there were numerous windows of opportunity in Korea’s history to both initiate rule of law to establish free and fair elections and correct past injustices, but these windows closed up with repressive and unfair endings. Thus, impunity is a vicious cycle that has plagued Korea’s modern history for a half century with forced amnesia of the past.

In this thesis, I will argue that the delay was caused by the path dependent effects and constraints of decisions to institutionalize impunity. I will demonstrate this by examining two moments in history to see whether or not Time 1, the moment of independence from Japan in
1945, set Korea on a limited path to Time 2, the moment after President Park’s assassination, with limited choices. Did the lack of democratic institutions and accounting systems of wrongdoers during Time 1 contribute to Time 2? Were there new mechanisms and vehicles available during Time 2 that Korea was ultimately unable to utilize? Lastly, how were they similar and different? I hypothesize that by establishing a rule of law to maintain fair and free election and correct past injustices, these moments could have turned out differently and Korea’s democracy may have been fully consolidated sooner.

I. Brief History of Correcting Past Injustice and Democratization

In the twentieth century, there were two watershed moments in countries that faced colonialism and the Cold War era, including South Korea, to build transitional justice and democracy: the post-World War II period and post-Cold War period. Specifically, during the post-World War II period, countries in Asia, Africa, and the Middle East that had suffered from colonial repression longed to create their own independent democratic states and resolve with their past. Immediately preceding this wave of independence, the Nuremberg Trials and Tokyo Trials were set up to prosecute any political, military, and economic leadership who were responsible for committing heinous crimes, namely massive killings and use of violent repression against civilians. The trials underscored the need for accounting for past regimes in order for these persecuting countries to be readmitted into the community of nations, which is known today as the United Nations. Eventually, the precedents set from the military tribunals became an example to rectify past wrongdoings and bring reparation to victims.

However, severe political unrest, social conflict, revolutionary violence, and the clash of ideologies filled the political vacuum of the post-World War II era. Decolonized nations
continued to carry the burden of the colonial past and state elites consolidated their power in political, economic, and social arenas. Decolonization did not lead to democratization. Soon, the era of the Cold War began and the United States’ Cold War priorities determined U.S. foreign policy to focus on the promotion of anti-communist governments, often at the expense of its democratic credentials. In the majority of cases, the work of overcoming colonial legacies and crafting a new democratic nation remained unfulfilled and left to be tackled by the formerly colonized states later.

The second period came with the collapse of authoritarianism, military dictatorships, and the Cold War, mostly in the 1980s. At this moment, the nations that had just escaped from military dictatorships and totalitarianism were met with political turmoil and unrest in the transitional period for democracy. Similar to those postcolonial nations that faced past wrongdoings by their colonial rulers and collaborators, countries that maintained dictatorship during the Cold War period were also met with a task of dealing with past-wrongdoings of authoritarian rulers and collaborators. Governmental and non-governmental institutions were founded in countries—such as the National Commission for Forced Disappearances of Argentina and South Africa’s Truth and Reconciliation Commission—to deal with past atrocities by seeking truth and reconciliation or by prosecuting the perpetrators.²

Specifically in South Korea’s case, the first turning point for transitional justice was during the postcolonial period, 1945 to 1950. After Japanese colonialism ended in Korea, the main political task was to establish an independent democratic nation-state. The U.S. military government prosecuted Japanese war criminals through the Tokyo War Crimes Trial, but it failed

to adopt a similar policy in South Korea because the United States saw Koreans as victims of Japanese annexation, not as enemies of the United States. It was apparent that in order to build a new nation where justice and democracy flourished, getting rid of Japan’s colonial governance and prosecuting local collaborators were the priorities. However, U.S. occupational forces arrested and convicted only a few Koreans who served in the Japanese Army, while those serving in Japan’s colonial regime were never regarded as criminals and were never punished.

At the same time, demands by the public for the prosecution of Japanese collaborators were not easily dismissed. To appease public sentiment, the Korean National Assembly passed the Special Act on Punishing Anti-National Conducts, which created a commission to investigate and prosecute Japanese collaborators, in November 1948. However, the investigation to correct historical justice was short-lived. The conservatives often hindered the investigation, and President Rhee even accused the commission as communists and protested that the Act might be misused to arrest innocent citizens. The commission ceased to function and it came to an end within a year without producing promising results. Korea’s transition to democracy came to a halt as General Park Chung-Hee took over the regime through a military coup in 1961. Park ruled South Korea for more than 18 years with violent repression aimed at its own citizens and power concentrated in the executive branch.

The second turning point came in 1979 when President Park was assassinated by the head of Korean Central Intelligence Agency (KCIA). The new interim president, Choi Kyu-Ha, and his cabinet members firmly believed that the time for democratic transition was ripe. They held press conferences to inform the public about planning a free and fair election and beginning constitutional reform. The Choi administration even regularly contacted U.S. officials for

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technical advice on political liberalization. However, in a matter of three months after Park’s assassination, General Chun Doo-Hwan took over the regime by military coup and controlled interim president Choi Kyu-Ha’s influence.

People’s rage finally exploded at the May 1980 protest against Chun’s dictatorship in Gwangju. It was a popular uprising by Gwangju residents, mainly students, that ended with 2,000 casualties. Protestors took control over the city and took up arms by raiding police stations, but they were crushed by the Korean Army. As a result, thousands of cases of torture and forced disappearances were formed. Then, in 1986, met by the popular demand to oust Chun, his party, the Democratic Justice Party, announced direct elections.

At this point, South Korea formed a *pacted democracy*, which is a democracy held together by an agreement among elite groups of the country to bring about democratic transition without confronting impunity. The reform group within the South Korean government made an agreement, and opposition groups accepted it in order to avoid mutual catastrophe. Previously, opposition parties existed under the Chun regime, but they were merely set up as puppet organizations that maintained little real legislative power. But with the opening for a democratic transition, Chun allowed political activities of the opposition parties. Both the reform group, the New Democratic Republican Group, and the moderate opposition group within the government and Chun’s ruling party, Democratic Justice Party, felt that a total collapse of government would not serve their best interests nor those of the country. They agreed to a proposal for the development of a democratic procedure. Accordingly, South Korea’s democratic transition

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5 Kim, *op. cit.*, 536.
through negotiations and pacts among political elites made it possible to sustain political, social, and economic structures.

With the strong support of Chun and the vote-splitting of opposition parties between Kim Young-Sam and Kim Dae-Jung, Rho Tae-Woo won the 1986 presidential election and took over the regime. In 1989, giving into the demands of the public to recognize the victims of the protest movement, Rho passed the Law for Compensating the Victims of the Gwangju Incident, which compensated the victims without the pursuit of truth and criminal justice. However, although Roh was elected through a direct public vote, his legitimacy suffered because of his past as a military general. Also, after beginning the process of democratic transition, the demands of civil society were not satisfied. The continuously unstable socioeconomic situation derived from student and labor demonstrations made it difficult for a new democracy to maintain its efficiency.7

When President Kim Young-Sam was elected and inaugurated in 1993, he yielded to public pressure and agreed to sign the Gwangju Special Law. With this, in 1995, Chun was tried by Seoul District Court and found guilty of staging a military coup in 1979 and ordering a military crackdown in 1980 that led to the killing of hundreds of anti-government protesters in Gwangju. Roh Tae-Woo was charged with his role in seizing power and taking bribes from a number of large conglomerate corporations. Chun was given a death sentence, and Roh a 22 ½ year imprisonment. However, just one year after their convictions, the court reduced their sentences: Chun’s death sentence to life imprisonment and Roh’s sentence to be reduced to 17 years of imprisonment. In 1997, the then-president Kim Young-Sam and his successor Kim Dae-Jung agreed to release and give special pardons to Chun and Roh, who were serving their time in

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In a nationally televised statement, Kim reminded the nation that the special pardon was carried out “to unite the country’s leadership and reconcile the past to build a new era for this country.” However, the announcement was met by conflicting responses from Korean nationals, especially from the Cholla region where Chun ordered a bloody military retaliation that led to hundreds of casualties. While it is laudable that the Korean Court brought forth a trial to hold state officials accountable for serious crimes such as mutiny, treason, and bribery, the delayed prosecution failed to achieve any of its supposed goals of justice. The defendants failed to pay the full consequences of their wrongdoings, while victims felt that the recognition of their damages and sufferings was not fully materialized. When a leap towards justice was made, it was then too late with too little punishment and accounting.

Coming out of this, it is evident that the two watershed moments in South Korea’s political history lacked truth and reconciliation processes during the mid-1940 to 1980’s. It failed to head off governmental officials with past war crimes and abuse of human rights and led them to operate in succeeding regimes, carrying out same abusive tactics as they did in the past and leading Korea to an illiberal democracy. This institutionalization of impunity made up the rot at the heart of South Korea’s democracy. This impunity problem exacerbated the political and social culture drastically and thus, delayed the consolidation of Korea’s democracy.

A significant force delayed Korea’s democratization by turning a blind eye to prosecuting war criminals and perpetrators of human rights, and to recognizing victims. There were individuals and institutions, some who had committed crimes, and others who protected

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9 Ibid.
10 Illiberal democracy is a term coined by Fareed Zakaria. It is a governing system in which free and fair elections are held but citizens lack civil liberties and the government fails to represent interest of its own citizens. Fareed Zakaria, "The Rise of Illiberal Democracy," Foreign Affairs 76.6 (1997): 22. Print.
wrongdoers from prosecution to enhance their own power. These powers11 benefitted from the sordid culture of corruption and its damaging impact on the society. This culture broke down the rule of law and legitimacy of democratic ideals. Effectively, impunity comes about when there is a vibrant interaction between veto-players and reformers, and when the veto players prevail, impunity slows down institutional movement to political liberalization. Thus, this thesis locates Korea in the spectrum of democratization process and identifies veto-players, who were key actors that kept Korea on the “impunity” path.

II. Research Procedure

The main puzzle that this thesis focuses on is: *Why did it take so long for South Korea to build itself as a democratic nation?* My answer comes in three parts: first, identifying the processes that delayed democratization – particularly, the institutionalization of impunity – and second, identifying the forces that explain how and why impunity got institutionalized – which were both internal and external. Finally, I demonstrate the causal connection between impunity and delayed democratization.

I have made use of a variety of conceptual tools to construct this answer. 12 In the next section of this chapter, I will develop three interrelated concepts: path dependency, process tracing, and critical junctures; in the following section I add the concept of veto players (both internal and external) to explain the mechanisms by which impunity becomes institutionalized.

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11 In this thesis, they are identified as veto-players.

12 Applying a variety of theoretical frameworks to illustrate a case has proven to be a productive approach in this thesis. It has allowed me to identify limits to making generalizations about veto-players who benefitted from impunity, while helping me to understand that there were other key variables in achieving a full, legitimate democracy. "Theoretical Framework," *USC Libraries*. University of Southern California, n.d. Web. Accessed December 19, 2013. http://libguides.usc.edu/content.php?pid=83009.
In the final section, I examine the concepts of impunity and transitional justice, and make the connection to delayed democratization.

**Process Tracing and Critical Junctures**

I first began the research by using a method of constructing detailed chronologies of trajectories. Then utilizing “process tracing,” I plotted events chronologically with detailed summaries to see how a certain outcome came about due to the convergence of several conditions, causal chains, and independent variables. Then I looked at how certain “putative causes” can be linked to “observed effects” in a given time frame. That is to say “of the two kinds of evidence on the theoretical causal notions of causal effect and causal mechanisms, tests of covariation attempt to address the former, and process tracing assesses the latter.”

As a result of this process tracing method, I identified two moments—the late 1940s and the late 1970s/early 1980s—as critical junctures when Korea might have had the opportunity to go off the path of impunity, but ultimately was unable to take that new path. First, especially during the postcolonial period from 1945 to 1950, the window of opportunity to bring pro-Japanese collaborators to justice and reconcile the past had opened up. President Rhee even passed the Special Act on Punishing Anti-National Conducts that set up a commission to investigate and punish the collaborators. However, the chance to bring justice and reconciliation soon came to a halt when the commission was terminated without solid results due to the attacks from the conservatives. Then again in 1979, when President Park was assassinated.

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15 Kim, *op. cit.*, 530.
and Koreans were hoping for an institutional regime change to a liberal government after decades of repressive iron fist, the window had opened up again this time for the “Seoul Spring.”\footnote{Korean democracy scholars refer to this brief moment of democratization as the “Seoul Spring.” For more on this moment, see the case study in Chapter 3, below.} However, the acting president Choi Kyu-Ha, who quickly worked to bring a smooth transition to democracy, failed in his pursuit when General Chun initiated a military coup and took over, forcing President Choi to resign from his post. Again, the opportunity to punish violators of human rights from the previous regime had been missed and the path to dictatorship gripped itself again in Korea.

These two key moments became critical junctures, which led me to closely examine the openings of these times. According to Lipset and Rokkan, a critical juncture is a “watershed moment in which different transitions lead to certain directions of change and foreclose others in a way that shapes politics for years to come.”\footnote{Ruth Collier, and David Collier, \textit{Shaping the Political Arena: Critical Junctures, the Labor Movement, and Regime Dynamics in Latin America}, Princeton, NJ: Princeton University Press, 1991: 27.} It is also a central element of path dependency analysis, which has become a key tool in comparative politics to make sense of the impact of the past on political processes and institutions. Critical junctures have three components: the claim that a significant change has occurred, the claim that this change took place in distinct ways in different cases, and the explanatory hypothesis about its consequences.\footnote{Ibid., p. 30.} In order to identify a critical juncture, political scientists look at how antecedent conditions with contingent choices lead to setting up specific trajectory of institutional development and consolidation that is difficult to reverse. I looked at how these critical times contributed to “path dependency”—reflecting how the decisions made during this time limited the trajectory of the future. Studying these two defining moments offered this thesis the spectrum of choices and decisions made by the state and powerful social actors that shaped South Korea’s road to democracy.
Veto-Players and the Impunity Path

In this section, I am going to discuss veto-players and the impunity path, which is the second part of my three-part argument. As put forward by leading game theorist George Tsebelis, veto-players are individual or collective actors whose agreement is necessary for a change of the status quo. Such a change in status quo requires a unanimous decision of all veto-players. In this thesis, the status quo is the institution of impunity, and a change in the status quo would be institutional change to democratization through vehicles such as bringing justice and reconciling the past. Veto-players are the individuals or groups of people who firmly maintained control of— or more precisely, hindered the impact of— the aforementioned vehicles. Veto-players are crucial to this thesis because their activities can determine a country’s path dependency. Since institutions are hard to change and slow to self-examination, a veto-player’s choice of action can either limit or adamantly close openings for rectification. Thus, I hypothesize that impunity at Time 1 makes it more difficult to face it at Time 2.

Veto-players could be anyone or any group from the presidents to the military that extended a certain degree of impunity to maintain their hold of power and legitimacy. In this thesis, it will be politicians, the military and external powers. While the United States had played a major role in shaping Korean politics through pressure and coercion, there are other veto-players within Korean society that defended their own privileges and power. In order to closely examine the relationships and the dynamic of the veto-players, I am going to delve into telegrams among U.S. officials, newspaper articles during the time, and declassified archives of internal memos within the government. Also, it is crucial to investigate veto-players and impunity by asking following questions about each era:

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1) Who were the veto-players?
2) When and how was impunity created?
3) What was veto-players’ modus operandi?
4) Who benefitted?
5) What kind of defense was maintained to privilege others?
6) What was the cost and implication of their actions?

Impunity as the Rot that Decays Democracy and Delays Democratization

a) What is Impunity and Why Does it Matter?

In the process of preserving their veto-power, some of the players institutionalized impunity and became a rot to the Korean society that hindered the process of democratization. After specifically identifying the veto-players, the thesis investigates veto-players’ impunity and its functions, finding out whether or not it worsened and/or expanded to other areas. But before doing this, I need to establish conceptually, legally, and politically why impunity matters.


Impunity is the impossibility of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings. Impunity arises from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations.20

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Likewise, impunity causes a broader societal rot that damages the core of democracy. Fighting against impunity is a significant battle in fixing a culture of violence, corruption, and oppression. As Woody writes, “failure to control the trend of impunity can have grave consequences for a newly developed government and can pose myriad setbacks and limitations to future evolution of the state.” Specifically, when there is a continuity of impunity in government, citizens are prone to lose faith in the new state and believe that the “old ways” will continue to prevail in the new state. I argue that past regime officials must be held accountable to the point where no impunity is possible and “rule of law becomes the only game in town” even during political and economic crisis. The institution of impunity must be directly faced and resolved as a nation transitions into a consolidated democracy. This idea is known as “transitional justice,” which refers to the “set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses. These measures include criminal prosecutions, truth commissions, reparations programs, and various kinds of institutional reforms.”

b) Transitional Justice: No Transition without (Legal) Justice?

Over the years, transitional justice has taken shape in multifaceted forms. The basic question of how to reckon with massive past crimes and abuses raises a range of approaches as a new regime emerges in pursuit of peace and democracy. There are numerous mechanisms and instruments to deal with the past: holding trials; purging perpetrators from public or security

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posts; creating commission of inquiry; providing individualized access to security files; providing reparation to victims; building memorials; implementing military, police, judicial, or reforms. In this thesis, I am going to focus on criminal justice, i.e., the need for bringing justice in the courts by prosecuting former human rights abusers.

One of the main debates in transitional justice has been about whether or not a new regime should punish human rights abusers from the past regime after a recent transition to a new democratic regime. Bringing justice in the courts is among the most difficult and prominent demands. Critics argue that bringing justice may exacerbate the new regime’s political instability, and thus may lead to possible military coup by the opposition. However, without clear and flexible prosecutions after a transition, a new emerging regime will suffer from the rot caused by those who operate above the law and maintain firm hold of decision-making in the political arena. Holding those human rights abusers accountable promotes the new regime’s rule of law and creates legitimacy of its governance. It should be one of the first priorities for a regime that pursues peace and democracy. While it is said that “justice delayed is justice denied,” it is better late than never. Justice often comes slowly and it is an on-going process that needs to be continued for a period of time. Still, bringing justice soon after transition sheds light on harsh devastations that defendants had faced and allows the public to be informed about the nature of the state.

In order to talk about different cases of transitional justice, it is imperative to talk about what transitional justice is as a mechanism. According to Jon Elster, there are three forms of justice under transitional justice: political justice, administrative justice, and legal justice.27

Political justice occurs when the executive branch of the government unilaterally decides what should be done with wrongdoers. It takes the form of show trials, where in a highly public trial judicial officers have already determined the guilt of the defendant. Administrative justice is allowing officials who are purged to have the benefit of due process. Legal justice, the form that should be given the highest consideration, is characterized by four features. First, the laws should be as unambiguous as possible, to reduce the scope for judicial interpretation. Second, the judiciary should be insulated from the other branches of government. Third, judges and jurors should be unbiased when interpreting the law. They should not distort the meaning of the law to justify a decision they have already reached. Fourth, legal justice must adhere to the principles of due process: the right to choose one’s own lawyer, the right to appeal, respect for statute of limitations, determination of individual guilt, and a presumption of innocence that places the burden of proof on the prosecution.28 Each of these features is instrumental in eliminating the rot of impunity and in claiming back citizens’ faith in the rule of law and in democracy. Hence, this thesis advocates for legal justice in the course of any transitional justice.

Applying the concept of legal justice, trials must be carried out in a way that adheres to both legitimacy (procedural fairness) and distributive justice (substantive fairness). For a system to be fair:

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28 Ibid., p. 89.
“... it must be firmly rooted in a framework of formal requirements about how rules are made, interpreted and applied. Among the marks of legitimacy are the determinacy of the legal rules, their symbolic validation through the possession of attributes that mark them out as authoritative, their application in a coherent manner that treat ‘like cases alike’ and their adherence to secondary rules that govern the creation, interpretation and application of such rules.”

It must move beyond the political realm, and ground the proceedings in objectively fair standards, which promotes due process and freedom from the fear of arbitrary punishment. In terms of punishment for defendants, retributive justice should be carried out in a way that punishment fits the crime and that like cases are treated alike. Wrongdoers deserve blame and punishment in direct proportion to the harm inflicted. However, overly harsh punishments do not make society any more secure and serve to increase the level of harm done. Punishment is thought to reinforce the rules of international law and to deny those who have violated those rules any unfair advantages. There is a need to give wrongdoers what they deserve, but in a way that avoids further escalation of the conflict— allowing formal institutions with trained judiciaries to carry out just retribution. The International Criminal Court (ICC) is one avenue of retributive justice to “transfer the responsibilities for apportioning blame and punishment from victims to public bodies acting according to the rule of law.”

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30 I would like to thank Professor Thomas Halper for bringing up this issue and suggesting that I delve further into the mechanism of the trial.
"Delayed" Democratization: Defining Transition and Consolidation, or, What Counts as ‘Democracy’?

In each of the case studies in this thesis, a given era will be located on the spectrum of democracies. It will start with the political and socioeconomic context of that era and delve into what type of democracy the government was operating. Thus, it is crucial to clarify and crystallize theories on democracy and democratization.

Democratization, at a minimum, involves holding free elections on a regular basis and determining who governs on the basis of the results. It also involves bring an end to an undemocratic regime, the inception of a democratic regime, and then the consolidation of a democratic system. Many scholars contributing to this literature view the transition phase of democratization as a period of great uncertainty. This phase entails a new democratic set of rules for political life. The end of the period of democratic transition becomes successful when a new democracy establishes a new constitution and holds free elections for political leaders with few barriers to participation. After a successful democratic transition, the task of the consolidation of democracy becomes next in order. This linear process, democratic transition through election and towards consolidation of democracy, has been part of an on-going debate as to what constitutes a consolidated democracy. Thus, I argue that a nation’s democracy cannot be fully consolidated unless its past problems and abuses are amended.

On the whole, there are two conceptions of democracy. One is a minimalist conception that emphasizes procedural or formal democracy. Procedural democracy is evident when a new

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34 Lee, *op. cit.*, : 103.
democratic regime elects political leaders through a free and fair election and maintains vibrant party competition, yet its citizens and the civil society fail to influence the policies of the country. Schmitter defines this minimalist conception as “the process of transforming the accidental arrangements, prudential norms, and contingent solutions that have emerged during the transition into relations of cooperation and competition that are reliably known, regularly practiced, and voluntarily accepted by those persons or collectives that participate in democratic governance.”

Linz and Stepan also mention that “none of the major political actors, parties, or organized interests, forces, or institutions considers that there is any alternative to the democratic process to gain power and that no political institutions or groups have a claim to veto the action of democratically elected decision makers… To put it simply, democracy must be seen as the only game in town.”

The other is a maximalist conception focusing on the outcomes of politics such as social justice, economic equality, or establishing political institutions. Scholars favoring the maximalist conception argue that both political and socioeconomic equality are needed for a country’s democracy to be consolidated. Such a democracy would include both procedural and substantive democracy elements such as “guarantees of civil rights, democratic accountability, civilian control over the military, democratic and constitutional checks on executive authority, and punishment of occupational and human rights abuses.”

Because of the influence of his work *The Third Wave*, I am going to use Samuel Huntington’s definitions of democracy as a litmus test to classify and identify a democratic regime. According to Huntington, the definition of democracy in relation to free and fair

elections is a minimal definition. A society could choose its political leaders but they do not exercise real power. True democracy, which aligns to the maximalist definition, means citizen control over policy, responsible government, honesty and openness in politics, informed and rational deliberation, equal participation, and promotion of civil and political rights.\textsuperscript{38} Political leaders share power with other groups in society. Lastly, nondemocratic regimes do not have electoral competition and widespread voting participation.\textsuperscript{39}

In order to investigate South Korea’s case of democracy and how it has been affected by veto-players, in this phase of the analysis I will examine the transparency level of Korean governmental institutions, distribution of power among the judicial, executive, and legislative branches, and the level of autonomy by presidency. I will also study scholarly analysis on political institutions including both governmental agencies and the office of Korea president, and reports by Truth and Reconciliation of South Korea.

\section*{III. Contribution to the Literature on Democratization}

\textit{a) Confronting Impunity Is Beneficial, Not Threatening, to Democratization}

In this thesis I argue that the process of digging out the past and prosecuting wrongdoers—specifically those who benefitted from impunity and human rights violators—is a crucial step in transitional justice, and that this process fosters democratization. As I will examine in Chapter 1, scholarship on the need for prosecution has been polarizing over the years, but after the end of the Cold War, a new consensus has emerged favoring prosecution as a necessary part of transitional justice.


\textsuperscript{39} \textit{Ibid.}, p. 12.
First-generation “transitologists,” writing in the 1970s and 1980s, stand against my aforementioned argument and generally conclude that prosecution of past violations is likely to destabilize new democracies. Huntington, a frontrunner of this general literature in academic and policy circles, believed that truth as well as justice were threats to new democracies, and prosecuting authoritarian officials for human rights violations would incur political costs that would outweigh any moral gains.  

His credibility not only carried a huge weight to the next generation of transitology scholars but also reinforced the scholars of previous generations. In their 1986 report *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies*, leading transitologists Guillermo O’Donnell and Philippe Schmitter do acknowledge the need to investigate violations of human rights, but suggest that in most transitional countries, holding trials would be very difficult. They write, “[only] if civilian politicians use courage and skill, it may not necessarily be suicidal for a nascent democracy to confront the most reprehensible facts of its recent past.”

Also, as scholars were coming together with this shared belief in the 1980’s, even Aryeh Neier, executive director of Human Rights Watch at the time, was pessimistic regarding prosecution. It was a big blow to the human rights community because as an activist, Neier has led multiple investigations of human rights around the world. He wrote that “permitting the armed forces to make themselves immune to prosecution for dreadful crimes seems intolerable… yet it also seems irrational to insist that an elected civilian government should commit suicide by provoking its armed forces.”

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Even in more recent years, this shared belief is still maintained by many scholars. Many scholars of international relations and international law have been critical of the increasing use of international human rights prosecution. For example, Stephen Krasner, one of the leading voices in this critique, writes in a *New York Times* Op-Ed piece that “attempts to bring even the leader of an abhorrent regime to trial could make it more difficult to promote democracy by making such leaders and their accomplices more desperate to maintain their hold on power.” In addition, Jack Snyder, another leading realist scholar, and his co-author Leslie Vinjamuri also argue that on the basis of thirty-two cases of transitioning countries, human rights trials can increase the likelihood of future atrocities, exacerbate conflict, and undermine efforts to build democracy.

At the same time, there is a long counter-tradition favoring trials. Political theorist Judith Shklar writes, “trials may actually serve liberal ends, where they promote legalistic values in such a way as to contribute to constitutional politics and to a decent legal system.” Similarly, Otto Kirchheimer of the Frankfurt School believed that trials enable “the construction of a permanent, unmistakable, wall between the new beginnings and the old tyranny.” Currently, with the increasing number of transitioning countries that carry out prosecution of its past violators, there is a growing body of scholarly literature that puts significance in the law during a transitioning process. Ruti G. Teitel, a comparative law professor at New York Law School, writes “criminal justice offers normative legalism that helps to bridge periods of diminished rule of law and offers a way to express both public condemnation of past violence and the

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legitimation of the rule of law necessary to the consolidation of future democracy.\textsuperscript{47} While there is a caveat of risk of perpetuating political injustice, Teitel argues that criminal justice offers the fulfillment of the potential for a renewed adherence to the rule of law.\textsuperscript{48} Thus, though there are risks of trials, she strongly argues for the use of strong legal mechanisms to address the past.

More recently, leading international relations scholar Kathryn Sikkink asserts that nowadays, we see a norm — what she calls the \textit{justice cascade} — that state officials should be accountable for human rights violations and that it has gained new strength and legitimacy.\textsuperscript{49} Based on her quantitative work on Latin American countries focusing on the relationship between the countries that underwent transition and the countries that carried out prosecution of past violators, she writes that it is difficult to maintain that prosecutions destabilize democracy. Rather, she concludes that there is a strong correlation that those countries that prosecuted its past wrongdoers will more likely to have forms of democracy.\textsuperscript{50} My thesis will closely align with this argument favoring prosecution as necessary for democratic consolidation, and contribute to this ongoing debate.

\textit{b) Korea’s Democratization: Civil Society Moved Transitions, but Veto Players Halted Consolidation and Maintained Impunity}

In the field of South Korean democracy and South Korea’s modern history, literatures that argue for causes of successful democratization tend to focus not on transitional justice, but rather on the role played by \textit{contentious politics}, specifically social movements\textsuperscript{51} of students,

\textsuperscript{48} \textit{Ibid}.
\textsuperscript{50} \textit{Ibid},. p. 148.
\textsuperscript{51} The role of civil society and the opposition political parties during the democratization movement will be further investigated in Chapters 3 and 4.
labor activists, and church leaders. In contrast to the established literature, this thesis will acknowledge the role that civil society played to bring about free and fair election but also point out how it failed to unseat the veto-players who kept impunity entrenched. For example, David Adesnik and Sunhyuk Kim argue that one of the main causes of Korea’s successful democratization in 1989 and not in 1979 was the increased unity of the protest movement. Hae Gu Jung and Ho Ki Kim, scholars at Stanford’s Asia-Pacific Research Center, also write that the “explosive growth of the protest movement led to a series of important events in 1985, which symbolized the democratization movement of the 1980s.” The protest movements in both instances consisted of four constituent groups—students, labor unions, churches, and the parliamentary oppositions. In the 1979 movement, they never achieved sufficient solidarity. But in 1987, the movement’s constituents successfully formed and operated peak organizations to consolidate and plan various protests.

The representatives of civil society, such as Catholic Priests’ Association for Justice, intellectual groups such as the Council of Dismissed Professors, human rights organizations like the Korean Council for the Human Rights Movement, and writers’ groups like the Council of Writers for Practicing Freedom, enjoyed a cooperative relationship with the political opposition, especially the New Democratic Party with the leadership of Kim Young-Sam. However, Adesnik and Kim argue that the cooperation between civil society and political sphere was not through institutionalized channels but through the close relationship between religious leaders and politicians from the opposition party. Also, the students and labor unions maintained strong

54 Adesnik and Kim, op. cit.: 13.
55 Ibid.
ties with religious organizations. Sunhyuk Kim wrote “the church soon became a guardian of young full-time dissidents, mostly composed of expelled students from colleges and universities, and a care provider for labor activists.” The churches and the unions came together under the groups such as the Young Catholic Workers and the Urban Industrial Mission. Students interacted with workers in settings such as the “night schools” that the students set up near factory towns. Night schools were first established to satisfy laborers’ desires higher education. Over time, schools’ purpose shifted to consciousness-raising programs tailored to the laborers. All together, the movement constituted a triple solidarity of students, laborers, and churches.

With the growing support and the establishment of the triple solidarity, the movement came together in a new peak organization called the National Movement Headquarters for Democratic Change. In 1987, this largely connected coalition organized several massive protests, including the June 26 Peace Parade that mobilized about one million protesters throughout South Korea.

Three days after the Peace Parade, Chun Doo-Hwan announced that the government would surrender to the movements’ demands.

On the other hand, historical literatures on Korea’s previously failed attempts to democratize focus on different interests and ambitions by presidents, public sentiment, and conflicts that distracted the United States from closely intervening in South Korea. James Fowler argued that from 1979 to 1981, the period in which Carter maintained the presidency, the United States was conspicuously silent, and some scholars see this as a crucial reason that the transition failed.


58 *Ibid*.

Likewise, there are relatively few scholars who focus on transitional justice, specifically prosecution of past violators, as a crucial process for South Korea’s democratization. One such scholar, Sang-Wook Han, agreed that South Korea had delayed justice, but argued that by delaying justice, a country could overcome or sufficiently build up civil society to absorb several risks that immediate prosecution poses to reconciliation.\textsuperscript{60} Han held up South Korea as a successful example of a delayed justice nation, where after 60 years from the independence, South Korea is now able to bring justice to those human rights violators. However, I agree with Huntington’s warning that if trials were undertaken, they have to be carried out immediately after the transition or it would be impossible.\textsuperscript{61} Seeking justice through prosecution after decades of nothingness is a very difficult, perhaps futile process. South Korea’s truth and reconciliation commission, which was established in 2005, is currently at a halt due to the lack of political support from the National Assembly and public funding. Also, from its inception, it had no jurisdiction for bringing justice through prosecution. Besides President Roh Moo-Hyun’s public apology on massacres that occurred during the 1980’s and passing the law to investigate those pro-Japanese collaborators, South Korea’s truth and reconciliation commission ended without much investigation of the past or prosecution of wrongdoers. Han also fails to connect how justice, delayed or not, contributed to Korea’s democratic consolidation. Therefore, my thesis, which argues that prosecuting past human rights violators is a necessary step to democratization, sheds new light on the field of transitional justice and Korea’s democratic transition.

\textsuperscript{60} Han, \textit{op.cit.} : 4.
\textsuperscript{61} Huntington, \textit{op. cit.} 228.
IV. Structure of the Argument

In Chapter 1, I will delve into why prosecution is an imperative process in post-conflict societies, and I will break down implications that legal prosecution hold for the society. Examples from Guatemala, Cambodia, and Argentina will illustrate the limitations that institutional impunity presents and why prosecution is an effective means to achieve national reconciliation and to challenge impunity. This will be followed by three case study chapters on South Korea, respectively the 1940s, 1980s, and present, in which I will present my path dependency-based analysis of three critical junctures in Korea’s democratization process. Here I will use process tracing to identify veto players, and examine available transitional justice mechanisms and the consequences of not using them. Finally, I will present a conclusion chapter that will contain comparative analysis to make the case for reconciling the nation by facing the past and establishing justice.
CHAPTER 1: CASES FOR PROSECUTION

Introduction: Why Legal Justice Matters for Democratization

In this chapter, I am going to first delve into procedures of legal prosecution and explore three illustrative cases from Guatemala, Cambodia, and Argentina to closely study why prosecution is one of the most effective processes for nations to reconcile with the past. Societies face the past in several different forms—whether by granting amnesty, purging, or prosecution—but only by legal prosecution, victims are fully recognized and defendants face the consequences of their actions. As legal scholar Diane Orentlicher writes, “Prosecution is the most effective insurance against future repression.” Prosecution, she contends, demonstrates that no one is above the law, thus it fosters respect for democratic institutions and deepens a society’s ongoing democratic culture.62 Furthermore, by revealing the truth about the violations of the past and punishing them, it deters future lawbreakers and prevents the public from being tempted to be part of state-sponsored impunity.63 Finally, governments should prosecute their predecessors’ atrocious crimes because trials legitimate a nation’s transition to democracy. Specifically, when a government prosecutes military officers for human rights abuse, it affirms the supremacy of publicly accountable civilian institutions.64

Prosecution also strengthens fragile democracies because the rule of law is integral to democracy itself.65 According to democracy theorist Robert Dahl, political culture that supports stable democracies is prone to value and maintain principles of fairness, legality and due process. He also adds that extensive political rights and liberties [prosecution and justice] are integral to

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64 Orentlicher, op. cit.
democracy and the functioning of the institutions that distinguish modern democracy from other kinds of political orders. Though political rights and economic rights may vary from country to country, he acknowledges the fact that democratic nations tend to value human rights and thus, maintain high order of the rule of law.

While legal prosecution is a long and complicated process, it demonstrates that no one is above or outside the law. As Aristotle said, “The rule of law is better than that of any individual,” as it provides an arena where individuals, both the accused and the accuser, are protected by the law and legal procedures. Similarly, as legal scholar Martha Minow suggests, applying the rule of law to prosecute those involved in mass atrocities is a very sacred process that aims to be insulated from the influence of politics, personal biases, and personal grudge and revenge. When done properly, it can establish judicial institutions where rule of law can be exercised. Thus, for new democracies, a nation’s judiciary and respect for the constitution, more than elections, must be given special attention. Trials not only call for accountability and present evidence of harms done but also reparative punishment. After evidence is closely examined and laws are applied, defendants are given a verdict, a sentence. Victims have a sense of accounting for truth and peace. This process affirms that justice has been done and establishes precedents that there will be consequences for not obeying the law.

Any prosecution of individuals for war crimes and domestic mass atrocities borrows from the norms and precedents set by the Nuremberg and Tokyo trials conducted after World War II. These postwar trials helped to launch an international norm for human rights – the Universal

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66 Ibid.
Declaration of Human Rights - and to establish a body that maintains such rights – the United Nations. There are several examples of domestic prosecutions that were inspired by the Nuremberg Trials: Israel’s prosecution of Adolph Eichmann, Argentina’s prosecution of 500 members of the military junta involved in state terrorism, and Poland’s trial of General Jaruzelski for his imposition of martial law.\textsuperscript{70}

Despite these precedents, societies with historical injustice often do not prosecute. As an alternative to prosecution, granting amnesty to wrongdoers is frequently employed as a political and economic response to deal with the past. Often times, it is a decision to protect a burgeoning democratic regime. Scholars of democratization have argued that prosecution of wrongdoers from the previous regime may exacerbate conflict and push military leaders to forcefully take over the government.\textsuperscript{71} Also, amnesty is granted when the new governmental body lacks political power and freedom to investigate and prosecute. However, the harmful effects of impunity are especially apparent when prosecutions are foreclosed by an amnesty law to appease the military or autonomous bodies. There are clear examples that show unwillingness to prosecute brings detrimental collateral damage to not only victims of conflicts but also all citizens, and society at large. It is particularly clear in the cases of Guatemala, Cambodia, and Argentina.

\textsuperscript{70} Minow, op. cit., 27.
Guatemala

In Guatemala, 36 years of domestic conflict ended in 1996 after 40,000 enforced disappearances and 200,000 deaths.\textsuperscript{72} In the aftermath, both the government and the opposition agreed to set up a truth commission, but with a body that had limited judicial power.\textsuperscript{73} The UN-supported International Commission against Impunity in Guatemala (CICIG) was also set up to investigate abuses and raise awareness on impunity and organized crime in the country.\textsuperscript{74} Recently, it has been lauded by the UN community for pushing for constitutional reform to allow independent judicial branch in Guatemala, but the work of the CICIG is still limited due to the constraint in judicial independence and the lack of transparency by the Guatemalan government.\textsuperscript{75} Without recognizing the victims and accounting of perpetrators, the civilians and military personnel who were part of mass killing maintained power in the government. The individuals who maintained impunity during the conflict carried out the same generalized attitudes and actions of corruption, self-dealing, and hubris towards the new authorities of law. Former military leaders got involved with drug and human trafficking with criminal gangs. They perpetuated the culture of violence and false authority in the new Guatemalan State. With this, networks of violent, criminal enterprises such as drug cartels and criminal gangs carried out


\textsuperscript{75} Roht-Arriaza, op. cit.
criminal activities with complete disregard to the rule of law and used violence against law enforcement.\textsuperscript{76}

In the recent years, Guatemala’s former dictator Gen. Efrain Rios Montt, a commander in chief responsible for massacres and forced displacement of the Maya-Ixil during his rule, was put on trial and convicted of crimes against humanity and received an 80-year prison term.\textsuperscript{77} However, although human rights groups in Guatemala were optimistic that the court would stand defiant and no longer allow impunity for the country’s powerful, Guatemala’s Constitutional Court overturned his conviction just weeks after his sentencing.\textsuperscript{78} In the end, the Guatemala example portrays a nation tolerating wrongdoers’ long standing impunity and failing to hold violent individuals accountable to the rule of law.

\textit{Cambodia}

In Cambodia, the Khmer Rouge, an insurgent Communist group, took control over the capital city, Phnom Penh in April, 1975. This marked the beginning of the Cambodian Genocide, in which the party enforced arbitrary executions and torture without due process and its attempts at agricultural reform led to devastating famine. During the four years of the Khmer Rouge’s repressive and authoritarian domination, about 1.5 to 3 million Cambodians died due to

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overwork, starvation, and state-sponsored murder. The regime infiltrated and attacked groups that it saw as a threat to its power, primarily officials of the previous regime, ethnic minorities, college students, and scholars.

While largely ignored by the international community, Cambodia saw a breakthrough to liberation when Vietnam intervened and invaded the country. The Khmer Rouge was removed from power in 1979 and was replaced by moderate pro-Vietnamese Communists. However, with support from China and Thailand, the Khmer Rouge remained active in some parts of Cambodia’s rural provinces and formed a coalition with resistance forces, which created a government in exile from bases in Thailand. Their resistance continued into the 1990s until five permanent members of the UN Security Council facilitated peace negotiations.

The Paris Agreements, signed in October of 1991, brought together four factions, including the Khmer Rouge, to negotiate a peaceful transition and fair governance of Cambodia. As a result, because it maintained popular support from the rural regions and diplomatic support from China, the Khmer Rouge kept its political status. The United Nations Transitional Authority in Cambodia (UNTAC) intervened to establish free and fair elections and stabilize governmental bodies. The Chinese government, which had aided and trained the Khmer Rouge during the civil war to help replicate China’s communism, refrained from going for the prosecution route and a choice was made to re-integrate former members of Khmer Rouge into Cambodian society at large. UNTAC, deprived of judicial power to prosecute, failed to

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80 Ibid., p. 240.
comprehensively investigate and try those who were responsible for gross human rights abuses under the Khmer Rouge.\textsuperscript{83}

As a result, those who were part of the Khmer Rouge were installed in the new government. The government offered amnesty and positions in the Royal Cambodian Armed Forces to Khmer Rouge guerillas who continued low level warfare in the rural provinces. Eventually, thousands of Khmer Rouge soldiers and generals became rehabilitated without any punitive measures or purging. In fact, in 1996, the government granted amnesty to Ieng Sary, the Khmer Rouge’s right hand man who was responsible for planning and operating mass killings.\textsuperscript{84} He accepted immunity in exchange for promising to promote peace between the Khmer Rouge guerillas and the government.

In the short term, amnesty is about expedience, transitioning into a quick, seemingly nonviolent peace, but in the long term, it leaves out confronting the past and impunity can be felt throughout the society. Today, Cambodian society is still reconciling with trauma and devastation of the past. A generation of war, revolution, and systematic atrocities committed by the Khmer Rouge created a fragile society susceptible to corruption and impunity, while Cambodians became cynical of its tumultuous government. It has hampered nation-building efforts and held back economic and social development. According to a 2007 report by LICADHO, a major human rights organization in Cambodia, impunity was the “single most important area in which the country needs to make progress.”\textsuperscript{85} Cambodia, the report asserted,


continued to persecute political opponents and critics of the government, perpetuates impunity for state actors, and protects economic interests of the rich and powerful.

Today, Cambodia holds the Cambodia Tribunal, known as the Extraordinary Chambers in the Courts of Cambodia (ECCC), which is a hybrid court between the Cambodian and international courts that consist of foreign judges, prosecutors, and defense attorneys. It seeks to put former Khmer Rouge leaders who committed human rights abuse on trials to find peace and justice. While the war ended in 1998 and the tribunal was first implemented in 2007 with the help of UN’s assistance, some Cambodians are still disappointed by the delayed responses of the Cambodian court. For example, Ieng Sary’s death while waiting for his conviction revealed the court’s failure to deliver immediate accountability to Khmer Rouge atrocities. Critics would contend that justice delayed is justice denied.

There is a continued feeling of delayed justice and an untold past. Several scholars today argue that finding justice for Cambodian victims is integral to the peace-building process in Cambodia. The Khmer Rouge Tribunal, which was established in 1997, produced few achievements due to its poor tribunal design and the challenges of the trials. Yet, justice has revealed itself to be a fundamental element in healing the victims’ trauma, bringing reconciliation, and building peace in Cambodia. A nationwide population-based survey conducted in December 2010 by the Human Rights Center at the University of California-

Berkeley reported that 82.9% still felt hatred toward the Khmer Rouge, while 71.5% wanted those criminals to be physically tortured. 90 Also, in another survey on Cambodian victims’ opinions on justice and national reconciliation by the Center for Social Development, before the trial on Khmer Rouge leaders took place, the majority of the victims had reported that they would feel justice if those who were part of the Khmer Rouge would be prosecuted. 91 Accordingly, there is a general consensus among scholars, based on reports and surveys on the victims, that justice would be served for the victims if the perpetrators would be tried; otherwise victims will continue to live in trauma and misery.

Argentina

Finally, in contrast to Guatemala and Cambodia, Argentina faced first prosecutions, then amnesty and then prosecution again after military repression. Despite presidential pardons to military generals who had committed human rights abuses, the nation came back to prosecuting military leaders after 20 years of constant push by human rights groups and victims’ families. Argentina presents an interesting transitional justice story to the world that prosecution in a timely manner is one of the best tools, after all, to deal with past crimes.

With the recent and ongoing success in the prosecution of human rights crimes, it is evident that Argentina has one of the best records of utilizing prosecution as transitional justice in the world. In the 1970’s, political repression led to massive numbers of deaths, prolonged arbitrary arrests, disappearances, unfair trials, and pervasive torture. As the commanders-in-chief of Argentina’s three armed forces ousted President Isabel Peron in 1976, the military proclaimed

a de facto regime. Under their control, they practiced forced disappearances as the most notorious feature of repression, and an estimated 30,000 people were abducted by security forces.\(^{92}\) They were sent to secret detention centers, where they were inhumanely tortured and interrogated. Many of them were systematically and secretly murdered. In 1983, before democracy was restored, the military regime granted itself immunity from any prosecution and destroyed any documents relevant to the military’s repression.

Raul Alfonsin, Argentina’s first democratically elected president after military rule, started his presidency with a weak democratic structure and a strong military that avoided any accountability. Nonetheless, he created a National Commission on Disappeared Persons (CONADEP) to investigate these crimes.\(^{93}\) In its 1983 report, *Nunca Más* ("Never Again"), it listed numbers of victims and detention centers where individuals were murdered and tortured under the authority of the armed forces. In 1985, nine former members of the military juntas that were charged with human rights abuse were successfully prosecuted in a major landmark trial. The trials began just 18 months after the military government left power and led to the conviction of former presidents Jorge Rafael Videla, and Roberto Eduardo Viola, the Admirals Emilio Eduardo Masera and Armando Lambruschini, and Brigadier General Orlando Ramon Agosti.\(^{94}\) More than 800 witnesses were presented and the trial covered 700 individual cases taken from the CONADEP’s case files.\(^{95}\)

The trials and the *Nunca Más* report encouraged more prosecutions and strengthened the ground for the rule of law in Argentina. They gave weight to demands of victims and their


\(^{94}\) *Ibid.*

families to investigate crimes committed by other military perpetrators. However, the call for trial also allowed authoritarian factions to voice their demands against the prosecution. The military threatened to launch a coup against the Alfonsin government numerous times, which led to the amnesty laws. Under this pressure, Alfonsin resigned and called early elections.\textsuperscript{96} In 1986 and 1987, laws such as Full Stop and Due Obedience, were enacted as a compromise between “democratic stability and impunity demands.”\textsuperscript{97} They allowed blanket amnesty and immediate halt of the majority of the investigations. Also, Alfonsin’s successor Carlos Menem granted presidential pardons to the military leaders convicted in the 1985 military junta trials and few other individuals who faced continued investigation after the impunity laws. The Menem administration believed that national pacification through amnesty was the key to move Argentine society forward, even though many were actually not ready to move on. As a result, the administration passed laws to discourage prosecution and fact-finding of the past.

Despite the compromises, Argentina’s human rights movement continued to push for accountability in both domestic and international settings, and over time they were successful. In the early 1990s, they first persuaded Argentine federal courts to conduct “truth trials,” which are a judicially-created procedure to obtain official information about the fate of victims before the criminal courts.\textsuperscript{98} In 1996, victims’ relatives also filed several cases in Spanish courts under universal jurisdiction, which led to the issuance of arrest warrants and extradition requests. In March 2001, federal judge Gabriel Cavallo found that the Full Stop and Due Obedience laws were unconstitutional under Argentina’s international human rights obligations.\textsuperscript{99} In July 2005, the National Supreme Court affirmed the Federal Court of Appeals’ decision in the case of Julio

\textsuperscript{96} Filippini, \textit{op. cit.} 2.
\textsuperscript{97} \textit{Ibid.}
\textsuperscript{98} \textit{Ibid.}
Hector Simon, a leader of the Argentinean Federal Police during the military dictatorship from 1976 to 1983, bringing charges against Simon relating to kidnapping, torture, and forced disappearance of persons, and many more cases were reopened. In 2006, an appellate court also declared unconstitutional the earlier pardons of the junta members who were convicted in 1985 and it was followed by a 2007 ruling of the Supreme Court, which also declared the invalidity of Menem’s presidential pardon.

According to the International Center for Transitional Justice, Argentine authorities express strong support for prosecuting past crimes today. More than 600 accused face criminal counts before federal courts and 62 defendants have been sentenced. Unlike the 1980s trials, today’s trials prosecute not only key leaders but also direct perpetrators including civilians, priests, judges, and former ministers. However, some in the human rights circle in Argentina voice a concern that the key to success in Argentina’s transitional justice is time. The scope of investigation is massive, witnesses and victim protection system is lacking, and evidence relating to military repression is being destroyed. Thus, they argue that holding the trials at a speedy and responsive pace would allow Argentina to finally come to terms with its past.

Assessment: Transitional Justice, Prosecution, and the Case of South Korea

As seen in the illustrated cases, transitional justice is a very complicated and politically-sensitive stage for any post-conflict society. Some nations, among them Guatemala, Cambodia and Argentina, in hopes of moving forward with national reconciliation, granted amnesty to war

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criminals and human rights violators, but it rather consolidated the culture of impunity throughout the country. As was the case in Cambodia, some citizens felt that they were not compensated for their pain and suffering while criminals became more violent and operated above the law. In Guatemala, amnesty allowed former military officials and violent criminals to carry out large-scale drug and human trafficking. However, as can be seen in the case of Argentina, this country returned to prosecution after 20 years of presidential pardon and even failed coup attempts. With the help of an active human rights movement of civilian groups and victims’ families, it has had more transitional human rights trials than any other country in the world and has enjoyed its longest continuous period of democratic rule since 1983. According to Sikkink, there are no data that human rights trials have contributed to undermining democracy in the region, including Argentina.\textsuperscript{105} Examples from the listed countries reveal that amnesty is a useful tool for certain political and economic conditions. However, their examples showed the world that when a window of opportunity to prosecute and bring justice opens, it must be fully utilized. The failure to hold trials during transitional justice makes it even harder to do it in the future. Unresolved problems in the past exacerbate and fester, and they become a rot of the society that institutionalizes impunity and protects veto-players. Granting amnesty in Time 1 may reinforce impunity and further corruption of the state in Time 2. It produces a negative social impact that carries over time due to the culture of injustice and unresolved problems. Thus, prosecution should be given the utmost weight and importance for any nations reckoning itself from trauma, brutality, and human rights crimes.

Similarly, I will argue that the same is true for the case of South Korea. Using process tracing to identify critical junctures in South Korea’s historical and political narrative, I will

demonstrate how the lack of prosecution in Korean society is related to its delayed democratic consolidation. In Chapter 2, I will examine the post-colonialism period from the mid-1940 to the late 1950’s when a newly independent Korean government failed to investigate and prosecute pro-Japanese collaborators who had committed heinous human rights crimes. In Chapter 3, I will illustrate how the lack of prosecution against the Park Chung-Hee’s regime following the dictator’s assassination in 1979 further consolidated the culture of impunity and disregard for the rule of law into the 1980s. Then in Chapter 4, I will profile present day Korea’s status on truth and reconciliation, and examine the effect that an unresolved past and injustice continue to hold on today’s Korean society, more than two decades after the much-celebrated transition in the late 1980s.
CHAPTER 2: 1940s – FORGOTTEN, UNFORGIVEN PAST

Introduction

Just as the end of the World War II brought the collapse of authoritarian regimes in Germany, Italy, and Japan, it also brought new opportunities for post-World War II colonies to create their own independent democratic states through the process of decolonization. However, the tasks of overcoming colonial legacies and building a new democratic system were left unfulfilled, to be tackled by colonized states at a later time. Korea was not an exception to this. It had been colonized by Japan since 1910, and the surrender of the Japanese in 1945 brought forth a political task to create an independent Korean national government. The majority of Koreans wished for a new free and fair nation that would move past decades of oppression and humiliation. They also expected former Korean collaborators with the Japanese regime and Japanese authorities to be prosecuted. However, following the Japanese departure, the bipolar rivalry between the United States and the Soviet Union ensued in the Korean peninsula internationally and domestically. This rivalry led the two super powers to scramble for spheres of influence in Korea, and as a result, the fight for spreading ideology took priority over self-government and nation-building for the people of the land.

On September 6, 1945, just weeks after independence from Japan, the Korean People’s Republic (KPR), a de facto government under the leadership of Yo Un-hyung was formed to govern the South of the Korean peninsula’s 38th parallel. However, as the U.S. Army, led by Lieutenant General John R. Hodge, arrived in Seoul, the U.S. authorities not only refused to recognize the republic but also officially declared it illegal.106 They instead established the U.S. Military Government (USMG), which ruled until the pro-U.S. Republic of Korea was founded.

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after three years. North of the 38th parallel, the Soviets helped create the pro-communist Democratic People’s Republic of Korea.

The superpowers, who each wanted the whole Korean peninsula to be under its sole control, did not get their wish. The Moscow agreement of December 1945 to work out a four power trusteeship, among Great Britain, the U.S., China, and Soviet Union, for a period of five years failed due to disagreement between the two powers, and Korean’s wish to found a new state free of colonial legacies never materialized.107 The trusteeship, an international overseeing device created by President Franklin Delano Roosevelt during the Yalta Conference in February 1945, was a crucial tool to focus U.S. involvement and maintain U.S. interest in Korea while allowing time to reconstruct Japan. The notion that “Koreans are incapable of self-governing” was widespread among the four trustees and other nations, and it had been exploited by Japan to justify its colonial rule.108 The superpowers failed to heed the Korean people’s anticipation for immediate self-rule. As a result, it led to the division between the North and the South, and the process of the separation was violent and costly. It was a critical origin of the Korean War.

Meanwhile, the Rhee administration worked aligned to the interests of the U.S. and reflected policies that completely disregarded its own citizens’ wish to bring justice by prosecuting wrongdoers relating to the Japanese colonial era. In this chapter I will argue that the Rhee administration’s annulment of attempts to punish pro-Japanese collaborators marked a crucial turning point in Korean history – what path dependency analysis would call a “critical juncture.” The failure to prosecute wrongdoers positioned Korea onto a pathway that allowed impunity and internal corruption within Korean society. The Rhee government maintained a

paucity of accounting and this diminished its legitimacy. While this was one of the early opportunities to establish a true and legitimate democracy, the Rhee administration repressed its own citizens by enacting laws to completely curtail political dissent and by overseeing multiple massacres that led to the death of between 600,000 and 1,200,000 victims. 109

Thus, in this chapter, I will analyze this critical juncture by first describing veto-players of this moment, and then explain impunity that hindered the democratic development of the newly-independent Korean state. Delving into the players and impunity will facilitate a better understanding of the nature of injustice and the pathway that slowed down the process of establishing a democratic nation. After examining these two topics, I will discuss the path-dependent implications of impunity that retrogressed Korea’s democracy.

**Veto-Players**

To start, I have identified two categories of veto-players in this era: External (the United States Military Government in Korea) and Internal (the Rhee administration; former Japanese collaborators in and out of the state; and the Republic of Korea military).

*United States Military Government in Korea*

The United States was a power group that tried to veto transitional justice in South Korea. Rather than allowing Koreans to build a self-governing body that would reflect the interest of its citizens and create a free and fair society, the U.S. applied paternalistic policies to control Korean society.

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The role of the U.S. in the Korean peninsula during this particular moment chronicles back to the Cairo Declaration in 1943, when the U.S. declared that it was committed to a free Korea. Roosevelt remarked the famous phrase, “in due course Korea shall become independent.”¹¹⁰

FIGURE 1: CHRONOLOGY 1940s

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>August 1945</td>
<td>WW II ended; Liberation of Korea; US military occupation began</td>
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</table>
| August 1945| The Korean People’s Republic (KPR), a de facto government, under the leadership of Yo Un-hyung was formed, but becomes disbanded. U.S. Military Government (USMG) led by Lieutenant General John R. Hodge is formed.
| December 1945 | The Moscow agreement among Great Britain, the U.S., and Soviet Union to work out a four power trusteeship was introduced. |
| April 1948  | Jeju's April 3 Massacre                                             |
| August 1948 | The Republic of Korea established                                   |
| September 1948 | The Anti-Collaboration Act was passed, Anti-Collaboration Committee was created and started investigating pro-Japanese collaborators. Investigation came to a halt months after its founding. |
| October 1948 | Yeosu-Suncheon Incident                                              |


However, little planning took place between the Cairo meeting and the landing of American forces at Inchon harbor on September 9, 1945. The U.S. policy in postwar Korea in general demonstrated a lack of vision, planning, and coordination between the branches of the U.S. national government and with the U.S. personnel in Korea.

When the 25,000 men of 24th Corps of the U.S. Army led by Lieutenant General John R. Hodge arrived in Seoul in September 8, 1945, it was the beginning of official American control over South Korea. However, General Hodge, an experienced World War II veteran, lacked knowledge of Korea, except that provided by the Japanese Government-General. Hodge was ignorant of the fact that Koreans wanted rectification of the past wrong doings of the Japanese colonial era and a new independent nation. He closely listened to the Japanese authorities and their allegations that Korea’s new, quasi self-government— the KPR— incited communistic ideals towards immediate independence. The Japanese claim was a blanket assertion that clearly mischaracterized the nature of the organization. Instead of the professed American goal of helping Korea’s new nation-building, a wish that the majority of Koreans desired, Hodge followed America’s own national and global aim of resisting influences from the Soviet Union. As a result, the U.S. tore down the KPR, and officially made it illegal to create any self-governing body and prohibited all political activities until the U.S. set up an anti-communist regime in South Korea. However, according to Jeon, the more recent consensus among revisionist scholars argues that the KPR was more nationalist than communist, had considerable popular support, and advocated a social and economic movement desired by the majority of Koreans. General Hodge went as far as to declare Korea to be “the enemy of the United States” and ordered his troops to carry out everything according to the customs fitting an enemy country. While Koreans welcomed the U.S. troops as an army of liberation, the U.S. forces nevertheless equated Korea as a provocative, dangerous state.

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At that time, Korea was not regarded as a sovereign state according to international law, despite having been freed from Japan. The U.S. forces capitalized on this legal distinction, and thus, claimed authority over all “ownerless land,” which provided the legal basis of the occupation of the Korean peninsula. In place of the KPR, the U.S. set up a formal U.S. Army Military Government in Korea (AMG) and dismantled most of local committees of the KPR, replacing them with a discredited colonial administrative structure throughout the country. Rather than rely on Korean politicians, the Military Government recruited discharged Japanese as “administrative advisors” and endorsed the Korean Democratic Party, which was made up of former Japanese collaborators. As a result, the eleven members of the Korean Advisory Council were largely members of the KDP. The actions of the U.S. occupation force quickly ended Korean expectations that liberation from Japan would result in national independence and political autonomy for the whole peninsula.

While the U.S. forces occupied Korea, it attempted to form a joint supervision by the United States, Great Britain, the Soviet Union, and China. However, the trusteeship decision was a disappointment to Koreans. Political independence and the punishment of collaborators did not happen. The United States in this era lacked concrete and long-term goals to build a democratic nation, and Korea’s true post-independence was secondary to its goals. The policies that they advanced favored conservatives, which included a good number of Japanese collaborators, and thus, the expectation of rectifying Japanese colonialism was never realized. Finally, it gave priority to global anti-communist priorities, and associated Korean nationalism with a potential communist threat. For all of these reasons, the U.S. used its power to “veto” attempts at legal justice.

\[114\] Ibid.
Former Japanese Collaborators In and Out of the State

After Korea’s independence, the U.S. military government decided to maintain the bureaucratic personnel and institutions from the Japanese colonial government. As a result, it was nearly impossible to punish collaborators without permission from USAMGIK, which protected the reemployment of collaborator personnel while controlling people’s zeal for severe punishment. Collaborators transformed themselves into bureaucrats and the pro-American forces continuously bolstered their new social status.

Many collaborators maintained posts in the Korean Democratic Party under the leadership of Rhee Syng-Man. In September 1948, the Anti-Collaboration Act was passed in the National Assembly, with a committee to appoint a special judge and a special prosecutor to carry out the preparatory investigation of collaboration.\textsuperscript{116} Yet, former collaborators hindered the legislation process and activities of the Anti-Collaboration Committee with threats, instigation of mass demonstration, and terrorist acts. There was even an attempted assassination of a member of the Anti-Collaboration Committee by some high-ranking police officers who had collaborated with imperial Japan.\textsuperscript{117}

Collaborators thus further achieved a rise in status and climbed the social ladder to the ruling class. Under the Rhee administration, as much as 34 percent of department ministers and 68 percent of chief justices and justices of the Supreme Court were collaborators, while making up a quarter of the National Assembly.\textsuperscript{118} In 1960, 70% of senior superintendents, 40% of police captains, and 15% of police lieutenants had all served in the Japanese colonial government and

\textsuperscript{116} Youn-Taw Chung, "Refracted Modernity and the Issue of Pro-Japanese Collaborators in Korea." \textit{Korea Journal} 42, no. 3 (Fall 2002): 35.
\textsuperscript{117} Ibid.
\textsuperscript{118} Ibid., p. 37.
still remained as police officers following liberation.\textsuperscript{119} Statistics compiled by a private research organization indicate that among the highest public officials in Korean society in the early 1980s, 121 were collaborators, including the president, chief justice, prime minister, chiefs of the staff in the Army, Navy, and Air Force, prosecutors, senior superintendents, mayors, and provincial governors.\textsuperscript{120}

Collaborators became elites in the economy, media, education, culture, art, and religion in postcolonial Korean society.\textsuperscript{121} \textit{Unresolved Issues in History}, a book published in South Korea investigating former Korean collaborators with the Japanese regime, includes articles on 60 collaborators and their personal backgrounds, most of whom were in positions of leadership in every area of Korean society after liberation.\textsuperscript{122} In particular, they played crucial roles in maintaining the anticommmunist dictatorship and in the modernization process in South Korea. They became credited as public servants and patriots, while those who had fought for independence against the Japanese became victims of anti-communism sentiment. Accordingly, collaborators dominated Korean society following the independence. Despite their past wrongdoings and benefits from Imperial Japan, the former Japanese collaborators quickly erased their past for their benefit and amassed veto-power over transitional justice during the Rhee era.

\textit{The Rhee Administration}

Another veto-player that resisted legal justice was the Rhee administration, which was a conservative coalition that protected former Japanese collaborators. In May 1948, the Korean

\textsuperscript{119} \textit{Naeoe jeoneol} (Naeway Journal), November 2001, a special issue on \textit{Ilje cheongsan} (Removal of the Colonial Legacy), vol. 1.
\textsuperscript{120} Jong-guk Im, 1982. \textit{Ilje chimnyak-gwa chinilpa} (The Imperialist Japanese Invasion and Pro-Japanese Collaborators). Seoul: Chungyunsaa.
\textsuperscript{121} Youn-Tae Chung. "Refracted Modernity and the Issue of Pro-Japanese Collaborators in Korea." op. cit.: 38.
\textsuperscript{122} Institute for Research on Anti-National Activities (1994).
National Assembly adopted a constitution setting forth a presidential form of government specifying a four-year term for the presidency. Rhee Syng-Man, a Princeton-educated politician, was especially favored by the U.S. because of his conservative stance against communism. The U.S. played an influential role in deciding the head of the state, as the leftist faction of the political sphere was marginalized and maintained little voice in the National Assembly. Soon, Rhee became head of the new Assembly. Then, on August 15, 1948, the Republic of Korea (South Korea) was proclaimed, Rhee assumed the presidency with the backing of the U.S. Politically, Rhee controlled the nation with an iron fist. He unilaterally amended the constitution to change his term limits to four, while threatening to dissolve the National Assembly if it failed to support his power grab.\footnote{Michael Breen, "Fall of Korea’s First President Syngman Rhee in 1960." \textit{The Korea Times}. Accessed October 10, 2013. \url{http://www.koreatimes.co.kr/www/news/nation/2011/01/113_64364.html}.} The National Assembly was a unicameral body, and a majority was made up of Rhee’s supporters.\footnote{\textit{Ibid}.}

Leading a new nation healing itself from its colonial past, Rhee relied heavily upon the United States for both financial and political help. Specifically, the policy of the Rhee administration was one of “unification by force,” in which the government allowed no room for suspicious acts of communism in the South. With no adherence to due process, even judges and prosecutors faced arrests when they ruled favorably to those who were imprisoned for suspicions of communist acts.\footnote{Dong-Choon Kim, "The Long Road Toward Truth And Reconciliation." \textit{Critical Asian Studies} 42.4 (2010): 534.} As a result, the Rhee administration carried out multiple massacres that led to the death of hundreds of thousands of innocent citizens. Rhee’s implementation of authoritarian and conservative policies made him veto looking into the past. There must have been something that Rhee refrained to disclose.
One significant, tragic massacre that occurred during the Rhee administration was the massacre of the NGA (Kuk-min-bo-do-yeon-yeon-maeng) members. Formed in 1938 by former nationalists and leftists, the NGA became a crucial target for Rhee’s postcolonial state. By preserving the colonial forms and procedures, the NGA was targeted to advance the South Korea state project of converting and defeating nationalists and others who had once demanded the punishment of former collaborators. Its members, numbering three hundred thousand, reported regularly to the police and were used by them as an informant network. It has been alleged that many of its members were innocent farmers and civilians who lacked knowledge of ideological conflicts but were forced to register.  

They were pressured to cooperate with the new state by promoting voluntary confessions, persuading political prisoners to convert. While some worried that their past could arouse the new government’s suspicion, they nonetheless came under suspicion when the government rounded them up. Especially on the day that North Korea invaded the South in 1950, the Security Bureau of the Ministry of Internal Affairs ordered the police to detail all members of the NGA nationwide and eliminate them in silence. This event is one of many horrifying acts of violence that the Rhee administration carried out to get rid of any individuals or organizations that were suspicious of being communists and those who called for the prosecution of former Japanese collaborators.

On a mission to defeat the Red Peril, the Rhee administration failed to move the nation from its postcolonial damages. Rather, it persecuted its citizens on the ground of unreasonable suspicion and awarded former Japanese collaborators with posts in cabinet and military leaderships.  

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Union, heavily repressed political activities to prevent any leftist organizing and pursued pro-American policies.

*The Republic of Korea Military*

With U.S. financial support, the Korean military under the Rhee administration, specifically the Korean National Police and special military units, tightened the regime’s grasp over domestic politics. The Korean military often declared the state of emergency as a convenient excuse for the regime to crack down on any of Rhee’s opposition. While the Republic of Korea (ROK) military was created for the purpose of combat situations, Rhee specialized several divisions within the military to be used for political purposes.\(^{129}\)

Military and police units were especially vicious in taking revenge on South Koreans who had cooperated with the North Korean military during the early months of the war. In the summer of 1950, when the Korean People’s Army (KPA), the North Korean military, occupied the majority of ROK territory, some South Koreans had assisted North Korean forces in reestablishing the North’s self-government, seizing and redistributing Japanese property, and maintaining order. When the U.S. and ROK troops recaptured the territory south of the 38th parallel in September of 1950, the South Korean police and army mercilessly punished and slaughtered collaborators with the North.\(^{130}\)

Rhee himself also used the military to hold onto power. In July 1952, when the National Assembly refused to pass Rhee’s constitutional amendment calling for the president to be chosen by direct election instead of by the assembly, Rhee declared martial law and ordered military


police units to hold the lawmakers hostage until they finally agreed to his proposal. With this military tactic, Rhee was able to extend his tenure in office again in 1956.132

During the mid- and late 1950s the State Department received a constant stream of communications from American diplomats detailing the ways that Rhee was using the national police and army units to intimidate and control his opponents. One State Department official who was stationed in Korea during 1957 said that the “Executive will is enforced by a centralized national police,” which was deeply involved in political affairs, especially the surveillance of opposition groups.”133 Rhee used both the ROK Army Counter Intelligence Corps and the Joint Provost Marshal Command “for security as well as political actions.”134 For the Rhee administration, these special units were useful in both preventing insurgency and controlling sources of political dissent until the late 1950s.135

The military was a forceful, systematic veto-player that was protected by the elites and politics of the Korean society. It was able to stand strong against accusations of impunity and tried to brand itself as a positive force that would save the nation from communist influences. Yet, in fact, it persecuted its own citizens and maintained a stronghold on its privileges, while vetoing any power that would threaten their power.

132 Ibid.
133 Brazinsky, op. cit: 30.
134 Ibid.
Impunity

Impunity and collective amnesia went hand in hand as the Rhee administration did not merely exonerate those who had committed grave crimes of violence, terrorism, and mass killings. It justified its actions as necessary to stem communism, and praised the perpetrators for risking their lives to fight communism.

In the 1940s after the Japanese surrender, many Koreans who were collaborators with the Japanese regime were absolved of their past crimes and were protected by the Rhee administration. Since it was more convenient for the occupational government to recruit experienced Korean administrators from the former Japanese governmental apparatus, these individuals were not punished even after the nation’s independence even though many of them had willingly cooperated with Japanese colonial rule. The U.S. Military government employed them in spite of their past, and they later secured high-ranking positions in the Rhee government. The U.S. policy of absolving Korean collaborators to the Japanese regime from the Tokyo Tribunal was in line with the occupation policy of the U.S. Military Government in Korea. This policy judged Japanese-trained soldiers, intelligence agents, and police officers to be useful in the suppression of communist operations in South Korea. Yet, in return, their violent tactics and abuses brought fear and terror to Korean citizens.

Calls for the prosecution of Japanese collaborators in order to obtain historical justice were not easily dismissed. Even President Rhee, who aligned himself with many of the former collaborators, felt compelled to accept the Act and used executive powers to create a body to investigate and prosecute Japanese collaborators in accordance with the law. However, the

first attempt at historical justice and truth did not last long. As soon as the committee was formed, it began to be assaulted by conservatives who were former collaborators or had aligned themselves with collaborators for personal gain. The Rhee government hindered the Act’s implementation by accusing the committee of communist-influenced leadership and protesting that the Act might be misused to arrest “patriots” who had fought against the communists.

In December 1948, the government enacted the National Security Law, a continuation of the former security Maintenance Law of Imperial Japan, and revived the Japanese-style police apparatus that had been notorious for torturing those who struggled for Korea’s independence. The Rhee government annulled legislative attempts to prosecute pro-Japanese collaborators; in doing so he exonerated those who had committed grave crimes against their fellow countrymen on behalf of Imperial Japan. This marked a crucial turning point. After, government officials, police officers, and military officials who had cooperated with Imperial Japan were able to retain their power during the Rhee government and subsequent military regimes. Some who had previously held positions in the Japanese police’s intelligence agency were recruited into the G-2 Sections and Counter Intelligence Corps. Freed from judicial prosecution, the Japanese-trained soldiers and police took vengeance on nationalists and specifically those who had demanded historical justice in the postliberation years. The former collaborators quickly transformed themselves into patriotic anticommunists. In order to consolidate their power, they exercised their power to accuse the accusers of being communists and to kill many of them.

\[139\] Ibid., p. 531.
\[140\] Ibid., p. 517.
Implications of Impunity for Korea’s Democracy

The exoneration and empowerment of pro-Japanese police and bureaucrats led Koreans to lose faith in their government. It created a culture of distrust that encouraged political unrest and on-going social conflicts across the country. Dissent, distrust, and disillusionment filled the country. As the country moved away from unification, frustrated by the partition of the peninsula, the left in Korea went against the impunity-based Rhee regime.

This unstable public sentiment and political sphere led to the Jejudo and Yeosun Incidents, both in 1948. In Jejudo, hundreds of partisan forces rebelled against the general election that was set to legitimize national division. The Korean National Police and military, supported by U.S. troops, opened fire on the group and took control over Jeju Island. Out of 150,000 residents, 30,000 were known to have been killed for their involvement with the guerillas. Following this event, in Yeosun, approximately 2,000 left-wing soldiers rebelled against the government in protest against its heavy-handed clampdown on the uprising in Jeju. Soldiers seized weapons and took control of the town. Soon, the South Korean army, with the help of U.S. military advisers, overwhelmed the rebels. Today, the Truth and Reconciliation Commission of Korea (TRKC) has confirmed that the number of casualties tally up to 439. The Rhee government responded to such mobilization by the political opposition by instituting martial law, whereby field officers arrested and killed civilians based on their own interpretation of law.

The administration allowed the use of torture by the Korean National Police and military, lynching, and even summary executions to promote anticommunism. The Rhee government

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142 Ibid., p. 534.
ignored due process of law and judicial process as a whole, and it regularly committed violations of human rights. Intelligence agencies were able to coerce and intimidate judges and warnings were routinely issued to the courts. The empowerment of Japanese collaborators and the failure to bring justice in the case of past wrongdoings culminated in the mass civilian killings the Rhee government committed before and during the Korean War. Justice was denied for the sake of eliminating any communist influence, and it deprived everyday citizens of fundamental rights and took the lives of many.

The experience of the Korean War firmly consolidated the injustices of the postliberation years. The war legitimated and developed the military, and it became the one of the most organized and influential forces in South Korean society. As a result, anticommunist ideology penetrated ordinary Koreans daily lives, taking away from public discourse such inconvenient truths as the corruption of state power and the mass killings of innocent civilians by Korean police. Everyday citizens were taught to fear state power, remain quiet about the past, and distance themselves from political procedures. The Rhee government, though elections and modern judicial systems were enacted, was a mere procedural democracy that was hungry for the attention of the United States while interests of its citizens became void.

Conclusion

On August 15, 1945, as soon as the Japanese surrender was confirmed, Koreans all across the peninsula came out to the streets, yelling out “Manse!” and “Haebang!” which meant freedom and liberation from Japan. They naturally expected that after decades of humiliation and both physical and emotional toil under the Japanese regime, their lives would be renewed under a new independent state. However, their freedom was never truly free. Korean’s first

independently created self-government was disbanded by the U.S. Military. When Rhee, with the backing of U.S., became the first president of Republic of Korea, his administration went along with U.S. policies for a pro-American government and for quick nation-building from the chaos and political vacuum of post-colonialism. Yet his conservative coalition brought lenient charges against former Japanese collaborators and employed them to heavily repress their fellow citizens.

The failure to disrupt the remains of colonial bureaucracy at this critical juncture of Korea’s liberation led to the development of state terrorism, human rights abuses, paucity of due process, and importantly, disconnection with its own citizens. State elites, who had benefitted from the Japanese colonial government, maintained their posts in national governmental apparatus and consolidated their power. While there were efforts to rectify the colonial past, they were soon brought to a stop by Cold War ideological conflicts.

Today, “truth and reconciliation” scholar Jae-Jung Suh argues that rectification of the Japanese colonial era was a necessary step towards historical justice and the transformation of Korean politics. The United States should have focused less on quick nation-building, and more on bringing strict adherence to the rule of law, mass political participation of citizens, and allowing civil society to form. While experienced personnel were needed for infrastructure within the governmental structure, setting a strong precedent that past wrongdoers would be prosecuted was needed to set an example of respecting and adhering to the law. As a result, the cold war distractions and political repression located Korea onto a path that institutionalized impunity and allowed veto-players to rule the society with violent repression. This disillusionment and illegitimacy filled the Rhee era, and it paved a way for the public’s discontent and distrust, then soon to a violent military takeover in 1961.

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CHAPTER 3: 1980s – SPRING DID NOT COME TO SEOUL

Introduction: 1979-80, Korea’s Next Critical Juncture

In 1961, the Rhee administration was toppled by military coup under the leadership of General Park Chung-Hee, a graduate of a Japanese military academy in Manchuria. The military justified the coup by claiming it needed to save Korea from communist influences. One of the main reasons for the fall of the Rhee government was its incompetence in ruling the country. The Rhee administration did not respond to various demands from below after the Korean War, nor did it properly control the military. The military was strong enough to counter the transition to democracy because it was the de facto monopolized physical power and developed over time with the financial support of the U.S. since the Korean War.

After taking over the presidency, Park aggressively promoted economic development policies. The success of his economic development plans offset the lack of legitimacy, which is evident in his landslide win in the 1967 presidential election. However, his economic miracle, which had sacrificed the rights and dignity of working class and middle class Koreans, faced growing opposition from labor unions and workers. Students and dissidents led massive protests against Park’s repressive policies.

The discontent against the Park’s regime’s repression and the democratic movement’s resistance created a divide within state elites. As a result, the KCIA chief, Kim Chae-Kyu, assassinated Park on October 26, 1979.146 His assassination opened up the prospect of regime change in South Korea, and expectations for democratization were higher than ever.

This particular moment of opening for democracy was known as the “Seoul Spring” of 1979-1980, and this moment was another critical juncture for South Korea’s political

With the wave of democratization that ended authoritarian regimes across the world, the time was ripe for Korea to end its decades-old dictatorship. There were opposition parties, increasingly based on the middle class, and student and labor movements grew to protest against the stagnant processes for democratization. Equally importantly, Korea encountered rapid industrialization. To seize this opportunity for democratization, it was urgent to determine a schedule for democratic transition in a transparent and speedy manner. It required a constitutional amendment to mitigate the executive branch’s power and a free and fair civilian election with opposing parties.

Contrary to public expectations for democratization, however, the plan for democratic transition was obscure during the Seoul Spring. The transitional government under President Choi Kyu-Ha failed to repeal the remnants of Park’s repressive structure of the government. Choi, who was a strict administrator by nature and not a charismatic leader, was reluctant to present a concrete plan for democratization. Then, on December 12, 1979, hard-line General Chun Doo-Hwan seized power within the army, which gradually darkened the prospect of democratization. Nonetheless, the democratization movement quickly spread during April and early May of 1980. Students and union workers protested the delayed transition to democracy and pressured for its speedy progress. Yet, in the end, Seoul’s Spring could not be achieved. Having seized military power through the December 12th coup, Chun’s forces took power from the Choi administration by declaring martial law on May 17, 1980. By this point, most of the efforts for democratization came to a halt.

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In this chapter, I will present a case study of this second “window of opportunity” for democracy that produced neither democracy nor justice in Korea. I will first identify the veto-players of the era. There were multiple influential players who held both political and economic power and who wanted to keep that power in the post-Park era. Closely examining their powerful networks within Korean society will reveal the choices that located Korea onto the impunity path, and how they were remains of the colonial and dictatorial legacy. Then, I address how the path of impunity was further consolidated during the 1970s and the 1980s. As former Japanese collaborators solidified their stance in the state and civil society and their wrongdoings were left untackled, the Park and Chun regimes used both human rights violations and political corruption to amend the political system as they wished. Thus, the impunity section will focus on the lack of accounting for the crimes of these violent regimes and lack of transparency for those who became silent victims of what was called the Yushin system in which the executive held indefinite power. Then, after examining impunity, I will carry out an in-depth analysis of the critical juncture of the Seoul Spring itself (October 1979-May 1980). While the circumstance and time was right for democracy, democratic transition failed to take root. Thus, I am going to investigate the significance of lack of prosecution of human rights abuse in a democratically transitioning state like South Korea, and how prosecution might have consolidated a burgeoning democracy.
Veto-Players

In the time between October 1979 and May 1980 in South Korea, the main veto-players resisting accountability for human rights abuses were U.S. corporations, American domestic politics, and the military’s Hanahoe club.

U.S. Corporations

American business interests played a key role in South Korea, as the Park and Chun administrations pushed for modernization policies. For American business leaders, democratic reform in South Korea was a secondary concern to economic liberalization. As long as they were able to seek the bottom line for their shareholders and a stable economic environment in Korea, they continued to back the repressive regime and maintained business contracts with conglomerates in Korea. Their interest in investment and trade in South Korea was promoted by
U.S. government officials’ pressure to Korea. There were several moments in which American business interest flexed their power alongside the Park administration.

In the late 1970s, the anti-nuclear-power movement in the U.S. had pushed the U.S. government to rescind new orders for domestic plants, and South Korea became a convenient solution to the problem of Westinghouse’s surplus production capacity.\textsuperscript{149} Westinghouse and the nuclear industry stood to gain tens of billions of dollars in contracts for nuclear power plants 7 and 8 alone. Park was first indecisive about the proposal because he knew that building laboratories for science institutes and a major highway that connected Seoul and major Southern cities were higher policy priorities than building nuclear power plants. However, when President Moore of the U.S. Export-Import (Ex-Im) Bank visited Park on behalf of Westinghouse to lobby for the nuclear plants, Park had to reluctantly accept the offer, since Korea was Ex-Im bank’s biggest borrower.\textsuperscript{150}

In the same period, California and Gulf Coast agribusiness harvested a surplus of medium grain rice. Korea, faced with a terrible harvest in 1980 during the Chun administration, sought to make up the deficit by importing from California agribusiness. However, just before the sale of 644,000 tons went through, California farmers raised the price by $100/ton, profiting an extra $64 million.\textsuperscript{151} Also, when Korea needed a million more tons of rice, the farmers raised even more than $100/ton above the record price of that time. Korea accepted the following unfair deals due to the heavy lobbying by the Rice Millers Association to the Korean Embassy.

\textsuperscript{149} For more information on this, see George N. Katsiaficas, \textit{Asia's Unknown Uprisings}. Oakland, CA: PM Press, 2012: 195.


When American businessmen showed concerns towards Korea’s lack of stability in the markets, Park and Chun frequently invited American business leaders to the Blue House and assured them that they would open up the market for investment purposes. Namely, to help allay investor fears, Chun invited leaders of the American Chamber of Commerce in Korea, including the president of 3-M and representatives of Bank of America, Dow Chemical, and Gulf Oil.\(^{152}\)

American corporations supported the Park regime despite accusations of human rights abuses coming out of the Carter administration. As long as they were able to invest in Korea under stable and secure environment, corporations found ways to maintain business-friendly relationship with Seoul. American corporations also had close relationships with Korean veto-players, especially business conglomerates and elites of the society, to push for business contracts that deemed profitable to their ends. The veto-players resisted accountability, and everyday business was carried out, overruling any concerns of the government’s heinous past.

*American Domestic Politics / Public Opinion*

During the period between 1979 and 1980, Korea was directly affected by American domestic politics. There were two critical events that facilitated the shift from protecting human rights to pursuing U.S. national security interests in Korea. The Iranian revolution in 1979 and the Soviet Union’s Afghanistan invasion that same year had a direct impact on U.S. policy towards South Korea.\(^{153}\) Sacrificing security in order to promote democracy and human rights – what had been the focus of President Carter’s foreign policy— became widely unpopular in America, which at the time was facing a humiliating hostage crisis and a renewed battle in the


Cold War.\textsuperscript{154} This diverted attention of both the State Department and the Carter administration, which shied away from the events in South Korea. William Gleysteen, U.S. ambassador to South Korea, noting that “Iran distracted the administration while it disciplined them,” utilized this public criticism to exert more pressure on the State Department and the Carter administration to respond to the Korean situation with caution.\textsuperscript{155} The Carter administration maintained its “security first” policy throughout 1979 and 1980 in Korea. The U.S. realized that the military was the critical player in this transitional period, and paid close attention to its movements. While Robert Rich, director of Korean Affairs in the department at that time, alleged that “the Iran analogy existed at the White House and congressional level,”\textsuperscript{156} Ambassador Gleysteen also noted that heavy U.S. involvement in the Korean government may have produced anti-American outbursts in Korea like those in Iran.\textsuperscript{157} Others such as Secretary of State Cyrus Vance joined in to use the Iran example to warn against pressing too hard on the Korean government. Also, Carter was running for re-election against the hawkish Republican candidate Ronald Reagan. At the center of the presidential election was American security issue dealing with Iran, and Carter tried to calm the public and American voters by changing to more adamant military action. Thus, America’s public criticism of Korea by analogy as potentially “another Iran” and Carter’s effort to secure re-election may help to explain why the human rights-conscious Carter administration in 1979 changed its policy of asserting overt pressure on the Korean government for liberalizations.


\textsuperscript{156} Ibid.

Hanahoe

Hanahoe was a secret military society that General Chun Doo-Hwan and General Roh Tae-Woo, along with graduates of the eleventh class of the Korean Military Academy, created in 1955. Chun and Roh specifically recruited officers who originated from the same home province, Kyong Sang province, as themselves. Its purpose was to build up a special coalition to help each other in the military hierarchy and political sphere. In particular, this military society was loyal to President Park, and he endorsed the society in return. Park appointed members of Hanahoe to military posts to help repress members of opposition parties. Hanahoe was considered the club of hard-liners in the military and closely contributed in Chun’s rise as the leader. It was a veto-player that maintained its strong grip on the Korean society through political and forceful force, quelling any movement that would threaten its privileged position and helping Chun’s rise to the power.

On the night of December 12, 1979, Chun, along with others members of Hanahoe, launched a rapid and violent operation to arrest the Army’s pro-democracy chief of staff, General Chung Seung-Hwa. General Chung had initially vowed to keep the military out of politics and support the Choi administration for democratic transition. But because of this coup within the armed forces, Chun was able to seize control of the Korean military. The arrest of General Chung was possible because Hanahoe members maintained crucial posts as military leadership all throughout Seoul. They disrupted military communication and ignored orders from the top-hierarchy, while making sure that General Chung was captured. Soon, Chun became the chief of the KCIA, an action rendered illegal by Chun’s refusal to resign from the military. With the

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160 Ibid.
position that allowed Chun more threatening power, he hired Hanahoe members as KCIA agents and pressured the civilian government to declare martial law. Protests culminated on May 15, 1980, when 70,000 to 100,000 students demonstrated in the heart of Seoul. Yet, on May 18, Chun suspended all political activity, closed the universities and arrested prominent rivals such as Kim Dae-Jung. Martial law brought an end to the protests. In the months after the uprising, Chun, with the help of Hanahoe members, went through the motions of amending the constitution and reorganizing his election as president by an electoral college of regime loyalists.

Thus, Hanahoe was a major veto-player that kept Korea on the impunity path. It was the backbone of Chun’s ambitious plan to emerge as the leader of a non-democratic Korea. They capitalized on the kinship of Kyong Sang province and convinced heads of military powers to follow Chun’s rule. Opposition parties were forcefully aborted by Hanahoe members. As they controlled both the military and politics, the history of human rights abuse and repressive military action by the Park administration was again, continued through this specific veto-player, without any room to put a check on their power.

**Impunity During (and for) the Park Regime**

The impunity path that was created during the Rhee administration had allowed a military coup that overthrew Rhee’s presidency. The path was continued and protected by veto-players, and when Park himself was assassinated, the window of opportunity for democratization with justice was closed off too quickly because of veto-players, both internal and external ones, who had remained powerful.

Park’s regime was marked by his oppression towards his own citizens. It led to a myriad of injustices, such as torture, fabricated espionage charges, and suspicious deaths. Park
frequently proclaimed a state of emergency and suppressed democratic movements with an iron fist. Moreover, he created a legally and physically powerful intelligence entity, the Korean National Intelligence Agency (KCIA), to closely monitor anti-governmental activists.\textsuperscript{161} The KCIA committed countless human rights violations with the power that it acquired from the executive. The agency arbitrarily detained individuals while in some cases, permitted summary executions.\textsuperscript{162}

Impunity was already well entrenched in the Park regime in many ways. By this time, many Japanese collaborators had consolidated their positions in both private and public sectors. Fifteen years had passed since the end of World War II and it made it that much more difficult to bring up the issue of their punishment now that Park, a former Japanese military officer and an anti-communist conservative, had taken over control. On the international side, even the U.S. found it difficult to deal with the Park administration. When Jimmy Carter became president in the mid-1970s, he put the issue of human rights abuses by President Park near the top of the U.S. foreign policy agenda.\textsuperscript{163} After Park’s proclamation of emergency decrees to crack down on rising opposition, the Carter administration and the Congress argued for cuts in military aid for South Korea to pressure the Park administration to be more responsive to U.S. concerns on human rights. Carter also announced plans for U.S. ground troop withdrawal in 1977. Yet, Park denied the existence of any human rights problems in South Korea.\textsuperscript{164} Alleging that Carter had failed to understand South Korea’s unique circumstance of national division and military confrontation against North Korea, Park’s advisors criticized Carter’s policy of military

\textsuperscript{164} \textit{Ibid.}
withdrawal as an ill-informed policy that would hurt U.S. interests in stabilizing the Korean peninsula. At a state reception, Park remarked, “the protection and the survival of the thirty-six million [South] Korean people [constitutes] the highest [possible] form of [protecting] freedom, human rights, and democracy.”165 The Carter administration, to the contrary, argued that human rights abuses were “neither necessary nor justifiable even in South Korea’s difficult military situation.”166

Responding to the Carter administration’s punitive measures, Park released fourteen leading dissidents from prison on July 17, 1977.167 However, Carter’s human rights policy was an impractical and politically unpopular policy that neither satisfied the human rights activists nor brought an end to human rights violations under Park’s regime. According to Kim, while Carter even created a bureau specially dedicated for human rights issues in the State Department, officials from the department and Carter’s key advisors still viewed human rights as secondary to “military, economic, and strategic considerations.”168 Meanwhile, Carter’s withdrawal policy was met by opposition from the Department of Defense, the Joint Chiefs of Staff, and senior officials of the State Department. The security interests won major support and the commitment to the existing alliance was renewed in late 1979, as the Carter administration called for a new cold war to contain communist threats after the Soviet Union’s invasion of Afghanistan. By his last year as president, Carter brought down “his zeal for human rights issues.”169 Instead, he focused on the strategic value of the U.S.-South Korean alliance. With the security issues affirming the existential cold war threat looming the Korean peninsula, human rights violations and Park’s Yushin system fully operated as necessities for national defense.

165 Ibid., p. 458.
166 Ibid.
167 Ibid., p. 473.
168 Ibid.
169 Ibid., p. 482.
The Rise and Decline of the “Seoul Spring”

The transition between the assassination of Park in October 1979 and Chun’s rise to power in May 1980 was arguably not enough time in which to uncover the accumulated past wrongdoings by the state. But one puzzle remains: even though the prospects for a transition were very promising, even the basics of a democratic transition failed to occur in that 5 month period. Two factors seem to account best for the failed transition of 1979 - 1980.

The first factor is that the interim government under Choi Kyu-Ha had failed to liberalize the dictatorial legacy and directly deal with wrongdoings of the Park administration. Choi’s lack of “political experience and leadership qualities” was evident when he became the acting president. 170 Choi angered opposition leaders when he announced a plan for an interim government before consulting them. 171 Choi had indicated a preference for democracy. He promised to reform the Yushin constitution that was written by the Park regime that guaranteed Park’s permanent presidency by indirect presidential election. He relaxed the political atmosphere by abolishing Emergency Decree No. 9, which was used to repress dissent during the Park regime, and releasing political prisoners and opposition politicians, including Kim Dae-Jung. Although President Choi had promised to revise the constitution by the end of 1980 and to call a free and fair election 172 that would be held in a timely manner, both the opposition and the government expressed fears that Choi’s refusal to announce a concrete timetable for constitutional reform and new elections was increasing the possibility of North Korean

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170 Kihl, Politics and Policies, 77.
intervention. Ambassador Gleysteen was pessimistic about Choi’s ability to run the government, and he began to focus on other men, such as Prime Minister Shin.

President Choi had also failed to infuse his transition with transitional justice. Using this option may have reinforced Choi as a charismatic leader with control over the military and domestic politics, perhaps leading the country to a timely democratic transition. Since the country was experiencing a devastating and uncertain time after President Park’s assassination, it was much more necessary to set the order that no one is above the law and individuals and entities will be prosecuted for their crimes against the humanity. The country needed a check on its decades-old human rights violations and its veto-players’ consolidation of power. However, President Choi spent most of his career as a bureaucrat and failed to have an autonomous base in the regime. He could not maneuver the government like Park Chung-Hee, who managed all the decisions by himself through his power base. As a result, Choi made decisions consulting with former and incumbent bureaucrats. He did not have a solid independent power base within the military either. With the December military takeover by General Chun, the U.S., seeking stability and order on the peninsula, favored Chun over the Choi administration. Choi, failing to move efficiently and effectively, ended up the victim of a military coup. Another opportunity to face the past and focus on nation-building was once again thwarted by the veto-players and the lack of leadership by the administration.


The second factor is that the U.S. shied away from an active effort to ensure the transition’s success. This transition period brought special challenge to the U.S. in deciding how to favor liberalization both gently and effectively without meddling too much in the domestic affairs of South Korea. Ambassador Gleysteen was clearly aware of the fact that the public in South Korea could have had a strong anti-American reaction if the U.S. did not support a democratic transition. However, according to Fowler, he seemed to fear an anti-American reaction within the Korean military even more. In the telegram from Gleysteen to Secretary Vance, he argued against pushing “too hard and too crassly” for liberalization.\textsuperscript{176} Initially, General John Wickham, commander of U.S. Forces Korea, and Gleysteen considered supporting a counter-coup within the military by anti-Chun generals, but decided against it.\textsuperscript{177} Gleysteen, noting that the “United States should resist oversimplifying Korean politics by making Chun Doo-Hwan the sinister source of all evil,” decided to defend Chun.\textsuperscript{178}

As a result, when Chun imposed nation-wide martial law in May 1980 and led to thousands of casualties all throughout the country, the U.S. hesitated to question his authority. Meanwhile, the U.S. Forces approved Chun’s use of Combined Forces Command, joint military personnel stationed along the North-South border, to quell the uprisings. The National Security Council meeting on May 22, 1980 decided that the American approach to the Korean government to be “short term support, in the longer term pressure for political evolution.”\textsuperscript{179} A memo from the national security adviser lays out the justification for this approach:

\textsuperscript{176} Telegram from Gleysteen to Vance, “Initial Reflections on Post-Park Chung Hee situation in Korea,” October 28, 1979, \textit{op. cit.}
\textsuperscript{177} Adesnik and Kim, \textit{op.cit.} 18.
\textsuperscript{179} NSC Memorandum – “Summary of Conclusions,” n.d. Cited in \textit{ibid.}. 
1. Maintain security on the Korean peninsula and strategic stability in Northeast Asia. (Do not contribute to “another Iran”—a big Congressional concern.)

2. Express a carefully calibrated degree of disapproval, public and private, towards recent events in Korea. (But not in a way which would contribute to instability by suggesting we are encouraging opposition to the Government.)

Accordingly, the Carter administration supported the suppression of the democratization movement in South Korea, even the infamous Gwangju uprising. On May 31, 1980, Carter told a CNN interviewer that “security interests must sometimes override human rights concerns.”

Thus, the Carter administration failed to use an important human rights right tool in the interest of security, and its hesitating silence helped cost South Korea an opportunity for democratic transition, as well as innocent lives.

The negotiated transition model is the most conventional model that is applied to Korea for the period between 1979 and 1980. There were five actors during this period: hardliners and reformers in the ruling bloc, moderates and radicals in the opposition bloc, and the U.S. According to the negotiated transition model, if the hardliners are more powerful than the reformers, the transition will be aborted. Likewise, if the moderates in the opposition bloc can’t maintain control over the radicals, the negotiation for democratization becomes impossible. The Korean case showed such conditions. The hardline military rose to power and controlled the reformers. The moderate New Democratic Party failed to be an opposition bloc due to its internal division on choosing a leadership and its failure to support the social movements.

However, had Choi pressured actively for the U.S. intervention to ally with both reformers and moderates and forcefully win over the hardliners and the radicals, the outcome

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might have turned out differently. While fulfilling the public’s call for rapid democratic transition may have been difficult, at least there was an opportunity for *procedural* democracy if the U.S. backed the reformers and the moderates. As Fowler argues, the fact that Choi did not ally with hardliners indicates that “he must have desired a transition and believed it was possible.”\(^{183}\) After Park’s assassination, Choi had three options to move forward: ally with the moderate opposition and seek a negotiated transition to democracy, ally with hardliners and support renewed authoritarianism, or make no commitments.\(^{184}\) Choi ended up with the last choice and with it, opened the way for a coup that kept Korea on its impunity path.

**Conclusion**

As in the moment after decolonization in the 1940s-50s, the opening to democracy during the brief “Seoul Spring” of 1979-80 was avoided by the lack of effective plan for democratic transition and by institutionalized activities of several new veto-players, this time American corporations, American domestic politics, and Hanahoe. The military, similar to that of the earlier case study, transformed and built up itself as a legitimate power in Korean politics and society. The failure to keep a check on veto-players located Korea onto an impunity pathway in which impunity was institutionalized and veto-players consolidated their power, making democratization much more difficult.

In this chapter I have argued that the period between Park’s assassination and General Chun’s military takeover could have been utilized as an opportunity to move on from the dictatorial legacy and bring historical justice, but it was thwarted by the existing hardliner forces within and outside the Korean society, notably American corporations and U.S. domestic politics.

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\(^{184}\) *Ibid.*
America’s interest in its own security and stabilization in the Korean peninsula allowed room for General Chun to rise in power, and eight more years of dictatorship and repression.

At the same time, while some may view this particular moment as a failed democratic transition, the pro-democratization movement that was developing in Korean civil society during this time paved way for the massive national democratization rallies during the Chun years.\textsuperscript{185} Students, workers, and political dissidents, while they could not realize what they had hoped for, built networks and planned for effective democratization process in the late 80’s. While the democratic transition in 1987 was a success, it was clearly delayed because of the power of veto-players that resisted accountability for their crimes and protected Korea’s elites’ crimes.

CHAPTER 4: JUSTICE DELAYED IS DEMOCRACY DELAYED: EVALUATING DEMOCRATIC TRANSITION AND CONSOLIDATION IN KOREA, 1987-PRESENT

Introduction

This chapter will discuss the regimes that came after Chun’s dictatorship (1980-87) and how democratic transition came about with the help of a nationwide democratic movement. After, it will delve into truth and reconciliation process that started during the Roh Moo-Hyun administration (2003-2008) and to the current Park Geun-Hye administration (2013-present). The definition of consolidation of democracy will be applied to South Korea and measure the quality of the nation’s democratic culture. Evidently, South Korea’s advance in democracy is deceptive and its democracy needs further development to be fully consolidated.

Completing the path dependency analysis, I will show how choices that were made during both critical junctures— the period between the mid-1940’s and early 1950’s and the window of time from October 1979 to May 1980— led Korea to remain on the impunity path after 1980. I will also discuss how the impunity path explains why Korea had a pacted transition without historical justice, and why the Truth and Reconciliation Commission of Korea was limited, due to still existing veto-players. It is evident that human rights abuses committed by veto-players were often protected and continued without any check. Impunity was continued and historical injustice was partially resolved, and this has darkened the road to Korea’s consolidation of democracy. Justice delayed is democracy delayed in the case of South Korea’s democratization narrative.
FIGURE 3: CHRONOLOGY

<table>
<thead>
<tr>
<th>Date</th>
<th>Event (Details)</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 1987</td>
<td>June 10 Democratization Movement occurred</td>
</tr>
<tr>
<td>June 1987</td>
<td>Democratic transition began with the June 29 Declaration</td>
</tr>
<tr>
<td>December 1987</td>
<td>Roh Tae-Woo elected President</td>
</tr>
<tr>
<td>June 1988</td>
<td>National Assembly held fact-finding hearings on the Gwangju Uprising</td>
</tr>
<tr>
<td>March 1990</td>
<td>Special Law compensated victims of the Gwangju Democratic Movement</td>
</tr>
<tr>
<td>December 1992</td>
<td>Kim Young-Sam elected President</td>
</tr>
<tr>
<td>August 1996</td>
<td>Seoul District Court issued Chun a death sentence and Roh a 22 ½ year imprisonment</td>
</tr>
<tr>
<td>December 1997</td>
<td>President Kim Young-Sam pardoned both Chun and Roh</td>
</tr>
<tr>
<td>December 1997</td>
<td>Kim Dae-Jung elected President</td>
</tr>
<tr>
<td>January 2000</td>
<td>Special Law established to restore the reputation and compensate those involved in democratic movements, restore the reputation of victims of the Jeju April 3 Incident</td>
</tr>
<tr>
<td>December 2002</td>
<td>Roh Moo-Hyun elected President</td>
</tr>
<tr>
<td>March 2004</td>
<td>Special Acts to investigate forced mobilization and pro-Japanese collaboration under Japanese rule enacted</td>
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<tr>
<td>May 2005</td>
<td>Framework Act on Truth and Reconciliation established</td>
</tr>
<tr>
<td>July 2005</td>
<td>Special Law to investigate suspicious deaths in the military</td>
</tr>
<tr>
<td>December 2005</td>
<td>Truth &amp; Reconciliation Commission, Republic of Korea established</td>
</tr>
<tr>
<td>December 2005</td>
<td>The Special Act to Redeem Pro-Japanese Collaborators' Property promulgated and entered into effect</td>
</tr>
<tr>
<td>December 2007</td>
<td>Lee Myung-Bak elected President</td>
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<tr>
<td>December 2012</td>
<td>Park Geun-Hye elected President</td>
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</tbody>
</table>

Post-Chun Regime and the Critical Juncture of 1987: Towards Transition

After the May 1980 Gwangju uprising, military forces, who took up posts in both the National Assembly and the administration, elected their coup leader, General Chun Doo-Hwan, as president of South Korea under the indirect presidential election in which members of the National Assembly voted for the presidential candidate. Political repression and killings of political opposition silenced political dissidents. South Koreans had to wait another seven years to enjoy political freedom and liberty from dictatorship.

Under the Chun regime from 1980 to 1987, more than a thousand people were falsely accused of being North Korean spies. They were indefinitely imprisoned and tortured for violating the National Security Law and the Emergency Law. The National Security Law was used as a grand umbrella security law that prohibited any actions of plotting treason and posing danger to the country. The KCIA used this particular law as their leverage to arrest and imprison anyone they sought after.

From the beginning, the Chun regime lacked legitimacy and trust from its own citizens, and it slowly sought ways to boost its popular appeal. By the end of 1983, the regime implemented an “appeasement policy” to decrease oppression to a considerable extent. Under the new policy, students were able to re-enter school, and sanctioned professors returned to universities. They also needed to maintain peace and order in order to successfully hold the 1986 Seoul Asian Games and the 1988 Seoul Summer Olympics. The policy opened doors to a growing pro-democracy movement. Students started a campaign to promote democratization that led to direct struggle against the Chun’s regime. Then, the labor movement, along with

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187 Ibid.
movements of the urban poor and peasantry, joined in to the campaign. The student-labor solidarity was consolidated as students left colleges and engaged in factory work disguised as workers in order to participate in the labor movement themselves or to support workers.\textsuperscript{189} The political dissident movement resumed. They formed the Council for the People’s Democratic Movement in June and the National Council for Democratic Reunification in October.\textsuperscript{190}

The year of 1984 was the watershed moment in which the democratization movement developed drastically in all parts of civil society. Gu and Ki argue that the most significant factor that accounts for the explosive growth of the democratization movement in the 1984 and 1985 was the “shock of the savage suppression by military forces in Gwangju.”\textsuperscript{191} The army, whose duty was to protect the lives of its citizens, dispatched elite airborne troops to massacre citizens of Gwangju. This experience had enraged and shocked pro-democracy forces. Many felt guilty for not lending a hand to innocent people in Gwangju, while the media labeled their resistance as a communist uprising.

The 1980s pro-democracy activism was distinct and significant in that it was no longer limited to the student movement and the dissident movement. It was now aligned with social movements, especially with the labor sector. With Chun’s appeasement policy, the opposition parties— the New Korean Democratic Party and the Korea National Party— that were excluded from the political scene, reentered the political arena through the February 12th general election in 1985 and expressed opposition to dictatorship and supported democratization move clearly. With the democratization movement growing in every sector of the Korean society, it was then

\textsuperscript{190} Ibid.
\textsuperscript{191} Jung and Kim, \textit{op. cit.}: 11.
possible to form the largest democratic coalition. The democratization forces proposed a constitutional amendment for direct election of the president as their immediate goal. The Chun regime repressed dissidents who argued for the constitutional amendment. Its extreme repression against the movement resulted in serious violation of human rights. It tortured a prominent dissident leader named Kim Geun-Tae, and, most significantly, tortured and killed Park Jong-Cheol, a college student. Park’s death stirred a massive popular uprising, and nationwide ceremonies mourning his death occurred throughout Korea.

The democratization coalition decided to hold a massive national rally on June 10, 1987 to protest Park’s death and to demand an amendment for a democratic constitution. This has turned out to be the beginning of the June Democratic Uprising, which was the national protest movement that forced the regime to accept the popular demand for democratization. The uprising lasted for about 20 days until the June 29th, when millions of citizens came out to the streets despite police repression. The Chun regime finally announced a plan to resolve the situation. The plan, also known as the June 29 Declaration, consisted of eight items—mainly, a constitutional amendment for direct election of the president. It finally opened the way to democratic transition that would democratize the authoritarian regime in South Korea.

After the June Declaration, workers stirred up the nation by fighting for labor rights from early July to September. Workers demanded their basic rights that had not been guaranteed under Korea’s authoritarian regimes, such as wage increases, the improvement of working conditions, the right to union representation and the right to collective agreements. There were five actors during this process: hardliners (Chun Doo-Hwan) and reformers (Roh Tae-Woo) within the

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193 Jung and Kim, *op. cit.*: 12.
regime who recognized the need to negotiate, moderates and radicals in the opposition bloc, and civil society’s pro-democracy organization, National Coalition for Constitutional Reform, that worked with the opposition bloc.

Alongside workers’ protest, politicians started the process of democratic transition according to the June 29 Declaration. All political parties assumed the task of amending the Constitution. The Democratic Justice Party, the majority party, and the Reunification Democratic Party, the main opposition party, had a political negotiation of eight leaders and drafted a constitutional amendment based on direct election of the President with a single five-year term. The bill was passed by the National Assembly, and the new Constitution was adopted on October 29, 1987, and presidential election campaigns began. However, voters became divided by the fact that the two leading candidates of the opposition would not cooperate in the selection of a single opposition presidential candidate. Votes were split between two opposition leaders, Kim Dae-Jung and Kim Young-Sam, against Roh Tae-Woo, President Chun’s protégé. In the end, the democratization forces lost the presidential election held on December 17. Roh Tae-Woo of the Democratic Justice Party won 36.6%, candidate Kim Young-Sam of the Reunification Party won 28.1%, and candidate Kim Dae-Jung of the Party for Peace and Democracy won 27.0%.197

The democratization movement brought about a democratic transition in South Korea through the June Democratic Uprising, but it provided an opportunity for remnants of the past dictatorial regimes to come back to power legitimately. By 1987, actors of the pro-democracy coalition were able to win a pacted transition, but they weren’t able to win a transition with justice, once again. Pro-impunity veto-players, despite the public’s call for democratization and accounting of past wrong, still took firm hold of their place in the society and resisted accountability of their history.

South Korea’s Democratic Transition, 1987-92: Transition without Justice

President Roh Tae-Woo’s June 29 Declaration began the process of democratic transition, especially the period between 1987 and 1992. The South Korean form of democratization was an example of “pacted democracy.” This is a democracy held together by an agreement among elite groups of the country to bring about democratic transition without confronting impunity through trials and investigations. Both the reform group within the government and the moderate opposition group compromised because they saw that the collapse of the government would not meet their mutual interest. The reform group within the government, Roh Tae Woo and his core group that led New Democratic Party, made a concession to restore formal democracy, the moderate opposition group, Reunification Democratic Party, did not ask for the reform group’s immediate exit from power and it took advantage of the reform group’s weak incumbency. This was possible because there was a strong and organized base of civil society from numerous sectors such as students, workers, and priests that went against the Chun regime and worked alongside the opposition bloc. With the negotiated transition engineered within the political system, South Korea was able to sustain continuity in political, social, and economic structures.

As the first civilian president in 32 years, President Kim Young-Sam was elected in 1993 and started his presidency with buoyancy from the nation’s high level of support. With strong public support and personal charisma, Kim pushed to restore legitimacy, and took some steps to

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201 Lee, "Democratic Transition and the Consolidation of Democracy in South Korea," *op. cit.* 110.
deepen democracy. He tackled problems of corruption, the establishment of civilian supremacy over the military as part of a firm military reform program, the implementation of a vibrant market economy, and the amendment of political inspired laws. His reforms were designed to consolidate democracy by eliminating the old remains of authoritarian legacies. However, as O’Donnell argues, the democratic transition process is always uncertain and complex, and the possibilities for authoritarian regression are numerous. Kim’s administration did not fully consolidate South Korean democracy. According to Lee, his reforms merely posed directions toward a democratic society and failed to produce positive outcomes in the long-term. Even though they were driven by Kim’s strong will, they were not implemented consistently. His reforms did not have the support of his political circle or reform groups, and he was criticized for the undemocratic decision-making process that was characteristic of his staff. The failure of Kim’s government was apparent in the decline of his popularity and poor economic conditions at the end of his tenure.

Kim’s focus was on building a moderate democratic system, in which he believed that democratic government could emerge through free and fair elections. The restoration of a democratic system was the essential goal after authoritarian rule. Yet, his understanding of democracy as a procedure was not enough to achieve the consolidation of democracy. Consolidation requires having members of the society playing on even field, especially confronting impunity of the society. Yet, under Kim, democratic consolidation was limited, as

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202 Soong-Hoom Kil, “Political Reforms of the Kim Young Sam,” Korea and World Affairs 17 (Fall 1993): 419.
203 Lee, op. cit.: 111.
205 Lee, op. cit.: 111.
evidenced by the fact that the only non-judicial truth commissions, not trials, were possible during that time.

**Almost but Not Quite: Trials and Truth Commissions of the 1990s**

During President Kim Young-Sam’s term, there were new calls for prosecuting the military leaders who had been instrumental in maintaining power and suppressing dissent during the Chun regime. Allocations of internal corruption and graft against Presidents Chun Doo-Hwan and Roh Tae-Woo were disclosed, and led to their 1997 trial and conviction, along with six other military leaders. The charges ranged from military insubordination, subversion of the constitutional order, and corruption. Seoul District Court issued Chun a death sentence and a fine of $132 million, and Roh was sentenced a 22 ½ year imprisonment and a fine of $158 million. Several months after the conviction, however, the appellate court commuted Chun’s sentence to life imprisonment and Roh’s sentence to seventeen years in prison. Then, in December 1997, President Kim Young-Sam, following President-elect Kim Dae-Jung’s advice, pardoned Chun, Rho, and other accomplices in the interest of national harmony and reconciliation. With trials clearly not possible, since then, truth commissions that are separate from the criminal justice system have been the instrument of choice for addressing the past.

After Kim Dae-Jung’s election in 1997, public pressure for truth and commissions to investigate past misconduct strengthened. Several new instrumental commissions were established. The Commission for Restoring Honor and Compensation for Victims of

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Democratization Movements was tasked with deciding whether applicants were involved with the democratization movement and to make recommendations regarding their treatment.\(^{211}\) It provided applicants with pardons for convictions and bestowed honorary diplomas.\(^{212}\) The Truth Commission on Suspicious Deaths was set up to investigate suspicious deaths that happened during the authoritarian era. It maintained nine commissioners appointed by the President, and it focused on deaths related to the democratization movement since August 7, 1969. The commission received 80 petitions alleging suspicious deaths, and it confirmed 19 of the cases in which they were a result of unlawful exercise of state power during the democratization movement.\(^{213}\) However, after much investigation and digging of the past, the prosecution of past wrongdoers never materialized. This was because the choices that were made at earlier critical junctures set Korea onto an impunity path. Powers of veto-players were protected and paths for resolving historical injustice were closed and as a result, democratization was delayed even after 1987.

**South Korea’s Truth and Reconciliation Commission**

Finally, in 2003, President Roh Moo-Hyun, known for his work on behalf of human rights during the 1980s, fully embraced the truth and reconciliation process. With wide support from the National Assembly, he established more commissions and continued support for the already existing ones. According to Wolman, the new commissions from this period are divided into three categories: 1) the commissions that dealt with issues stemming from the Japanese annexation and earlier; 2) the commission that dealt with human rights violations from the post-

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\(^{212}\) Wolman, op. cit. :37.

\(^{213}\) *Ibid.*
1945 era of authoritarianism; 3) the Truth and Reconciliation Commission of Korea, which was established as a larger and comprehensive commission that dealt with issues from both the Japanese colonial and authoritarian eras.\textsuperscript{214}

As a result of Roh’s commissions, however, the political sphere became polarized, and veto-players from the past were re-activated. Veto-players’ powers were once again protected and resisted accountability of their past. Many conservatives had direct or indirect connections to the authoritarian era and to collaborators from the Japanese colonial era. The Commission of Confiscation of Properties of Pro-Japanese Collaborators was established in December 2005 to identify and confiscate real property that was gained through pro-Japanese activities during the colonial era. The commission had seized 23.7 million dollars’ worth of property from 168 individuals who had either inherited the properties or purchased them.\textsuperscript{215} In terms of dealing with the authoritarian era, the Roh administration established a number of commissions within government agencies to reveal possible human rights abuses by the agencies during the authoritarian era. The Policy Committee investigated the police involvement in massacres, fraud elections, illegal surveillance and fabrication of evidence during the regimes.\textsuperscript{216} The Defense Ministry committee examined cases of forced conscription, military agent training, and a training camp for civilians.\textsuperscript{217} However, while property might have been confiscated and investigations delving into human rights abuses during the authoritarian era were carried out, not a single person was prosecuted under the rule of law. This lack of legal justice is a proof of how veto-players were able to exercise their power and stand protected by their institutionalized impunity.

\begin{footnotes}
\item \textsuperscript{214} \textit{Ibid.}, p. 40, 41.
\item \textsuperscript{216} Wolman, \textit{op. cit}: 43.
\item \textsuperscript{217} \textit{Ibid.}, p. 45.
\end{footnotes}
On July 31, 2005, in accordance to the Framework Act on Clearing up Past Incidents for Truth and Reconciliation, the Truth and Reconciliation Commission of Korea (TRCK) was established. The law was mainly drafted and introduced by National Assembly members of Roh Moo-Hyun’s Uri Party.\textsuperscript{218} Conservatives from the opposition Hannara Party had argued against the commission, claiming that it will lose its objectivity and reflect political grudges in its investigation. However, because of the Uri Party’s dominance in the Assembly at that time, members of Uri Party went ahead and passed the bill. The TRCK was created with a stated purpose to “foster national legitimacy and reconcile the past for the sake of national unity by honoring those who participated in the anti-Japanese movements and investigating incidents regarding human rights abuses, violence, and massacres occurring from the period of Japanese rule to the present time; specifically during the nation's authoritarian regimes.”\textsuperscript{219}

The TRCK was an investigatory body that responded to petitions submitted by the general public. Investigations included site visits, archival research, and questioning of pertinent authorities. It maintained fifteen Commissioners, including four Standing Commissioners, who were appointed as public officers.\textsuperscript{220} Commissioners served for a two-year term, with the possibility of reappointment for a second term. The President appointed eight, four were nominated by the President, and three were nominated by the Chief Justice of the Supreme Court.\textsuperscript{221} Most Commissioners have been lawyers, while a good number of others were historians, religious leaders, and civil rights leaders.

\textsuperscript{220} Ibid.
Despite these impressive-sounding structures, the Commission maintained relatively weak powers to enforce cooperation. It was able to subpoena documents and evidence to be turned over from state authorities, but they were often denied when officials claimed that the evidence carried sensitive national security details.\textsuperscript{222} By July 31, 2010, its investigations came to a close, and it issued its final report on December 31, 2010. It investigated 11,175 claims submitted by the public; of those, 8,468 claims were verified, 1,725 claims were dismissed, and 510 claims were unverified.\textsuperscript{223} The TRCK put special focus on human rights abuse during the authoritarian regimes. It examined cases relating to illegal or unfair exercise of state power, serious infringements of human rights such as death, serious injury or disappearance and instances of unjust court verdicts often regarding violation of the National Security Law.\textsuperscript{224}

Although critics claimed that the commission found nothing new, it also shed light on how the U.S. forces committed human rights abuses during the Korean War.\textsuperscript{225} Fundamentally, the commission issued recommendations to both governmental officials and organizations. In cases involving past massacres, recommendations focused on providing state apologies, revising family registries, instituting memorial events, revising historical records, peace and human rights education, law revisions, and medical subsidies for the wounded.\textsuperscript{226} In human rights abuse cases, it recommended retrials, state apologies, deletion of records, and the provision of compensation and medical services for victims and bereaved families.\textsuperscript{227} It also has recommended the

\begin{footnotesize}
\textsuperscript{224} Wolman op cit.: 47.
\textsuperscript{227} Ibid.
\end{footnotesize}
government to pass a law awarding compensation to victims. The commission offered recognition to victims of the past and apologies by the state agencies, and even President Roh officially apologized for the State’s role in the Ulsan Bodo League in the 1950s when the State violently suppressed suspicious leftists in Ulsan, resulting in the death toll of 100,000 to 200,000.228

When the conservative Lee Myung-Bak administration (2008-2013) gained control, however, his administration failed to continue the on-going efforts of rectifying the past and minimally, procedurally carried out investigations of human rights abuse. The Lee administration did not issue any official apologies.229 While he chose not to renew the mandates of the TRCK and did not issue an official English-language report by the end of its closure, he initiated a new commission to address forced emigration during Japanese rule.230

Any Justice by the TRCK?

In the theory chapter of the thesis, I argued that legal justice, using the rule of law with due process for both prosecution and defense, is the best form of justice. The TRCK, due to insufficient authority, lack of cooperation from other governmental organizations and lack of time, was not able to reveal the truth to the fullest and enforce strongly on its recommendations. It failed to impose adequate legal justice on those who benefitted from impunity and human rights abuse, and ultimately it failed to provide adequate legal justice to the Korean society. In the cases that the TRCK revealed and investigated, from the Japanese colonialism era to today’s human rights abuse, the commission was only able to provide governmental recommendations,

228 Ibid.
230 Wolman, op. cit.,: 49.
which were not enforced by the law. Namely, it gave recommendations to public authorities, such as the Ministry of National Defense or the National Intelligence Service, that they give formal apologies to victims and to the court for retrials.231

Most notably, the generals and soldiers who were part of massacres and tragic killings were not brought to justice. In the case of Cheongwon Bodo League Massacre, when, in the wake of the Korean War, South Korean Police and the Counter Intelligence Corps massacred 232 civilians who were suspected as leftists, the commission exhumed 332 remains, 235 bullets, and 300 other victim-related articles in Cheongwon County.232 However, the government only offered an official apology, provided peace and human rights education for soldiers, police, and civil servants who were involved with the killing, supported memorial services for the victims, and built permanent facilities to preserve the victims’ exhumed remains. This trend of “government apology” is carried out in almost all of the cases that the commission investigated, while no individual or entity is indicted on any charges. Accordingly, while the commission tried to reconcile the past by recognizing the victims, identifying the perpetrators and offering government apologies, it failed to fully set a precedent that anyone involved in past impunity will be brought to justice and human rights abuse will not be tolerated. Only by legal prosecution can victims be fully recognized and defendants face the consequences of their actions. As legal scholar Diane Orentlicher writes, “Prosecution is the most effective insurance against future repression.”233 Trials in the criminal justice system do more than non-judicial commissions to break down impunity. In the case of the TRCK, justice was minimally realized within procedural and symbolic channels but impunity remained virtually untouched.

232 Ibid.
The Impunity Path and the Consolidation of Democracy

There is an ongoing controversy among scholars of comparative politics and democratization about what democratic consolidation entails. Generally, there is a divide between those favoring a minimalist definition\textsuperscript{234}, which is backed by O'Donnell, Dahl, Stepan & Skach; and maximalist definition\textsuperscript{235} advanced by Gould, Chang, Dryzek, Kowert & Legro.\textsuperscript{236} This thesis, while favoring a maximalist definition, focuses specifically on the political elements of a broader definition of the consolidation of democracy that emphasizes “guarantees of civil rights, democratic accountability, civilian control over the military, democratic and constitutional checks on executive authority, and punishment of occupational and human rights abuses.”\textsuperscript{237} At the same time, my definition also includes punishment of past human rights abuses in a context of truth and reconciliation within the process of democratic consolidation.

I would also argue further that adherence to human rights and legal justice promotes democratic quality.\textsuperscript{238} By rectifying abuses of the past, it establishes a culture of accountability and respect for human rights, which are also core democratic values.\textsuperscript{239} In order for a transitional country to be democratically consolidated, its historical injustice must be amended and resolved. The table below explains ways in which it reinforces democratic consolidation.\textsuperscript{240}

\textsuperscript{234} A “minimalist” conception emphasizes procedural or formal democracy. Procedural democracy is evident when a new democratic regime elects political leaders through a free and fair election and maintains vibrant party competition, yet its citizens and the civil society fail to influence the policies of the country.

\textsuperscript{235} A “maximalist” conception focuses on the outcomes of politics such as social justice, economic equality, or establishing political institutions. Scholars of maximalist conception argue that both political and socioeconomic equality is needed for a country’s democracy to be consolidated.


\textsuperscript{239} Ibid.

\textsuperscript{240} This table was derived from James Gibson’s The Contributions of Truth to Reconciliation: Lessons From South Africa. James Gibson, "The Contributions of Truth to Reconciliation: Lessons From South Africa." \textit{Journal of Conflict Resolution} 50, no. 3 (June 01, 2006): 415.
Table 1.

<table>
<thead>
<tr>
<th>Component of Reconciliation</th>
<th>Mechanism for Mitigating Intergroup Conflict and Enhancing Democratic Consolidation</th>
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<tr>
<td>Reduction of political intolerance</td>
<td>Expansion of individual freedom and an unrestricted marketplace of ideas</td>
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<tr>
<td>Reduction of intergroup prejudice</td>
<td>Increased intergroup trust and cooperation</td>
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<tr>
<td>Support for a human rights culture</td>
<td>Increased constraints on the ability of authorities to suspend/manipulate the rule of law</td>
</tr>
<tr>
<td>Institutional legitimacy</td>
<td>Expanded capacity of institutions to make unpopular but necessary decisions; increased acquiescence</td>
</tr>
<tr>
<td>Collective memory</td>
<td>Redirecting political debate from the past to the future</td>
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Briefly, political tolerance supports extension of the rights of political competition. Prevention of intergroup prejudice suspends group stereotypes and promotes intergroup trust and cooperation. The support for human rights culture allows legitimacy for governmental officials to use the rule of law with authority and make binding decisions. Lastly, by building and certifying a collective memory of the past, truth and reconciliation can free the society from obsession of past injustice and redirect political debate to contemporary issues.

In the case of Korea, while there is general acceptance that it has achieved a successful democratic *transition*, scholars are skeptical about Korea’s *consolidation* of democracy. 241 Indeed, I will now identify four variables to investigate how Korea has not reached the stage of consolidated democracy: individual rights and freedom of expression, checks and balance on the executive power, transparency and accountability in its political institutions, and promoting truth and reconciliation in the Korean society at large.

The first area that is problematic is the lack of individual rights and freedom of expression. By early 2000, the oversight of the National Intelligence Service, which was a major state apparatus of surveillance and investigation of opposition parties during the authoritarian regimes, was reduced and kept out of domestic politics.\textsuperscript{242} Yet, there is still concern expressed by the Amnesty International reports that Korea maintains the National Security Law that allows arbitrary restriction of political rights such as freedom of expression and association.\textsuperscript{243} Provisions of the National Security Law have been used to restrict the propagation of ideas that authorities consider Communist or pro-North Korean. Given its situation vis-à-vis the North, these restrictions are not surprising; however, they may hinder the ways in which citizens practice their constitutional rights. In recent years, several journalists have been prosecuted under criminal libel laws for critical or aggressive reporting.\textsuperscript{244} Two of the three major television networks, KBS and MBC, are owned by the government, which appoints presidents to these networks. The neutrality and independence of the media is still controversial.\textsuperscript{245}

Another area is the difficulty in checks and balance on executive power. It is evident in the recurring scandals involving big business groups and elected high-ranking officials. Korean presidents under the authoritarian and democratic regimes were imprisoned and indicted on charges of accepting bribes and kickbacks from large conglomerates in sums up to as high as U.S. $900 million.\textsuperscript{246} In May of 2009, President Roh Moo-Hyun, the human rights champion who greatly expanded the role of the TRCK, was not immune from the widespread corruption scandals, and committed suicide. He had acknowledged that a businessman who supported him


\textsuperscript{244} Shin and Chu, *op. cit.*: 18.

\textsuperscript{245} *Ibid.*

had given more than $6 million to his wife and son and his brother’s son-in-law while he was in office.\(^{247}\) Roh, who publicly berated the powers of Chun Doo-Hwan and Roh Tae-Woo in the 80’s and the 90’s, followed the footsteps of his predecessors— every former South Korean president since the 1980s has faced corruption accusations or gone to prison on such charges after his term was over.\(^{248}\) Also, President Kim Dae-Jung was embroiled in a scandal when he transferred $100 million through a government-supplied loan to North Korea before his landmark summit meeting in North Korea.\(^{249}\) The widespread corruption is linked to the culture of breaking rules and ignoring the legal procedures among presidents. This impunity has located Korea onto a pathway where veto-players resisted accountability and consolidated their power. Shin and Chu argue that “in Korea, under the emperor-like presidential system,” the decision making procedure for governmental policy has been ignored frequently in the past.\(^{250}\) Just as the Kim Dae-Jung administration illegally funneled a large sum of taxpayer money to North Korea, presidents have often resorted to illegal methods to achieve their policy goals, especially in the area of national security.

Third area is the **dearth of transparency and accountability in its political institutions**. Korea has endeavored to promote the expansion of information about governing procedures to the public. Reforms such as passing of the laws of Civil Servants Ethics in 1993, the Information Disclosure Act in 1997, and the public confirmation hearings of high-ranking civil servants since 2000 have improved democratic accountability in Korea.\(^{251}\) Nonetheless, Shin and Chu argue that as political scandals involving bribes and kickbacks reveal, the information provided to the

\(^{248}\) Ibid.
\(^{250}\) Shin and Chu, *op. cit.*: 31.
\(^{251}\) Ibid., p. 34.
public is still limited and the process of policy-making still remains a murky area for citizens.\textsuperscript{252} Hwang also adds that the legacy of the authoritarian regime leads to secret patterns within the policy-making process.\textsuperscript{253} Many high-ranking civil servants are appointed as a reward for their contribution to the political success of presidential elections, instead of the competitiveness of candidates.\textsuperscript{254} The lack of a roll-call voting system and the small number of standing committees exacerbate democratic accountability problems.\textsuperscript{255} In 2003, the Korean EAB survey asked a group of questions to Korean citizens.\textsuperscript{256} When asked about the cover-up of illegal and corrupt practices, a majority (total 54\%) replied that the government does so “always” (12\%) or “very often” (42\%). Another considerable portion (43\%) said “sometimes” and a negligible minority (4\%) said “rarely.” When asked about the openness of governmental agencies to the public, only about one-third of Koreans perceived the extent of openness as “a lot” (2\%) or “somewhat” (30\%). More than two-thirds, on the other hand, said that government agencies were not much open to the public (60\%) or not open to it at all (8\%). This number contributes to the general public sentiment in Korean society that elected officials seek to avoid accountability to the electorate.

Lastly, the lack of truth and reconciliation process in the Korean society remains an obstacle to its democratic culture. As has been mentioned earlier, upon the establishment of the

\textsuperscript{252} Ibid.
\textsuperscript{255} Shin and Chu, \textit{op. cit.}: 34.
\textsuperscript{256} East Asia Barometer’s survey was first conducted in Korea during February 2003. Face-to-face surveys were conducted by trained interviewers and based on a stratified probability sample in accordance with the probability proportional size principle. Ordinary Korean citizens were asked about their views about the overall democratic quality of its current regimes. For more information on the survey, visit www.eastasiabarometer.org. The results can be found in Shin Doh Chull and Chu Yun-han, \textit{The Quality of Democracy in South Korea and Taiwan: Subjective Assessment from the Perspective of Ordinary Citizens}. Report. Taipei: Asian Barometer Project Office, 2004: 35.
TRCK, it received 10,860 petitioned cases and 9,154 (84.2%) were chosen for investigation.257 Governmental recommendations were made to resolve past conflicts and create an environment for greater solidarity in the future. Accordingly, no trials were held. However, the commission’s non-judicial nature did not adequately promote justice in the Korean society. The lack of legal justice failed to put a check on veto-player’s power and undermined citizens’ trust in the government.

The TRCK came to a close as its mandate expired in 2010. Dong-Choon Kim, one of the scholars that helped investigate cases of the TRCK, argued that “there are many more that we must study and research” even after the TRCK disbanded.258 In an interview with Radio Netherlands Worldwide, he emphasized that the legacy of suffering lives on among the families of victims, adding “they still have some economic and psychological difficulties. Some communities were totally devastated.”259 He concluded that one of the reasons why the TRCK was not extended was because “the current conservative regime doesn’t want to make this kind of incident known to the Korean people and to other people.” The TRCK’s request for documents and evidence was hampered by the lack of cooperation by the National Intelligence Service and other governmental agencies.260 There are still sites that must be exhumed and investigated, and massacre accounts that must be heard and told. Today, there are still untold truth and unresolved reconciliation that is deeply rooted in the Korean Society, and they will hinder the political institutions from moving forward in focusing on contemporary issues and the

future. Until this task is embraced by all political parties and completed, Korean society will be far from the level of consolidation of democracy.

**Today**

As Park Geun-Hye, the daughter of dictator Park Chung-Hee, currently holds the presidency, there has been a limited role in addressing past injustices. During her campaign, Park stressed the idea of unity and reconciliation between past adversaries and visited the graves of important democracy advocates. While Park has discussed forming a commission to deal with reconciliation issues, especially the ones that took place during her father’s dictatorship, she still has not announced any concrete plans for investigation or mandates for such a body. In recent times, her administration has focused more on addressing human rights abuses in North Korea. There may be the resurgence of old military-based veto-players, such as actors in the national security apparatus, as the conservative Park administration takes a hard line on the relationship with the North.

As a result, various civil society organizations have taken the lead in seeking historical justice. The recently-formed Forum on Truth and Justice has attempted to take over the work of the TRCK. The organization has published lists of individuals who collaborated with the Japanese imperial regime. It recently issued its first list of 3,096 collaborators in 2005, which included Park Chung-Hee and other prominent political figures. Still, the division between the

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conservatives and liberals will remain over the truth and reconciliation issues. While the conservatives try to progress from the past and focus on human rights abuses by North Korea, the liberals will seek the past and address past injustices by setting up commissions. The TRCK has played a prominent role in initiating the process of addressing Korea’s past, and given that trials are, at this point, impossible, it must be renewed to serve as an institutional channeling in dealing with the after effects of a particularly turbulent twentieth century.

Conclusion

Even after Chun’s authoritarian regime came to an end in 1987 with the June Declaration, a landmark success that was the result of Korean civil society’s well-organized protest, the remnants of impunity and powers of veto-players were still deeply entrenched in Korean society. Efforts to rectify historical injustice through organized investigative entities such as the TRCK failed to bring legal justice to both defendants and victims of the past. Oftentimes, the effort to bring justice was attacked by the conservatives and veto-players who tried to resist accountability. This reflects the impunity path that Korea has taken on since independence and is still following to the present day. Justice was thwarted and democracy was delayed. Only trials in the justice system can eliminate remains of impunity and set a precedent that no one is above the law. As a result, the culture of impunity is still present in Korean society. That is why, despite the shortcomings of the model, the work of the TRCK, with the help of civil society organizations, must be resumed to deal with the past and to fully consolidate Korea’s road to democracy.

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264 The divide between the liberal Democratic United Party and the conservative Saenuri Party reflects the disjuncture between progressives and the conservatives, populist and political elites, and Honam, southwest region of South Korea that supports the left and Yeongnam, southeast region that supports the right.
CONCLUSION

In this thesis, I have argued that South Korea’s democratic development has been hindered by veto-players’ institutionalization of impunity that prevented a truth and reconciliation process centered on prosecuting past regime crimes at certain moments of South Korean history. I supported this standpoint by carrying out two case studies on two “critical junctures” in Korean history—Chapter 2, the period from Korea’s independence after the World War II to the Rhee regime’s collapse (265) and Chapter 3, the window of time from October 1979 to May 1980 (266). In each of the eras, the institution of impunity became entrenched in Korean society and, over time, decayed democratic culture and delayed democratization. They were special moments that opened doors to rectify historical injustice and possibly, move forward with democratization. Nonetheless, the openings for new, democratic change were aborted by veto-players, and the institution of impunity located Korea onto a path where a dictatorial legacy still prevailed and veto-players consolidated their power. The path-dependent effects of remaining on the impunity path after 1980, along with how it set Korea up for a pacted transition without historical justice and how recent initiatives such as the Truth and Reconciliation Commission of Korea have been limited due to the still-entrenched veto-players and their resistance to impunity, are further discussed in Chapter 4.

This thesis also focused on ways in which the absence of legal justice as part of a truth and reconciliation process affects a nation’s consolidation of democracy. Often, it de-legitimates the current political regime and distracts the nation from focusing on contemporary and future issues of the nation. As shown in Chapter 4, under democracy citizens expect the government to be open and transparent, and thus the process of truth and reconciliation – even one without prosecutions – can help. But prosecuting individuals, showing that nobody is above the law, is

265 From Korea’s independence after the World War II to the Rhee regime’s collapse.
266 From the assassination of Park to the Chun regime’s start.
the crucial way for political institutions to be held accountable and resolve past wrongdoings that come into attention time and again. Therefore, I have argued that a nation’s democracy cannot be fully consolidated unless its past problems and abuses are amended. Evidently, this is still the case in South Korea. There are still unresolved cases and hidden historical accounts of past injustice co-existing at the center of post-authoritarian Korean society. Yet, as seen in the case of the expiration of the Truth and Reconciliation Commission of Korea, the efforts to confront past problems have been thwarted and failed to be renewed by the recent administrations.

On the other hand, South Korea’s developments in *procedural* democracy since the transition have been substantial: a democratic constitution, free and fair elections, multiple political parties, civil liberties, solid civilian control of the military, nonviolent horizontal power transfers between opposition parties, and increased checks and balance among state institutions.\(^{267}\) Moreover, South Korea elected Park Geun-Hye, the daughter of former dictator Park Chung-Hee, as its sixth democratic president. However, even in recent years, the country’s democratic procedures seem to be deceptive and reveal structural difficulties. During the Lee Myung-Bak administration (2008-2013), Lee carried out violent measures against antigovernment protesters and demonstrators; attempted to curtail and suppress freedom of expression and assembly in the name of uprooting politically motivated rumors; and made unilateral policies focused on infrastructure construction that bypassed the National Assembly.\(^{268}\)

In November 2013, high-ranking officers of the Defense Ministry, including chief of the National Intelligence Service, have been prosecuted and sentenced on charges of posting thousands of anti-North Korean political message on blogs and spreading 1.2 million Twitter


messages praising current President Park Geun-Hye ahead of the election. These officials praised government policies while attacking Ms. Park’s opposition as untrustworthy, pro-North Korean sympathizers. In the weeks following the indictment, Catholic, Protestant, Buddhist and other religious groups have issued statements demanding that Ms. Park resign on the grounds that she may have benefitted from illegal means to election, while Park dismissed the demands.

Though it is early in her term, this scandal resurfaces the notion that every former South Korean president since the 1980s has faced corruption accusations or gone to prison on charges after the term was over. Park’s predecessor, Lee Myung-Bak, who is from the same political party as Park, apologized publicly for scandals involving his brother Lee Sang-Deuk and Lee’s close aides receiving a series of bribes from Samsung. Presidents before Lee’s administration—Roh Moo-Hyun, Kim Dae-Jung, Kim Young-Sam, Roh Tae-Woo—have all been indicted and accused of bribery scandals. In the end, Park Geun-Hye, with her party’s troubles, may not be immune from recurring tales of scandals. The recent corruption cases confirm that veto-players’ impunity, both undisclosed and made public, always resides in any given era and gets in the way of consolidating democracy.

Thus, the on-going nature of scandals and corruption in current Korean politics calls into question its prospects for democracy. The culture of injustice and impunity has taken over South Korea since its independence in the 1940’s and has limited the nation from making citizen-centered choices and free and fair structural changes, and thus, it must be dealt with at all costs. One viable solution to mitigate this problem may be through activism and institutional checks by

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Korea’s vibrant civil society. Starting from early 2000, Korea’s civil society has gained much support and traction by the Korean government. Kim Dae-Jung and Roh Moo-Hyun built what is known as “participatory government” that increased financial backing for civic groups and encouraged direct civil society participation in the policy-making process.²⁷² Also, more recently, the online “netizen” community has garnered considerable power as an informal force for political and social change.²⁷³

In particular, the role of civil society to counter government corruption has expanded in terms of size and quality. In 1989, The Citizens’ Coalition for Economic Justice (CCEJ) was founded and helped establish the Real Name Financial Transactions System that requires all financial transactions to be conducted in real, legal names.²⁷⁴ This policy was initiated to forbid any third party members from protecting the confidentiality of illegal transactions in order to evade taxes.²⁷⁵ People’s Solidarity for Participatory Democracy (PSPD) was founded in 1994 and developed a movement for business conglomerate (Chaebol) reform, political reform, and eradication of injustice and corruption.²⁷⁶ Notably in early 2000, citizen groups rallied together for “Anti-corruption movement with people’s participation” and inaugurated a highly-respected entity called Transparency International Korea.²⁷⁷ Likewise, civic groups have not only drafted various policies as alternatives to resolve corruption problems in the Korean society, but they have also acted as major players in enacting anti-corruption legislation, such as the Anti-Corruption Act and the Money Laundering Prevention Act both in 2001. Civil society groups are

²⁷³ Ibid.
²⁷⁶ Lee, op. cit.
²⁷⁷ Ibid.
now requesting more measures to prevent corruption through a residents’ summons system, in which residents of a province may summon the head of the local government for a public hearing; enactment of Information Disclosure Act; reinforced protection for whistleblowers; a more transparent personnel system in the government; and the expanded scope of administrative disclosure.\textsuperscript{278}

Civil society has become a major force in Korea, and has been relatively successful at protecting itself from manipulation by the state.\textsuperscript{279} The clash between vibrant civil society as well as social movement and the culture of corruption within the state suggests that we may be approaching a contemporary “critical juncture” for South Korea. Just as Korean civil society and social movements played crucial roles in pressuring the authoritarian government to exit, to expedite the process of political transition, and to buttress a fragile democracy during the transition, it must continue to hold the government accountable to its citizens and ultimately, help consolidate its democracy.\textsuperscript{280} According to Kim, social movements in Korea are constantly evolving, and coalitions of different movement groups are becoming easier to form.\textsuperscript{281} They also coordinate and cooperate with political parties. Thus, further study on Korea’s democracy could be focused on the current state of social movement in Korea and how it could be used as a vehicle to bring about a judicial reform or political reconciliation to the Korean society. Also, investigating further on how the work of TRCK has been carried out by civic groups such as Truth and Justice Forum\textsuperscript{282} will also shed light on how the pursuit of truth and reconciliation is a continuing effort in Korean society, and significant role that civil society takes on in those efforts.

\textsuperscript{278} Ibid.
\textsuperscript{279} Sukhyun Kim, "Contentious Democracy in South Korea: An Active Civil Society and Ineffectual Political Parties," \textit{Taiwan Journal of Democracy} 8.2 (2012): 58.
\textsuperscript{280} Ibid., p. 56.
\textsuperscript{281} Ibid., p. 59.
\textsuperscript{282} For more information on this group, please visit www.ktruth.org [Forum: Truth and Reconciliation]
Division within Korean society between those who benefit from impunity and those whose rights are damaged by it must be bridged in order to fully consolidate its democracy. South Korea is at the threshold of democratic consolidation, yet there is still a disjuncture between the progressives and the conservatives, populist and political elites, and Honam and Yeongnam. This state of disjuncture is a fragmented feature of today’s Korean politics. At the heart of this disjuncture is historical injustice—two opposing forces clashing against prosecution of pro-Japanese collaborators, ideological clash amongst political forces that ended in failure to hold authoritarian regimes accountable, and most importantly, veto-players’ institutionalization of impunity that set back the nation from moving forward with what people wished for: democracy. What Korea needs today is healing and reconciliation from the past, but most of all it needs the rule of law and an end to impunity. Only by confronting impunity, urging reconciliation between existing political institutions, and constructing a truly democratic identity, can Korea finally take off and achieve a legitimate, substantial, consolidated democracy that transcends its contested and painful past.

283 This reflects South Korean politics’ regionalism. The southwest region of South Korea, also known as Honam, generally supports left-leaning politics, while the southeast, Yeongnam, supports right-leaning politics.
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