Transitional Justice in South Korea:  
One Country’s Restless Search for Truth and Reconciliation

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Abstract

A recent Korean film, “National Security”, about a democracy activist and former Korean politician, Kim Geun-Tae, who was kidnapped and tortured into making a false confession by police in 1985, has renewed debate among South Koreans about the state of transitional justice in the country. From 1995 to 2010, South Korea took a number of steps to expose the political oppressions and human rights abuses of its past authoritarian governments and to assist individuals involved in the struggle for democracy to clear their names and restore their reputations. This article analyzes the relative success and failure of South Korea’s truth seeking process and the prospect for the realization of transitional justice in the country in the future.

I. INTRODUCTION ................................................................................................... 140
II. OVERVIEW OF MODERN KOREAN HISTORY .............. 141
   A. First Republic (1953 – 1960) ................................................................. 142
   B. Second Republic (1960 - 1961) ......................................................... 143
   C. Military Rule (1961 – 1962) ................................................................. 144
   D. Third Republic (1963 – 1972) ............................................................... 144
   E. Fourth Republic (1972 – 1979) ............................................................ 146
   F. Fifth Republic (1979 - 1987) ................................................................. 146
G. Sixth Republic (1987 - 1992) ........................................ 147
III. THE ROLE OF TRANSITIONAL JUSTICE IN SOUTH KOREA ................................................................. 148
   A. Special Act Regarding May 18 Democratization Movement (1995) ................................................................. 148
   B. Presidential Truth Commission on Suspicious Deaths (2001) 151
      i. Whether Individuals Involved in Counter-Violence Should Be Acknowledged as Democracy Movement Involvers 155
   D. The Basic Act for Coping with Past History for Truth and Reconciliation (2005) ...................................................... 156
IV. DEVELOPMENTS FROM 2005 TO THE PRESENT ........... 160
V. CONCLUSION ................................................................. 162

Better to light one small candle than to curse the darkness.  
-Chinese Proverb¹

A recent Korean film, “National Security” (Namyoung-dong 1985 in Korean), is based on the memoir by Kim Geun-Tae, a democracy activist and former Korean politician, who was kidnapped and tortured into making a false confession by police in 1985 during the Chun Doo-Hwan regime.² The release of this film renewed debate among South Koreans about the state of transitional justice in the country. Despite

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† All English translations of Korean-language materials referenced in this article are by the author unless otherwise noted.

¹ Author unknown.
claims by those opposed to investigating past crimes such as current President Park Geun-Hye (the daughter of former South Korean dictator Park Chun-Hee), who has referred to South Korea’s truth seeking process as a “worthless scam”, this article will show that many unresolved cases remain.

I. INTRODUCTION

Torture, forced disappearances, extra-judicial killings and mass executions occurred with disturbing regularity in Korea from the end of World War II until the election of Kim Young-Sam in 1993. Some estimate that as many as 100,000 people were executed by governmental authorities. Further, many South Koreans have been fighting to clear their names of political subversion charges from the military regimes of the 1960s and 1980s. With the election of President Park, South Korea has, in all likelihood, closed the book on its attempts at transitional justice. From 1995 to 2010, however, South Korea took a number of steps to expose the political oppressions and human rights abuses of its past authoritarian governments and to assist individuals involved in the struggle for democracy in order to clear their names and restore their reputations. In 2010, when the Truth and Reconciliation Commission was shut down, Commission President Lee Young-Jo stated: “Even if we

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3 See Son Byung-Kwan, Addressed and Concluded by Law? Park Geun-Hye Should Apologise, OHMYNEWS NEWS AGENCY (Jan. 23, 2007) (translated from Korean by Jeong-Min Lee), http://www.ohmynews.com/NWS_Web/View/at_pg.aspx?CNTN_CD=A0000387883 (noting that on August 29, 2004 at a dinner party, Park Geun-Hye was requested to comment on her father’s rule of South Korea, she stated that these issues have “already been addressed and concluded by law. If these issues were to be readdressed, it should be done after thorough legal examination, and shouldn’t condemn politicians”).

4 See Choe Sang-Hun, In Seoul’s Red Scare, Redemption is Elusive For Accused Spies, An Agonizing Wait For Justice in a Still Divided Country, INTERNATIONAL HERALD TRIBUNE, Mar. 10, 2007 (describing the agony suffered by the Venerable Bong-Wang, a Buddhist monk who was tortured with electric shocks until he signed a confession that he was a communist spy and how in 1998, after 15 years in prison, he was released only to find his family had deserted him out of fear of being associated with a confessed communist).


6 Choe, supra note 4.
investigated more, there's not much more to be revealed.”

This article analyzes the veracity of Mr. Lee’s statements within the context of the various attempts that South Korea has made in dealing with the human rights abuses of the regimes that ruled Korea since the end of the Korean War.

Part I of this paper provides a brief overview of modern history of Korea, including a description of the authoritative regimes that controlled South Korea from 1960 until 1993. Part II describes the various attempts by South Korea to address crimes committed by its former authoritative regimes and to restore the honor of those accused of crimes under those regime. Part III will discuss the degree to which South Korea’s attempts at transitional justice have been realized.

This paper concludes with analysis of the relative success and failure of South Korea’s truth seeking process and the prospect for the realization of transitional justice in the country in the future.

II. OVERVIEW OF MODERN KOREAN HISTORY

Korea’s modern history begins with Japan’s defeat in World War II. In 1945, the United Nations divided Korea at the 38th Parallel in accordance with an agreement wherein the Soviet Union would administer the north and the United States the south. When the Soviets and the United States could not agree on the implementation of joint trusteeship

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8 See INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, http://www.ictj.org/en/tj/ (The International Center for Transitional Justice provides that transitional justice "refers to a range of approaches that societies undertake to reckon with legacies of widespread or systematic human rights abuse as they move from a period of violent conflict or oppression towards peace, democracy, the rule of law, and respect for individual and collective rights"). Other commentators have stated that key elements of transitional justice are truth telling and accountability. See, e.g., Geoff Gentilucci, Truth-Telling and Accountability in Democratizing Nations: The Cases Against Chile’s Augusta Pinochet and South Korea’s Chun Doo-Hwan and Roh Tae-Woo, 5 CONN. PUB. INT. L.J. 80 (2005), available at http://cpilj.files.wordpress.com/2013/09/5_conn-pub-int-l-j-79.pdf.

9 See Bruce Cumings, KOREA: A PLACE IN THE SUN (W.W. Norton, 2th ed. 2005); see also KOREAN HISTORY PROJECT, http://www.koreanhistoryproject.org/Jta/Kr/KrGOV0.htm.
for the entire country, separate governments were established in 1948, with each claiming to be the legitimate government of all Korea.\footnote{Id.}

A. First Republic (1953 – 1960)

On August 15, 1948 the Republic of Korea (South Korea) was formally established and with the backing of the United States, Syng-Man Rhee was elected as the Republic’s first president.\footnote{Lee Ki-Baik, A NEW HISTORY OF KOREA (1990).} Rhee immediately began instituting a variety of reforms, including land reform, wherein the government confiscated and redistributed all land formerly held by the Japanese colonial government, Japanese companies, and individual Japanese colonists.\footnote{Id.} The Rhee government also followed a policy of brutal repression of leftist activity and instituted harsh reprisals against any and all threats by groups with perceived leftist leanings such as labor unions and university student groups.\footnote{See id. (Government perception that labor unions and university student groups were sympathetic to North Korea and thus a threat to the rulers in the south continued through the 1980s); see also James F. Person, New East German and Soviet Evidence on North Korean Support to South Korean Political Parties and Labor Unions, WILSON CENTER, http://www.wilsoncenter.org/publication/new-east-german-and-soviet-evidence-north-korean-support-to-south-korean-political (discussing newly translated German and Russian documents from 1960 which indicate that North Korea provided political and material support to South Korean political parties, labor unions, and student groups) (last visited May 7, 2014).} Because the United States saw Rhee as ballast against the communist north, South Korea was the beneficiary of vast sums of American aid. In fact, in some years American aid to the south totaled the entire size of South Korea’s national budget.\footnote{Cumings, supra note 9, 255, 306.}

On June 25, 1950, North Korean forces invaded South Korea. Led by the United States, a 16-member coalition undertook the first collective military action under the United Nations Command. Constantly changing battle lines inflicted high civilian casualties and wrought near total destruction on the entire peninsula. With China’s entry on behalf of North Korea in 1951, fighting came to a stalemate close to the original line of demarcation. Armistice negotiations, initiated in July 1951, finally
concluded on July 27, 1953 at Panmunjom, now in the Demilitarized Zone (DMZ).\textsuperscript{15}

Throughout his rule, Rhee went to great lengths to ensure that he would stay in power. Rhee pushed through constitutional amendments that made the presidency a directly elected position and promulgated an amendment, which exempted him from the constitutionally mandated eight-year term limit.\textsuperscript{16} However, in 1960, violent repressions of student demonstrations on the day of the presidential election touched off massive protesting and Rhee resigned amid widespread social strife.\textsuperscript{17}

\textbf{B. Second Republic (1960 - 1961)}

After the student revolution, power was briefly held by an interim administration until a new parliamentary election was held on July 29, 1960.\textsuperscript{18} The Democratic Party, which had been in opposition during the First Republic, gained power and established the Second Republic, which adopted a parliamentary system where the President took only a nominal role.\textsuperscript{19}

During the Second Republic there was a proliferation of political activity, which had been repressed under the Rhee regime.\textsuperscript{20} Much of this activity was from leftist and student groups, which had been instrumental

\textsuperscript{15} One sticking point to peace was the size of the flags at the negotiating table. Giving new meaning to the phrase “Napoleon complex”, each day when the opposing sides met, their accompanying flags were larger than the previous day. This gamesmanship continued until the flagpoles would no longer fit in the barracks where the negotiations were taking place. The issue was finally settled when both sides agreed to place their respective flagpoles outside the barracks. (An American soldier told me this anecdote during a visit to the DMZ in 1997).

\textit{See also} Brandon K. Gaulthier, \textit{What was It Like to Negotiate with North Koreans 60 Years Ago}, THE ATLANTIC (JULY 26, 2013), http://www.theatlantic.com/international/archive/2013/07/what-it-was-like-to-negotiate-with-north-koreans-60-years-ago/278130/ (discussing other North Korean tactics such as shortening the legs of his chairs to make its generals seem taller and noting that when a United Nations flag was on the conference table, a bigger North Korean flag appeared alongside it after a break in the negotiations).


\textsuperscript{17} \textit{Id.}


\textsuperscript{19} \textit{Id.}

\textsuperscript{20} \textit{Id.}
in the overthrow of the First Republic.\textsuperscript{21} Union membership and political activity grew rapidly during the later months of 1960.\textsuperscript{22}

Under pressure from the left, the government carried out a series of purges of military and police officials who had been involved in anti-democratic activities or corruption.\textsuperscript{23} The government passed a Special Law to this effect on October 31, 1960, wherein 40,000 people were placed under investigation. Of those investigated, more than 2,200 government officials and 4,000 police officers were purged for their activities under the Rhee government.\textsuperscript{24}

\textbf{C. Military Rule (1961 – 1962)}

The Second Republic ended on May 16, 1961, when Major General Park Chung-Hee staged a \textit{coup d'état}.\textsuperscript{25} Under pressure from the Kennedy administration, Park promised a return to civilian rule.\textsuperscript{26} On December 2, 1962, the country held a referendum on returning to a presidential system of rule, which purportedly passed with a 78.8\% majority.\textsuperscript{27} Despite Park’s pledge not to run for office in the next elections, Park ran anyway, narrowly winning the presidency in 1963.\textsuperscript{28}

\textbf{D. Third Republic (1963 – 1972)}

Park ran for president again in 1967, winning the presidency in a closely contested race.\textsuperscript{29} At the time, the presidency was constitutionally

\begin{itemize}
\item \textsuperscript{21} Id.
\item \textsuperscript{22} See Yang, \textit{supra} note 18, at 193—94 (approximating 2,000 demonstrations held during the eight months of the Second Republic).
\item \textsuperscript{23} Id.
\item \textsuperscript{24} See Andrew C. Nahm, KOREA: TRADITION & TRANSFORMATION 411 (Hollym International Corp., 2d ed. 1985) (There was also great economic unrest at the time. For example, Korea’s currency lost half of its value against the dollar between fall 1960 and spring 1961).
\item \textsuperscript{25} Seung-Mi Han, The New Community Movement: Park Chung-Hee and the Making of State Populism in Korea, 77 PACIFIC AFFAIRS 69, 73 (2004).
\item \textsuperscript{26} See Apoorv Agarwal, Park Chung Hee: Another Dictator or a Saviour, SIMPLY DECODED (March 20, 2013), http://www.simplydecoded.com/2013/03/20/park-chung-hee/ (discussing Park’s rise to power and 18-year dictatorial rule of South Korea).
\item \textsuperscript{27} See ANDREA M. SAVADA & WILLIAM SHAW, SOUTH KOREA: A COUNTRY STUDY (Library of Congress, 4th ed. 1992)
\item \textsuperscript{28} Id.
\item \textsuperscript{29} Id.
\end{itemize}
limited to two terms. Park, however, forced a constitutional amendment through the National Assembly in 1969, which allowed him to seek a third term.\footnote{\textsuperscript{30}} He was re-elected in the 1971 presidential election.\footnote{\textsuperscript{31}}

During the Third Republic, South Korea maintained close ties with and continued to receive a substantial amount of aid from the United States. A status of forces agreement adopted in 1965, clarified the legal situation of the U.S. forces stationed in the country.\footnote{\textsuperscript{32}} Soon thereafter, South Korea joined the Vietnam War, eventually sending a total of 300,000 soldiers to fight alongside U.S. and South Vietnamese troops.\footnote{\textsuperscript{33}}

The South Korean economy grew rapidly during this period. The Park regime used the influx of foreign aid to provide negative interest loans to export businesses.\footnote{\textsuperscript{34}} However, as the economy grew so did Park’s power. Park declared martial law on October 17, 1972, dissolving the

\begin{footnotesize}
\footnote{\textsuperscript{30} Nahm, \textit{supra} note 24, at 423.}
\footnote{\textsuperscript{31} The leading opposition candidate at the time was Kim Dae-Jung, a political dissident and who was elected President of South Korea in 1997. The government made two attempts on Kim’s life. The first was a car accident allegedly staged by the KCIA, which left Kim with a permanent limp. The other incident occurred when the KCIA reportedly kidnapped Kim from a hotel in Japan and trundled him onto a fishing boat. Kim was later quoted as saying that a weight had been attached to his feet aboard the boat heading toward Korea, indicating that the kidnappers had intended to drown him by throwing him into the sea. They were, however, forced to abandon this plan, as the Japan Maritime Self-Defense Force began a pursuit of the kidnappers’ boat. Subsequently, Kim was released in the port city of Pusan. According to some reports the U.S. Ambassador at the time intervened with the South Korean government to save Kim's life. \textit{See} Carol Clark, \textit{Kim Dae-Jung: From Prison to President}, CNN, available at http://archive.today/UYC6K; \textit{see also} Kim Dae-Jung Biography, THE FAMOUS PEOPLE, http://www.thefamouspeople.com/profiles/kim-dae-jung-52.php}
\footnote{\textsuperscript{34} Although Park was without question a brutal dictator, he remains very popular because most South Koreans give Park credit for its miraculous economic development. \textit{See} Donald Gregg, \textit{Park Chung Hee}, \textit{TIME} (Aug. 23 1999), http://www.time.com/time/asia/asia/magazine/1999/990823/park1.html.}
\end{footnotesize}
National Assembly and announcing plans to eliminate the popular election of the president.  

E. Fourth Republic (1972 – 1979)

The Fourth Republic began with the adoption of the Yushin Constitution on November 21, 1972. The Yushin Constitution gave Park effective control over the parliament. In the face of continuing popular unrest, Park promulgated a series of emergency decrees in 1974 and 1975, which banned people from engaging in actions that challenged the Yushin Constitution and led to the prosecution and imprisonment of hundreds of dissidents.

Judges enforced the special decrees for President Park to perpetuate his rule and control the population. Under the law, citizens were punished just for criticizing the government while talking with friends in pubs, classrooms or on the streets. Recently, one of these former judges, surnamed Lee, expressed his feelings about his special decree rulings: “I always feel regret about the rulings I made under the Emergency Measures Act. But they were in inevitable. My heart aches when I think about the past, and I think we, including the government, are fully responsible for it.”

F. Fifth Republic (1979 - 1987)

36 The Yushin Constitution remained in effect until Park’s death at which time the country reverted to its “original” constitution, originally adopted on July 17, 1948. This constitution has been amended nine times and is in effect today. See DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION], available at http://english.ccourt.go.kr/home/att_file/download/Constitution_of_the_Republic_of_Korea.pdf (S. Kor.).
37 There are many cases of individuals prosecuted under Park’s emergency decrees, many times for simply making an off-handed statement critical of Park. For example, a construction worker was sentenced to eight months in prison for drunkenly stating that Park “wants to be president forever.” Drunks Criticizing President Punished Under Park's Rule, KOREA TIMES, Jan. 25, 2007, available at 2007 WLNR 300544.
39 Id.
40 Id.
The head of the KCIA assassinated Park in 1979 while the two were having dinner. Park’s assassination led to a popular uprising, composed primarily of university students and labor unions. The protests reached a climax after Park’s second in command, General Chun Doo-Hwan, seized power and declared martial law. On May 18, 1980, a confrontation broke out in the city of Kwangju between students of Chonnam National University (protesting against the closure of their university) and the police. The confrontation turned into a citywide riot that lasted nine days. The government quelled the riot by sending in the army, including special-forces units that reportedly hunted down and executed the leaders of the protest, as well as innocent civilians. Estimates of the death toll, as a result of what is now referred to as the Kwangju Massacre, range as high as 2,000. Public outrage over the killings consolidated nationwide support for democracy, paving the road for the first democratic elections in 1987.

G. Sixth Republic (1987 - 1992)

In 1987, Roh Tae-Woo, one of Chun’s military colleagues in the 1979 coup was elected to the president by the popular vote. In 1993, Kim Young-Sam was elected as South Korea’s first civilian president in 30

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41 There were two previous attempts on Park’s life. On January 28, 1968, a 31-man detachment from North Korea crossed the DMZ with the purpose of killing Park. They made it within 800 meters of the Blue House (Korea’s version of the White House) dressed in ROK uniforms before they were discovered. In the ensuing firefight that occurred over the course of several days, 68 South Koreans and three Americans died. The second assassination attempt, launched again by North Korea, occurred when Park was delivering a speech during a ceremony celebrating South Korea’s liberation from Japanese rule. A North Korean agent fired shots from the front row of the audience. The bullets missed Park who had finished his speech but struck his wife, who died later from her wounds. See Donald Gregg, Park Chung Hee, TIME (Aug. 23, 1999), http://www.time.com/time/asia/asia/magazine/1999/990823/park1.html.


44 Id.

45 Id.

46 Id.

47 Id.
years. South Korea’s commitment to democratize its political processes reached the end of a long bloody road in 1997 with the election of Kim Dae-Jung. Kim’s election represented the first peaceful transfer of government between parties in South Korea.

III. THE ROLE OF TRANSITIONAL JUSTICE IN SOUTH KOREA

For more than a decade, South Korea has taken a number of steps towards rectifying wrongs perpetrated by the authoritarian military regimes, which ruled the country since 1961. The following is a brief description of each piece of legislation and the legal and/or political challenges each faced.

A. Special Act Regarding May 18 Democratization Movement (1995)

In the early 1990’s there was a great deal of public demand for justice for the victims of the “democratization movement”. Although Kim Young-Sam strongly criticized the actions of former presidents Chun and Roh, he believed prosecution of the two might lead to political and social unrest. Kim argued against criminal prosecution of the former presidents stating: “truth should be reserved for historical judgment in the future.” From a legal perspective, there was concern that the prosecution of previous military dictators may be barred by the applicable statute of limitations. As debate raged amongst politicians and the public, the Seoul Prosecutor’s Office made the controversial decision to suspend the

49 Id. at 581. (Under President Kim Young-Sam many dissidents were “rehabilitated” insofar as they ascribed the status of “democratization movement involvers” who took part in the “democratization movement”, as opposed to communist sympathizers fomenting social unrest and engaged in criminality). See, e.g., Gwangju Minjuhwa Undong Gwanryeonja Bosang Deungye Gwanhan Beobyl [Act for Compensation for the Victims in the Democratization Movement in Kwangju], Act No. 4266, Aug. 6, 1990 (S. Kor.).
50 Cho, supra note 48, at 581-82. (Kim entered the Blue House with the support of many high-ranking military leaders and thus, was reluctant to resort to criminal punishment for mutiny, insurrection and murder for the former military leaders).
51 Id. at 581.
52 Id. at 582.
prosecution of the military leaders. Although the Prosecutor’s Office determined the 1979 coup involved crimes of mutiny, insurrection and murder, and that the suppression of the 1980 Kwangju uprising constituted treason and murder, it found that prosecution of these crimes were barred by the statute of limitations.

The Korean Constitutional Court addressed this issue in 1995 when, in a majority decision, it declared that a prospective prosecution of the two formers dictators was constitutional insofar as it did not violate the statute of limitations. The Court held that under Article 84 of the Constitution, statutes of limitations are stayed while a president is in office except for crimes of insurrection and treason. The Court determined, however, that it would not intervene in prosecutorial decisions, noting the conflict between “realizing justice” by punishing former military leaders and the danger of fomenting social confrontation that such prosecutions would create.

When the government and the legal system refused to push forth with prosecutions of Chun and Roh, South Korean citizens again took to the streets in 1995. As a result, the National Assembly passed the Special Act Concerning May 18 Democratization Movement (the “Act”). The Act suspended the statute of limitations for “crimes against constitutional order” that had been committed on or around December 12, 1979 and May 18, 1980, the dates relating to the coup and to the Kwangju massacre. The Act also provided for the right to re-trial for those deemed to have

53 Id. at 581.
54 Id. at 582.
55 Id. The KCC was established in September 1988 and is modeled on the European model, insofar as it is specialized court that determines constitutional laws, disputes between governmental entities, Constitution Complaints filed by individual, impeachments and dissolution of political parties. The justices are appointed by the president with the approval of the National Assembly and serve six-year renewable terms. Decisions rendered by the KCC are final and cannot be appealed. See CONSTITUTIONAL COURT OF KOREA, http://english.ccourt.go.kr.
56 DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] art. 84 (S. Kor.) (“[t]he President cannot be charged with a criminal offense during his tenure of office except for insurrection or treason.”)
57 Cho, supra note 48, at 582.
58 Id. at 582—83. (The final straw was the revelation that both Chun and Roh had amassed huge sums of money in bribes received during their respective presidencies).
59 Minjuhwa Undong Deung E Gwanhan Teukbyeol Beop [Special Act Concerning May 18 Democratization Movement], Act. No. 5029, Dec. 21, 1995 (S. Kor.).
been punished because of their involvement in the democracy movement.\textsuperscript{60} As a result, the Seoul District Prosecutor’s Office initiated criminal proceedings for treason against Chun, Roh and other former high-ranking officials.\textsuperscript{61}

The defendants filed a motion with the KCC, challenging the constitutionality of the Act asserting: (1) it violated equal protection principles, as it was directed only to punish a specific group of individuals; and (2) constituted retrospective punishment and thus, violated \textit{ex post facto} principles.\textsuperscript{62} The Court, however, upheld the constitutionality of the Act, determining that despite the fact that the Act was created to prosecute a narrow set of individuals, it was not \textit{per se} unconstitutional.\textsuperscript{63} Relying heavily on public policy as the foundation of its decision, the Court determined that the Act was founded upon a national demand to rectify past wrongs and establish “legitimate” constitutionalism in South Korea.\textsuperscript{64}

On the \textit{ex post facto} issue, the Court held that because the Supreme Court at that time had not decided the issue of whether the statute of limitations expired when the Act was passed, the court found that it would not be unconstitutional to extend the statute of limitations.\textsuperscript{65} Importantly, the justices failed to agree whether the statute of limitations had already expired, with four justices holding the Act was constitutional

\textsuperscript{60} \textit{Id.}

\textsuperscript{61} \textit{Cho, supra} note 48, at 583.

\textsuperscript{62} \textit{Constitutional Court [Const. Ct.], 96 HunKa 2, Feb. 16, 1996, (8-1 KCCR, 51) (S. Kor.) (noting that \textit{ex post facto} criminal punishment is prohibited by the Korean Constitution under the Article 12 (1) (enshrining the principle of due process) and Article 13 (1) (specifically prohibiting prosecutions acts that do not constitute crimes under the law in force when the act is committed). For background on the role of the Constitutional Court in South Korea, see \textit{Jurisdiction, CONSTITUTIONAL COURT OF KOREA}, http://english.ccourt.go.kr/home/english/jurisdiction/faq.jsp (last visited Apr. 17, 2014) (the Korean Constitutional Court was established in September 1988 and is based on the European model insofar as it is a specialized court that determines constitutional laws, disputes between governmental entities, constitution complaints filed by individuals, impeachments and dissolution of political parties. The Court’s justices are appointed by the president with the approval of the National Assembly and serve six-year renewable terms. Decisions rendered by the KCC are final and cannot be appealed.).}

\textsuperscript{63} \textit{Constitutional Court [Const. Ct.], 96 HunKa 2, Feb. 16, 1996, (8-1 KCCR, 51) (S. Kor.).}

\textsuperscript{64} \textit{Id.}

\textsuperscript{65} \textit{Id.}
and five finding in favor of unconstitutionality. Under Korean law a finding of unconstitutionality requires a vote of six or more justices and therefore, the five-justice dissent did not meet the threshold for a determination that the Act was unconstitutional.

The Supreme Court affirmed the defendants’ convictions for treason and killing for the purpose of treason, holding:

The defendants grasped political power after they stopped the exercise of the authority constitutional state institutions by mutiny and rebellion. Even if they had arguably ruled the State based on the constitution, which was revised by popular referendum, it should not be overlooked that a new legal order was established by mutiny and rebellion. It cannot be tolerated under any circumstances under our constitutional order to stop the exercise of the authority of constitutional state institutions and grasp political power by violence, not following democratic procedure. Therefore, the mutiny and rebellion can be punishable.

The Supreme Court affirmed Chun’s conviction and sentence to life in prison and Roh’s conviction and sentence of 17 years in prison, as well as upholding the convictions and sentences of 23 of their subordinates. In 1997, all those convicted under the Act received presidential pardons and were released from prison. No other soldiers or government officials were punished.

B. Presidential Truth Commission on Suspicious Deaths (2001)

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66 Id.
67 Id.
68 Cho, supra note 48, at 584.
69 Id. The Supreme Court only examined issues related to the defendants’ convictions and sentences for treason and killing for the purpose of treason and not constitutional issues, which were resolved by the KCC in its Decision of February 16, 1996, 96 HunKa 2. See e.g., Constitutional Court, supra note 62.
In 2001, the National Assembly established a commission to investigate deaths of individuals who were involved in South Korea’s pro-democracy movement and who died under suspicious circumstances. The Commission was, however, hampered by the fact that most of the deaths it was investigating occurred many years ago, usually long after the expiration of the applicable statute of limitations. As a result, most of the individuals who tortured, murdered and gave false testimony to convict innocent citizens remain unpunished due to the legal impediment of statutes of limitations for these crimes.\footnote{See Cho, supra note 48, at 585 (Under Korea’s Criminal Procedure Code, crimes such as murder are subject to a 15 year statute of limitations).} Again, civil and human rights groups strongly argued in favor of legislation, which would allow for prosecutions of those involved in past crimes by extending statutes of limitations.\footnote{See Andrew Pollack, 2 Ex-Dictators Leave Korea Jails, pardoned after 2 Years, THE NEW YORK TIMES (DEC. 23, 1993), http://query.nytimes.com/gst/fullpage.html?res=9403E3D7153EF930A15751C1A961958260&n=Top/Reference/Times%20Topics/People/R/Roh%20Tae%20Woo.} However, two bills that would allow for circumvention of various statues of limitations for those accused of perpetrating crimes against those involved in the democracy movement failed to pass the National Assembly.\footnote{Id.}


In 2000, the government passed legislation (hereinafter the “Democracy Act”) the purpose of which was to recognize the sacrifice, and in some cases, provide compensation for those determined to have been involved in South Korea’s “democracy movement”.\footnote{This term is defined as “activities that contributed to establishing democratic constitutional order and resurrecting and enhancing freedoms and rights of people by resisting authoritative rule that had disturbed free democratic basic order and violated people’s fundamental rights guaranteed by the Constitution…” Act for the Honor Restoration and Compensation to Persons Related to Democratization Movements, Statutes of South. Korea, Act. No. 6123, Jan. 12, 2000 (S. Kor.).} The Democracy Act established the right of resistance against South Korea’s illegitimate regimes.\footnote{Id.} The Democracy Act established a Review Commission (the “Commission”) to review applications made by individuals who asserted they were involved in the democracy movement
and were persecuted as a result.\textsuperscript{76} Although the Commission had no investigative or judicial authority, it had the power to recommend pardons or expungement of an applicant’s conviction.\textsuperscript{77} Importantly, it also had the power to make recommendations to state or local governments and/or private companies to rehire individuals involved in the democracy movement.\textsuperscript{78} Further, the Commission has made recommendations to schools to abolish disciplinary records and bestow honorary degrees upon those punished for their involvement in the democracy movement and suffered some detriment as a result. In addition to this so-called “honor restoration”, the Commission could recommend financial compensation to qualified applicants.\textsuperscript{79}

In its most high profile matter, the Commission reviewed the case of eight college students who, under extreme torture by the KCIA, admitted to being North Korean spies. They were convicted and executed one day after the Supreme Court confirmed their convictions and death sentences.\textsuperscript{80} On December 27, 2005, after a recommendation from the Commission, the Seoul Central District Court re-examined the case and overturned the convictions.\textsuperscript{81}

The Commission also examined a number of cases involving a concentration camp called the Samchung Re-education Camp, set up by the military. Take, for example, the case of Jean Jeong-Bae. The Commission found that Mr. Jean was shot on June 20, 1981 by a Samchung guard for protesting his arrest, detention and demand for a

\textsuperscript{76} Cho, \textit{supra} note 48, at 590—92 (describing the Democracy Act and the Review Commission that examines applications by those claiming to be “democratization movement involvers”).

\textsuperscript{77} \textit{Id.}

\textsuperscript{78} \textit{Id.}

\textsuperscript{79} \textit{Id.} According to Cho, as of December 28, 2006, “democratization movement involvers” were given $28,700,000 on compensation. \textit{Id.} at 592 (citing Dong Jung-Min, \textit{Recognizing 46 Illegal Labor Activists as Democratic Activists}, DONG-A ILBO, Dec. 18, 2006).

\textsuperscript{80} \textit{Id.} at 592; see also Ju Jin-Woo, \textit{The People’s Revolutionary Party, Homicide Committed in the Name of the Law}, JU JIN-WOO’S KOREAN MODERN HISTORY PODCAST (SEP. 12, 2012), http://blog.naver.com/srcachu?Redirect=Log&logNo=30142229623, (describing how one defendant, Ha Jae-Wan, was caught recording North Korean radio and sharing with others, a crime under South Korean law and how the government at the time was under a lot of stress due to protests of students against Park Chung-Hee).

\textsuperscript{81} Choe Young-Yoon, \textit{Sentence of Innocence to the People’s Revolution Party Case After 32 Years}, HANKOOK ILBO (JAN. 24, 2007).
formal trial.\textsuperscript{82} Another case involved a claim by a former inmate of the Samchung Camp occurred in 2001, when a man, surnamed Lee, submitted a petition to the Commission, calling for compensation for pain and suffering as a result of his incarceration at the Camp.\textsuperscript{83} The commission rejected his claim finding Mr. Lee was not a pro-democracy activist and was, therefore, not eligible for compensation from the government.\textsuperscript{84} Mr. Lee then brought his case to an administrative court, and in 2013 that court recognized Mr. Lee’s claim and ordered the government to compensate him. The Court stated that the 74-year-old Lee: “fought for democracy in the face of repression by the authorities . . . was injured due to his campaigning for freedom and basic rights . . . [and] should be regarded as a democracy fighter.”\textsuperscript{85} It was the first time that a court recognized a surviving victim of the camp as a democracy fighter.\textsuperscript{86}

Another Commission case that garnered a lot of attention concerned the mysterious death of Tsche Chong-Kil, a law professor at Seoul National University, whose body was found at the bottom of a fire escape outside the KCIA building.\textsuperscript{87} The KCIA announced that Professor Tsche had committed suicide by throwing himself out of the building after

\textsuperscript{82} Cho, supra note 48, at 600; Lee Ju-Young, \textit{Presidential Truth Commission on Suspicious Deaths: Obligation and Compensation Regarding Samchung Re-education Camp}, OHMYNEWS NEWS AGENCY (OCT. 1, 2002), http://www.ohmynews.com/NWS_Web/View/at_pg.aspx?CNTN_CD=A0000089478; see also National Human Rights Commission of Korea Recommended Equal Compensations for Foreign Victims of Samchung Re-education Camp, ASIAN PACIFIC HUMAN RIGHTS INFORMATION CENTER (SEP. 5, 2006), http://www.hurights.or.jp/archives/newsinbrief-en/section1/2006/09/national-human-rights-commission-of-korea-recommended-equal-compensations-for-foreign-victims-of-sam.html (The Camp was set up under President Chun Doo-Hwan. Detained individuals were subjected to organized violence under the name of “social cleansing,” which aimed at the elimination of social vices, such as violence, smuggling and drug use. Some 42,000 individuals were arrested without proper warrants and subjected “purification education” through violence and hard labor).


\textsuperscript{84} Id.

\textsuperscript{85} Id.

\textsuperscript{86} Id.

confessing that he was a North Korean spy. The Commission found that the KCIA had tortured Professor Tsche and that there was a “high probability” that he was killed and his body thrown out a window of the KCIA building. The Commission based its decision, in part, on the testimony of a former KCIA agent who stated: “[t]he official announcement that Professor Tsche had confessed to being a spy and jumped to his death was a fabrication … when he lost consciousness while being tortured, investigators mistook him for dead and pushed him off the fire exit” in order to cover up the death. In February 2006, the Seoul High Court awarded Professor Tsche’s family 1.8 billion KRW (approximately $1.9 million) in compensation.

The Commission was dissolved in 2004, with a number of unresolved cases before it. The most high profile cases were those of Chang Joon-Ha, a leading activist against the Park regime found dead on a mountain in 1974 and Lee Chul-Kyu and Lee Rae-Chang, both activists, whose bodies were found in isolated places (a reservoir and beach respectively). Prior to its dissolution, the Commission recommended that the National Assembly establish a new commission with greater investigative powers, including the authority to punish those who refuse to give evidence or commit perjury before it. The Commission also recommended passage of a law barring the application of the statutes of limitations for state crimes against human rights.

i. Whether Individuals Involved in Counter-Violence Should Be Acknowledged as Democracy Movement Involvers

As South Korea struggled to come to terms with its past, an important issue arose with regard to whether individuals who engaged in violent opposition to past authoritative regimes should be eligible for relief under the Democracy Act. One case involved a group of Dong-Eui University students who staged a sit-in to protest what they considered to

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88 See id.; see also History of Harm, TIME (June 9, 2003), http://www.time.com/time/magazine/article/0,9171,457405,00.html (detailing incidences of violence within South Korea).
89 Id.
91 Cho, supra note 48, at 601.
92 Id. at 602.
93 Id.
94 Id.
be corrupt university entrance exam procedures. When the police broke into the library to break-up the demonstration some students threw Molotov cocktails at the police. In the ensuing fire, seven police officers were burned alive and the students were convicted of the crime of murder by arson.

In 2002, the Commission determined that the forty-six students involved in the demonstration were, in fact, part of the democracy movement and should thus be absolved of their criminal liability for the deaths of the police officers. The family members of the dead officers filed a complaint with the Constitutional Court arguing that the decision of the Commission violated their constitutional rights and tarnished the reputations of the dead. The Court held that the family members lacked standing and that the Committee’s decision did not cast the officers in a negative light. The police, conservative politicians and certain members of the media, criticized this decision asserting that the de-facto result of the decision was to transform cop killers into activists. The final decision of the Commission was a compromise by the court; the students were determined to be “democratization movement involvers” and the dead policemen, “officers of merit”.

D. The Basic Act for Coping with Past History for Truth and Reconciliation (2005)

Based on the outgoing Commission’s statements concerning the need for a new truth finding body and the overwhelming support of the public, the National Assembly enacted The Basic Act for Coping with Past History for Truth and Reconciliation in 2005. The Act established

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95 Id. at 593—94; see also Stephen R. Weisman, Korea Addresses Abuses of Its Past, N.Y. TIMES (May 24, 1989), available at http://query.nytimes.com/gst/fullpage.html?res=950DE5D91E3FF937A15756C0A96F948260&sec=&spon=&pagewanted=all (describing the violent escalation of the demonstrations by Dong-Eui University students as atypical for the time).
96 Cho, supra note 48, at 593—94.
97 Id.
98 Id.
99 Id.
100 Cho, supra note 48, at 594 (citing Decision of October 27, 2005, 2002 HunMa 425 (Korean Constitutional Court).
101 Id.
102 Id.
103 See TRUTH AND RECONCILIATION COMMISSION, REPUBLIC OF KOREA, http://www.jinsil.go.kr/English/Commission/outline.asp (last visited Apr. 6,
the Truth and Reconciliation Commission (“TRC”) as an independent organization that was given a four-year mandate to initiate investigations on suspicious deaths by petition or by its own volition.\textsuperscript{104} The TRC was made up of 15 members, eight recommended by the National Assembly, four appointed by the President and three nominated by the Supreme Court.\textsuperscript{105} The TRC had an expansive mandate. In addition to abuses under past regimes, the TRC was also empowered to investigate crimes committed during the Japanese occupation\textsuperscript{106} and the Korean War.\textsuperscript{107} The first President of the TRC, Father Song Gi-Im, described the purpose and mandate of the TRC was: “to investigate and find out the truth and take necessary measures to bring about reconciliation in case relating to the anti-Japanese independence movement, mass victimization of civilians before and during the Korean war, human rights violations and politically fabricated trials during authoritarian rule, and the like.”\textsuperscript{108} Importantly, the TRC had the power to request relevant individuals to submit affidavits, appear for inquiry and submit evidence pertinent to its particular investigation.\textsuperscript{109} Unlike the Commission on Suspicious Deaths, the TRC had limited subpoena power to compel the

\begin{footnotesize}
\textsuperscript{104} Id.
\textsuperscript{105} Id.
\textsuperscript{106} See Cho, supra note 48, at 608. There has been strong pressure by Korean academics and the public at large for the investigation and subsequent publishing of an “encyclopedia” of the names of “pro-Japanese collaborators.” However, investigating and publishing the names of those involved in pro-Japanese activities is inherently problematic given that Japanese collaborators have likely long since passed away and the Korean Constitution provides that “[n]o citizen shall suffer unfavorable treatment on account of an act not of his own doing but committed by a relative.” DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] art. 13(3) (S. Kor.). As it is almost certain that relatives of those on the list would suffer at the very least significant social stigmatization, there is a serious question whether publishing such a list would pass constitutional muster.
\textsuperscript{108} Id.
\textsuperscript{109} Cho, supra note 48, at 608.
\end{footnotesize}
appearance of individuals who refuse to appear more than three times without just cause. In addition, it had the power to impose administrative fines on those who made false statements, submitted false information, refused or evaded the TRC’s investigation or subpoena. Part of the mandate of the TRC was to recommend reconciliation between offenders and victims or their families based on an offenders’ repentance and the victims’ or families’ forgiveness.

One of the most controversial decisions made by the TRC was its determination to publish the names of 492 justices who had rendered decisions in as many as 1,412 cases involving violations of emergency decrees under the Park regime. The Korean Bar Association sharply criticized the Commission for its decision stating that identifying the justices would serve only to aggravate public distrust of the judiciary. Others argued that it was unfair to place all responsibility on the judges because they had no choice but to enforce the Park’s emergency decrees, as at that time, it was the law. Further, critics asserted that police and prosecutors, who arrested, indicted and forced violators of Park’s emergency decrees to stand trial, remained unnamed and unpunished. Supporters of the Commission’s decision to publish the names have called for the removal of those justices who remain on the bench but to date, no

110 Id.
111 Id. at 609.
112 Id.
114 See id.; see also Kim Rahn, Past Wrongdoing Probe Embarrasses Park, KOREA TIMES (Jan. 31, 2007), available at Westlaw at 1/31/07 KORTIMES (discussing the assertion of Park Geun-Hye, daughter of the late dictator Park Chun-He and chairwoman of the Grand National Party, that the sole purpose of disclosing of the names of judges, was to embarrass her and her party in the lead-up to the 2007 election).
116 Id.
such action has been taken.117 To the contrary, subsequent to being named by the TRC, most of the judges continued with their careers as judges, lawyers and academicians, with some even serving on the Korean Constitutional Court and the Korean Supreme Court.118 It should be noted, however, that not all judges toed the party line; some judges followed their conscience and refused to enforce what they considered to be unjust decrees.119 One case is that of Lee Young-Gu who, in 1976, was the chief judge of Seoul Yeongdeungpo-gu district court and handed down a not guilty verdict to a teacher who was accused of criticizing the government in violation of both the Anti-Communist Law and the Emergency Decree No. 9. Another man, Yang Young-Tae, who was a High Court judge of Gwang-ju in 1975, dismissed a guilty verdict against a farmer who had received 3 years imprisonment and 5 years probation during his trial for criticizing president Park Jung-Hee.120 Both judges were punished for their decisions.121 Within a month, Judge Lee was demoted and voluntarily left the judiciary.122 Judge Yang, remained as a low level judge while his compliant colleagues on the bench advanced to


118 For example, Lee Kang-Kuk was named by the TRC and served as the head of the Korean Constitutional Court from 2007 to 2013. Biography of Lee Kang-Kuk, NAVER, http://people.search.naver.com/search.naver?where=nexsearch&query=%EC%9D%B4%EA%B0%95%EA%B5%AD&sm=tab_txc&ie=utf8&key=PeopleService&os=112327 (trans. Jeong-Min Lee); see also Seong Hye-Mi, Over Ten Current High-ranking Judges Including the Head of Constitutional Court and Supreme Court Justices, YONHAP NEWS AGENCY (Jan. 31, 2007, 10:34 PM), available at http://bemil.chosun.com/nbrd/bbs/view.html?b_bbs_id=10038&num=13831 (reporting on the naming of judges by the TRC) (trans. Jeong-Min Lee).


120 Id.

121 Id.

122 Id.
high judicial positions. These brave men stand out as exceptions to the 492 justices who had enforced the emergency decrees who defended themselves with self-serving claims that they were only applying the positive law of the time and the all too familiar defense heard at Nuremburg that they were only following orders.

IV. DEVELOPMENTS FROM 2005 TO THE PRESENT

The TRC was dissolved in June 2010 amidst a sea of criticism from both its opponents and advocates. The TRC heard a total of 11,175 petitions reaching final conclusion in 8,450 cases (85.6%), leaving 510 cases (4.7%) unsolved and declined to hear 1,729 cases (15.5%).

The most publicized reports issued by the Commission focused on mass executions by South Korean authorities before and during the 1950–1953 Korean War and on the killing of innocent civilians by US forces. Research also focused on the suppression of leftist civilians and soldiers in that era and of suspected communists after North Korean forces invaded the south in June 1950. The commission also investigated killings by US forces, who fired on refugees streaming south following the North Korean invasion. Conservative opponents of the truth seeking process have criticized the reports documenting these killings, as “leftist.”

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123 Id. (Judge Yang was finally promoted to a judicial scholar of the Supreme Court).
124 Id.
125 Don Kirk, South Korea’s TRC to Fold, RADIO NETHERLANDS WORLDWIDE (Mar. 24, 2010), available at http://www.rnw.nl/international-justice/article/south-korea%E2%80%99s-trc-fold See also Ryu In-Ha, The Truth and Reconciliation Committee Ends as the Truth of the Victims Remain Undisclosed, THE KYUNGYANG NEWSPAPER (Dec. 27, 2010), available at http://news.khan.co.kr/kh_news/khan_art_view.html?artid=201012272137245&code=940100 (describing the reaction of the National Association of the Bereaved Families of the Korean War Victims to the TRC report who asserted that the TRC had produced its report in secret but also at the last moment).
127 Id.
128 Id.
129 Id.
130 Id.
After assuming office in February 2008, conservative President Lee Myung-Bak replaced the liberal head of the TRC appointed by Roh Moo-Hyun with the conservative, Lee Young-Jo, as head of the commission. The TRC soon found itself fighting budget cuts and restrictions on its investigative powers, which some believed was due to the fact that President Lee Myung-bak and his ruling conservative party were uncomfortable with the scrutiny of the country’s past. Advocates further asserted that the Lee government had reluctantly inherited the TRC and would like to see it shut down. The commission’s new president stated that, having spent 20 billion KRW ($17.79 million), the TRC had not been cost effective and that it should cease its work without extension. The TRC was shut down in June 2010. The term period of the TRC was until April 2010 and although it could have been extended for an additional two years, until April 2012, it was only extended for an additional two months.

When Park Geun Hye ascended to the presidency in 2013, she discussed forming a commission to deal with reconciliation issues, especially those that took place during her father’s presidency but no action has been taken to date. The progressive former head of the TRC doubts that Park would enact such a plan, asserting that Park’s true purpose is the exoneration of her father’s name.

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133 Id.
134 Id.
136 Id.
Many South Koreans are, however, demanding that further action be taken regarding past crimes. One example is that of politician Lee Jae-Ho, a member of the Saenuri party, recently announced that he has put forth the “basic law for coping with past history for truth and reconciliation”, which is to reactivate the Truth and Reconciliation Committee. The proposed law would allow the Commission to work on their investigation for a maximum of five more years, three years for an initial investigation, with a possible two-year extension. Mr. Lee stated the reason for his proposal was: “because of [the TRC’s] time limit for petitions, many victims did not receive an official accounting of the truth nor recover their tarnished reputations and even subsequent remedies were unsatisfying.” Thus, a troubled cloud hangs over the state of transitional justice in South Korea to this day.

V. CONCLUSION

Contrary to the claims by opponents of Korea’s truth seeking process, South Korea continues its struggle to free itself from the jackboot of its past. This is due in large part to the fact that Korean truth commissions can, with a few exceptions, also be characterized as essentially victim-centered. They have rarely punished or recommended punishment for offenders. In fact, in most cases Korean truth commissions have refrained from publicizing the names of perpetrators. Nor have they been greatly involved in making recommendations for institutional reforms. Rather, the focus has been on the victims, and especially on revealing the truth surrounding their victimization and rehabilitating their reputations, phrased as “restoring their honor” in the preferred formulation.

140 Id.
141 Id.
142 See Wolman, supra note 136 at 52.
The first question is whether there has been complete truth telling with regard to past crimes. Tragically, the answer to this question is a resounding no. The first Presidential Truth Commission on Suspicious Deaths of 2001 was hampered by the lack of power to compel testimony and production of information, and by the impediment of the statute of limitations that prevented prosecution of potential suspects. South Korea is a state party to the Rome Statute, which allows for the tolling of statutes of limitations in cases of grave violations of human rights such as crimes against humanity.

The Democracy Act of 2000 made great strides towards reconciliation insofar as it resulted in the rehabilitation of the reputations of many of those involved in the democracy movement, as well providing financial compensation to victims and their families. The Commission was, however, dissolved with a number of uninvestigated and unresolved petitions before it. The expectation was, however, that the TRC (with its expansive investigative powers) would pick up where the Commission left off and resolve these cases. Unfortunately, the great promise with which the TRC began was never realized.

With regard to the issue of accountability for the wrongdoers, one could argue that this was achieved to a degree, given that two former presidents were prosecuted, convicted and jailed for their crimes against the Korean people. While it is true that the trials of Chun, Roh and their subordinates did provide South Koreans with a sense that some justice had been done, their subsequent pardons after a mere two years justifiably created a great deal of cynicism towards the concept of transitional justice.

Moreover, no other officials, or other individuals acting under color of law, were brought to account for crimes committed during authoritative rule.

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143 See, e.g., Gentilucci, supra note 8, at 85 (stating the premise that transitional justice requires both truth telling and accountability; describing the latter as necessary for “retribution”, which he describes as blame-laying and punishment for wrong doers).


The TRC was important in that it had much greater investigative authority than the 2001 Commission. Further, because part of its mandate was to bring about reconciliation between offenders and victims, the TRC had a greater chance to achieve a national “healing” than South Korea’s previous attempts. The TRC’s promise was, however, never realized. Considering the recent election of President Park, it likely that they will remain so. Reconciliation and societal harmony can never be realized while these individuals remain free, safely ensconced in the bosom of the statutes of limitations that protect them from prosecution for their crimes. The solution to this is one that has been proposed a number of times to the National Assembly, abolish the statute of limitations for crimes against the Korean people and allow the perpetrators to be brought to justice.\(^\text{147}\) The people of South Korea are strongly in favor of such legislation and the KCC clearly opened the door when it found that suspending the statute of limitations for certain crimes was constitutional under Korean law.\(^\text{148}\)

Regarding crimes committed prior to and during the Korean War, many of these cases have either been under investigated or not investigated at all. This is very troubling given that a cable released by Wikileaks dated October 20, 2009, indicates that there may be as many as eight potential cases involving the deaths of Korean citizens at the hands of US forces during the Korean War.\(^\text{149}\)

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\(^{146}\) (describing Korean truth commissions as essentially victim-centered, focused on honor restoration and where offenders are rarely named or punished, nor recommendations for institutional reforms made).

\(^{147}\) See Lee Deok-Woo, Esquire, Abolish Statutes of Limitations for Human Rights Violators, available at http://english.hani.co.kr/arti/english_edition/e_opinion/218159.html, (describing, inter alia, the Special Law Regarding the Statute of Limitations for State Crimes Against Human Rights that was proposed to the National Assembly in 2005 but which has yet to be debated much less voted on).

\(^{148}\) Ryu Kyung-Wan, Park Geun-Hye Government Should Stop Ignoring the Civilian Victims of Massacres!, TONGIL NEWS AGENCY (Nov. 21, 2013), http://www.tongilnews.com/news/articleView.html?idxno=105032 (citing a representative of human rights organization: “Even after 60 years of the most tragic civilian massacres, our government is evading its responsibility by being indifferent and by concealing the crime ... President Park Geun-Hye should, at least, address what her father did 52 years ago and after thorough investigation, should sincerely apologize in order to build a framework of reconciliation and harmony.”) (trans. Jeong-Min Lee).

South Korea has consistently criticized Japan for its refusal to acknowledge its past. President Park herself has stated that a lack of trust exists between Seoul and Tokyo due to Japan’s failure to properly address issues of “historical variety” such as the Korean women pressed into sexual slavery during Japan’s occupation of Japan during World War II. South Korea’s stance is, however, weakened by the fact that the nation itself has failed to properly address its own issues regarding the past, including properly examining the issue of Korean collaboration with colonial era Japan. Until it cleanses its own closet of skeletons, South Korean accusations that Japan is failing to address its past, carry little weight.

South Korean society is highly influenced by the Confucian values of societal unity and harmony. There can be no harmony in a society where untold numbers had their lives torn asunder without official recognition, where there is no accountability for those who visited egregious injustice upon the innocent and where unexcavated mass graves dot the landscape. As director Chung Ji-Young poignantly stated upon

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151 Id.


153 Choe Sang-Hun, Korea Investigates Atrocities in Race Against Time, N.Y. TIMES, Sept. 4, 2009, http://www.nytimes.com/2009/09/04/world/asia/04truth.html?_r=0. (detailing the TRC’s confirmation of more than 50 mass killings of civilians during the Korean War and the location of 168 mass graves, which due to budget constraints and a lack of political support from Lee’s administration, only 13 were expected to be excavated before the expiration of the TRC’s term).
the release of National Security: “If we triumph over the past, we can move forward with unity and reconciliation.”