

TRANSITIONAL JUSTICE IN KOREA: LEGALLY COPING WITH PAST WRONGS AFTER DEMOCRATIZATION

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Abstract: For more than a decade, Korean society has taken various legal steps to rectify past wrongs perpetrated by the old authoritarian-military regime. In 1995, the “Special Act Concerning the May 18 Democratization Movement” was passed in the National Assembly. Under this new legal circumstance, the two former presidents were imprisoned on charges of leading the 1979 military coup and brutally oppressing the May 18 Uprising of 1980. However, because such a transition from the authoritarian-military rule was established through a political compromise, Korean society had to experience a limited transitional justice. As another step to rectify past wrongs, the “Act for Restoring the Honor of Democratization Movement Involvers and Providing Compensation for Them” was enacted in 2000. Under this Act, a number of democratization activists have been recognized as “democratization movement involvers.” However, this Act has been strongly criticized because the activists using harsh counter-violence were also recognized as the “involvers.” In 2001, the legislature enacted the “Special Act for Truth-Finding Suspicious Deaths” to handle the suspicious deaths of many democratization activists during the old authoritarian-military regime. Also, broadening the scope of illustrating past wrongs, a series of laws was recently enacted to uncover the activities of pro-Japanese collaborators under the Japanese occupation in the early twentieth century.

These various Special Acts for dealing with past wrongs certainly have never been free from political struggle between the liberal and conservative. Some argue that these acts were forged by agreements between these two factions. However, although each side has advocated somewhat differently, they have come together in the belief that Korean society needs to discard the legacy of the authoritarian regime. In this light, the acts are symbolic statements that officially declare the people’s dissatisfaction with the authoritarian regime. Therefore, they are necessary for Koreans to heal old wounds, and to move beyond their tortured past.

I. INTRODUCTION

For more than a decade, Korean society has taken legal steps to rectify past wrongs under the authoritarian-military regime. A cleansing campaign has developed since the “Civilian Government” was launched in 1993. It was a part of a global wave of political democratization after soviet

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communism's collapse.¹ The nationwide "June Struggle" of 1987 led to the collapse of Korea's authoritarian-military regime and opened a road toward democratization. Since then, a number of human rights violation cases were shockingly revealed in Korea ("Korea" or "South Korea"). The Korean public came to see the whole picture of the painful past, and it became an unavoidable task for the Korean democratic-civilian governments to rectify past wrongs. How to properly achieve "transitional justice" has become a serious political and legal issue.² While liberals including human rights organizations supported the realization of transitional justice, conservatives, in particular politicians with military backgrounds, objected to it.

This Article aims to review the legislative steps and the judicial decisions regarding Korea's dark past, and to provide a Korean method to deal with past wrongs. First, this article reviews the constitutionality of the 1995 Special Act Regarding the May 18 Democratic Movement, which was enacted to suspend the statute of limitations in order to punish the crimes committed by military leaders on and around December 12, 1979 and May 18, 1980. Second, this article proceeds to examine the recent laws excluding application of the statute of limitations to state crimes against human rights and related issues of retrospective punishment. Third, it reviews two bills intended to restore the honor of democratization activists, and to find the truth about suspicious deaths that occurred in the process of the democratization movement against the authoritarian-military regime: the 2004 Act for Restoring the Honor of the Democratization Contributors and Compensation for Their Sacrifice, and the 2000 Special Acts for Finding Truth about Suspicious Deaths. Finally, to extend the scope for rectification of past wrongs, this article briefly examines three recently enacted laws: the 2004 Special Act for Finding the Truth of Anti-Nation Activities under the Japanese Occupation, the 2005 Special Act for Reverting the Property of Those Who Did Pro-Japanese Anti-Nation Activities to State, and the 2005 Basic Law for Coping with Past History for Truth and Reconciliation.

¹ Regarding the global situation of lustration of the past wrongs, see TRANSITIONAL JUSTICE AND THE RULE OF LAW IN NEW DEMOCRACIES (A. James McAdams ed. 1997); Mark S. Ellis, *Purging the Past: The Current State of Lustration Laws in the Former Communist Bloc*, 59 LAW & CONTEMP. PROBS. 181, 181 (1997); THE POLITICS OF MEMORY: TRANSITIONAL JUSTICE IN DEMOCRATIZING SOCIETIES (Alexandra Barahona de Brito et al. eds., 2001).

² "Transitional justice" is defined as the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes. See Guillermo O'Donnell & Phillippe C. Schmitter, TRANSITIONS FROM AUTHORITARIAN RULE: TENTATIVE CONCLUSIONS ABOUT UNCERTAIN DEMOCRACIES 6 (1998); Ruti G. Teitel, *Transitional Justice Genealogy*, 16 HARV. HUM. RTS. J. 69, 69 (2003).

II. TWO FORMER PRESIDENTS WERE PUNISHED

A. *Punishing the Leaders of the Military Coup*³

1. *The Civilian Government Was Initially Hesitant to Punish Military Leaders*

The task of coping with past wrongs started with the punishment of military leaders, including two former presidents, Chun Doo-Hwan and Roh Tae-Woo. They led the December military coup of 1979 after the assassination of President Park Chung-Hee, and ordered the brutal oppression of the May 18 Uprising of 1980 in the Kwangju area. Chun became President after dissolving the National Assembly and revising the Constitution under martial law. Roh was elected as president by popular referendum in 1987.

The “Civilian Government” that President Kim Young-Sam launched in 1993 faced strong demands from the public to investigate and punish these military leaders. Under the previous Roh government, redefining the Uprising as a “democratization movement,” the National Assembly passed a law that allowed for victim compensation,⁴ and made Chun appear and testify in parliamentary hearings. However, these efforts did not alleviate the people’s demands for justice and a full inquiry into the two historical incidents. In its inception, the Kim Young-Sam government was hesitant to pursue punishment against the two former presidents because he entered the Blue House with support from many politicians with military origins. Although President Kim strongly criticized the military leaders and praised the May 18 Uprising of 1980, he was reluctant to resort to criminal punishment, “arguing that the truth should be reserved for historical judgment in the future.”⁵

In 1994, the Seoul District Prosecutor’s Office made a controversial decision to suspend prosecution of the military leaders although it recognized that the December coup of 1979 involved crimes of mutiny, insurrection, and murder, and the suppression of the May 18 Uprising of

³ See generally James West, *Martial Lawlessness: The Legal Aftermath of Kwangju*, 6 PAC.RIM L. & POL’Y J. 85 (1998); In Sup Han, *Kwangju and Beyond: Coping with Past State Atrocities in South Korea*, 27 HUMAN RIGHTS QUARTERLY 998 (2005).

⁴ *Kwangju minjuhwa undong kwanryeonja bosang deung e kwanhan beopryul* [Act for Compensation for the Victims in the Democratization Movement in Kwangju], Statutes of S. Korea, Law No. 4266 of 1990 (last revised by Law No. 7911 of 2006).

⁵ Han, *supra* note 3, at 1005.

1980 constituted treason and murder. They were concerned that prosecuting the military leaders might cause political, social, and legal confusion because, legally speaking, the democratic-civilian government was a legal successor to the previous Chun and Roh governments. Therefore, they concluded that “a victorious coup should not be punished after a substantial lapse of time.”⁶ The office was faced with a “dilemma between formal legality and substantive justice, or between normative reality and a normative ideal.”⁷

In 1995, the majority opinion of the Constitutional Court held that this prosecutorial decision did not exceed the prosecutorial discretion allotted in Article 247 (1) of the Criminal Procedure Code, and was, hence, constitutional.⁸ The court held that the statute of limitations automatically ceases during the incumbencies of the former presidents according to Article 84 of the Constitution.⁹ Article 84 provides: “The President shall not be charged with a criminal offense during his tenure of office except for insurrection or treason.”¹⁰ This meant that Chun and Roh could be subject to prosecution for mutiny or homicide. However, the court believed that it did not need to intervene into the prosecutorial decision, considering the conflicting interests between realizing justice by punishing the military leaders, and prolonged social confrontation caused by doing so.¹¹

2. *The 1995 Special Act Regarding the May 18 Democratization Movement Presented a Legislative Move to Punish the Perpetrators*

The Korean public was not satisfied with this compromised legal solution and kept pressing the government and the legislature to make a new law to punish the military leaders. Students demonstrated in the street demanding punishment of Chun and Roh. The newly revealed scandal that the two former presidents had amassed huge amounts of money from bribes they had received during their presidency made people even more infuriated. It became certain that Korean people did not want to leave their crimes to the judgment of history but to seek a legal response to the crimes. In response, President Kim directed his ruling party to enact new legislation

⁶ *5.18 beop jeok chaekim kwa yeoksa cheok chaekim* [MAY 18, LEGAL ACCOUNTABILITY AND HISTORICAL EVALUATION], 225-27, 243-44 (Park Eun-Jung & Han In-Sup eds. 1995).

⁷ Han, *supra* note 3, at 1010.

⁸ Decision of January 20, 1995, 94 HunMa 246 (Korean Constitutional Court). *See also* Decision of December 15, 1995, 95 HunMa 221, 95 HunMa 233, 95 HunMa 297 (Korean Constitutional Court).

⁹ Decision of January 20, 1995, 94 HunMa 246 (Korean Constitutional Court) at 5-Ka-(2)-(Da).

¹⁰ *See Daehan minguk heonbeop* [THE CONSTITUTION OF THE REPUBLIC OF KOREA], art. 84 (last amended 1987), available at <http://www.ccourt.go.kr/home/english/welcome01.jsp>.

¹¹ Decision of January 20, 1995, 94 HunMa 246, *supra* note, 8 at 5-Da.

and the National Assembly passed the Special Act Concerning the May 18 Democratization Movement in December 1995.¹²

The Special Act was enacted to suspend the statute of limitations for the crimes against constitutional order which had been committed on and around December 12, 1979 and May 18, 1980.¹³ It stipulated that the limitation period ceased to run during the period of the presidencies of Chun and Roh in which “there existed obstacles for the State to institute prosecution.”¹⁴ It also allowed the court to review prosecutorial disposition of cases where a prosecutor had declined to prosecute.¹⁵ On the other hand, a right to have a special retrial was given to people who had been punished because of their engagement in the May 18 Uprising or because of their opposition to crimes against the constitutional order.¹⁶

In these new legal circumstances, the Seoul District Prosecutor’s Office initiated prosecution and detained the two former presidents and former high-ranking officials who led the 1979 military coup and oppressed the May 18 Uprising of 1980.

B. Judicial Decisions Allowed the Case to Go Forward

During the trial, the constitutionality of the 1995 Special Act was challenged by the defense. The defense argued that the Special Act was made to punish only specific groups, and, therefore, arbitrarily violated the equal protection principle. In addition, it applied retrospective punishment and, thus, violated the *ex post facto* principle. However, the Constitutional Court confirmed the constitutionality of Article 2 of the Special Act in 1996.¹⁷

First, the Constitutional Court held that the Special Act cannot be regarded as automatically unconstitutional even though it was narrowly created for particular situations. The Special Act can be justified by other reasonable grounds: that the unlawfulness of the coup was grave and there exists national demand to rectify the past wrongs in the aim of establishing legitimate constitutionalism.¹⁸

Second, the court held that the Special Act does not violate the *ex post facto* principle. The court based its decision on two hypothetical situations

¹² 5.18 Kwangju minjuhwa undong deung e kwanhan teukbyeolbeop [The Special Act Concerning the May 18 Democratization Movement], Statutes of S. Korea, Law No. 5029 of 1995.

¹³ *Id.* art. 2(1).

¹⁴ *Id.*

¹⁵ *Id.* art. 3.

¹⁶ *Id.* art. 4.

¹⁷ Decision of February 16, 1996, 96 HunKa 2, 96 HunBa 7 & 13 (Korean Constitutional Court).

¹⁸ *Id.* at 3-Ka-(3).

because the Supreme Court at that time had not decided the issue of whether the statute of limitations expired when the Special Act was applicable. It held that if the statute of limitations had not expired it would be constitutional to extend the statute of limitations. The justices' opinions were split in the case as to whether the statute had already expired.¹⁹ Four justices maintained the Special Act was still constitutional, while five justices argued it was unconstitutional.²⁰ However, the vote of five dissenting justices did not meet the requirement for a decision of unconstitutionality, which requires a vote of six or more.

On April 17, 1997, the Supreme Court affirmed the defendants' convictions for treason and killing for the purpose of treason.²¹ The Supreme Court held that the statute of limitations for the crimes against constitutional order was lawfully suspended by the Special Act, and the prosecution was instituted before the period expired.²² It held:

The defendants grasped political power after they stopped the exercise of the authority of 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.²³

Chun was sentenced to life imprisonment and Roh was imprisoned for seventeen years. Others received prison sentences ranging from three and a half to eight years. Based on Article 7 of the Special Act,²⁴ the decorations given to the military leaders were cancelled in 2006.²⁵

¹⁹ *Id.* at 3-Da & Ra.

²⁰ *Id.* at 3-Na.

²¹ Decision of April 17, 1997, 96 Do 3376 (Korean Supreme Court).

²² *Id.* chapt. 1 (2)-Ka.

²³ *Id.* chapt. 1 (1).

²⁴ 5.18 *Kwangju minjuhwa undong deung e kwanhan teukbyeolbeop* [The Special Act Concerning the May 18 Democratization Movement], Statutes of S. Korea, Law No. 5029 of 1995, art. 7.

²⁵ Park Joong-Hyun, [Disgraced Ex-Presidents Lose State Honors], CHOSUN ILBO (S. Korea), Mar. 22, 2006; Sung Dong-Ki, [Former Presidents Stripped of Medals], DONG-A ILBO (S. Korea), Mar. 22, 2006; Kim Hak-Joon, [The Decorations Awarded to Former Presidents Canceled] HANKYOREH SHINMOON (S. Korea), Mar. 21, 2006; Chun Su-jin, [Ex-Presidents Stripped of All Decorations, Orders of Merit], JOONG-ANG ILBO (S. Korea), Mar. 22, 2006.

C. *The Successful Prosecution and Trial Were “Collective Lessons in Justice”*

Transitional justice in Korea did not sacrifice justice although the Kim Young-Sam government was established with support from many politicians with military origins. The government had to consider the people’s power that overthrew the old regime. The trial of the military leaders declared that military coups and dictatorships will never be tolerated in Korea. It was a symbolic break with the old regime, providing education about democracy and the rule of law. In this context, the trial of the military leaders was a “political theatre” to provide “collective lessons in justice.”²⁶

After the guilty verdict, the military leaders, including two former presidents, received presidential pardons and were released in 1997. Nobody expected they would fully serve their sentence. Investigation and prosecution for other inferior soldiers or government officials who served for them were not pursued. The fact that the transition from the authoritarian-military regime was not established through revolution, but rather through compromise, embracing some parts of the political forces that had backed the authoritarian-military regime, constituted the restrictive surroundings for transitional justice. In this sense, justice was limited.

III. STATUTES OF LIMITATIONS CAN PREVENT THE APPLICATION OF HUMAN RIGHTS LAWS

A. *There Are Legal Difficulties When Punishing State Crimes Because of Statutes of Limitations*

Although two former presidents and other former military leaders were punished, a number of governmental officials or agents who tortured citizens, distorted substantial facts to convict citizens, and even murdered citizens, remain unpunishable. The Presidential Truth Commission on Suspicious Deaths, which was established in 2001,²⁷ recognized their crimes. However, they were not prosecuted because the given period in the statute of limitations had expired. According to the Criminal Procedure Code, crimes such as murder are subject to statutory limitations of only

²⁶ Barahona, *supra* note 1, at 26.

²⁷ *Euimunsa chinsang kyumyeong e kwanhan teukbyeolbeop* [The Special Act for Truth-Finding of Suspicious Deaths], Statutes of S. Korea, Law No. 6170 of 2001 (last revised by Act No. 7796 of 2005). Regarding the activities of the Truth Commission, *see* text accompanying notes 80-91.

fifteen years.²⁸ This short period of statutory limitation is a major impediment to legal redress.

Besides the “suspicious death”²⁹ cases that occurred in the process of the democratization movement, there was a notorious case where state authorities hid and supported a killer in order to maintain an anti-communist ideology and to bolster the authoritarian regime.

Kim Ok-Boon, also known as Susie Kim, was killed in Hong Kong by her husband in 1987. Her husband, Yoon Tae-Sik, lied to law enforcement authorities including the Agency for National Security Planning (“ANSP”), which was formerly the Korean Central Intelligence Agency (“KCIA”), that she was a spy for North Korea, had kidnapped him with other spies, and that he had escaped from them. Even though they found Yoon to be lying, the ANSP announced that Kim was a spy and praised Yoon as an anti-communist fighter. In 2001, after democratization, the truth was revealed and Yoon was arrested and convicted. In May 2002, Kim’s family filed a civil suit against the state and, in August 2003, was given 4.2 billion won (equivalent to approximately 0.4 million U.S. dollars) as compensation in a court decision. The Seoul District Court held that the state cannot rely on the statute of limitations if it has not taken any action to correct the illegal activities by state authorities.³⁰

However, the ANSP agents who fabricated and concealed the truth could not be prosecuted because the statute of limitations period for their crimes had expired. The public was angered by such legal technicalities preventing the punishment of criminals. Civic organizations and human rights groups strongly argued for the establishment of a law to prosecute them. However, like American jurisprudence,³¹ the majority of Korean jurisprudence maintains that retrospective application of an amended limitation period to time-barred prosecution violates the ex post facto principle because it may invite arbitrary and oppressive exercise of state authority to punish and infringes upon the citizen’s expectation of being free

²⁸ *Hyeongsu sosongbeop* [The Korean Criminal Procedure Code], Act No. 341, Statutes of S. Korea, art. 249. (1954) (last revised by Law No. 7965 of 2006).

²⁹ *Id.* art. 2.

³⁰ Kim Soo-Kyung, [4.2 Billion Won Paid to Suzy Kim’s Family], DONG-A ILBO (S. Korea), Aug. 15, 2003; Yang Sung-Wook, [Suzy Kim’s Family Won the Lawsuit Against the Government] DONG-A ILBO (S. Korea), Aug. 15, 2003.

³¹ *Commonwealth v. Guimento*, 491 A.2d 166 (Pa. Super. Ct. 1985); *People v. Shedd*, 702 P.2d 267 (Colo. 1985); *State v. Hodgson*, 740 P.2d 848 (Wash. 1987); *State v. Creekpau*, 753 P.2d 1139 (Alaska 1988); *State v. Nunn*, 768 P.2d 268 (Kan. 1989); *Commonwealth v. Barger*, 524 N.E.2d 829 (Mass. 1989); *Commonwealth v. Rocheleau*, 533 N.E.2d 1333 (Mass. 1989); *People v. Chesebro*, 463 N.W.2d 134 (Mich. Ct. App. 1990); *State v. Cookman*, 920 P.2d. 1086 (Or. 1996).

from punishment. By contrast, extending a limitation period before a given prosecution is barred does not violate this principle.³²

As seen in the decision of the Constitutional Court on the constitutionality of the 1995 Special Act Concerning the May 18 Democratization Movement in December 1995,³³ Constitutional Court justices' opinions were also split on whether the retrospective extension of the statute of limitations was constitutional when the limitation period had already expired.

B. Legislative Efforts to Overcome Statute of Limitations Bars to Prosecutions

There have been two bills submitted to cease or exclude the application of the statute of limitations.

The first was the 2002 Bill for Revision of the Criminal Procedure Code.³⁴ It excluded the application of the statute of limitations to the following crimes: treason, inducing of foreign invasion, killing or inflicting injury by torture, killing of civilians by war crimes or terror, destruction of evidence, helping criminals flee, abandoning duty, perjury, and interference in the performance of public duty with the intent of concealing facts.³⁵ It also provides that the statute of limitations shall cease while a criminal is staying out of the country to evade prosecution, or during any period the case is being concealed or fabricated.³⁶ However, the bill did not pass in the National Assembly.

The second bill was the 2005 Special Act Bill for Statutory Limitations to the State Crimes against Human Rights.³⁷ It excludes the application of the statute of limitations to killing or torture by state authorities in both criminal and civil cases.³⁸ It provides that the statute of limitations shall cease for the crimes of destruction of evidence, illegal arrest and detainment, abuse of authority, hiding criminals, abandoning duty, and

³² See Bae Jong-dae, *Hyeongbeop Chongron* [CRIMINAL LAW: GENERAL PART], 95 (8th ed., 2005); Kim Il-su, *Hyeongbeop Chongron* [CRIMINAL LAW: GENERAL PART], 62 (11th ed., 2006); Lee Jae-sang, *Hyeongbeop Chongron* [CRIMINAL LAW: GENERAL PART], 19 (5th ed. 2003); Park Sang-Ki, *Hyeongbeop Chongron* [CRIMINAL LAW: GENERAL PART], 31 (6th ed. 2004); Shin Don-Woon, *Hyeongbeop Chongron* [CRIMINAL LAW: GENERAL PART], 39-40 (2nd ed. 2006); Yim Woong, *Hyeongbeop Chongron* [CRIMINAL LAW: GENERAL PART], 22 (2002).

³³ See text accompanying notes 17-20.

³⁴ The Bill submitted as of May 24, 2002 (Bill No. 1582).

³⁵ *Id.* art. 249(2).

³⁶ *Id.* art. 253(3).

³⁷ The Bill submitted as of July 11, 2005 (Bill No. 2222).

³⁸ *Id.* arts. 2 & 4(1).

perjury during any period that the case is being concealed or fabricated.³⁹ These provisions are to apply to criminal cases where limitation periods do not expire.⁴⁰ In civil cases, they are applicable to cases whose limitation periods have already expired.⁴¹ This bill utilizes a constitutionally safer way in that its extension of the limitation period is not applicable when the limitation period has already expired. It took into account the possibility that the Constitutional Court could find the Act unconstitutional. This bill also did not pass in the National Assembly.

C. *There Is a Contradiction Between the Application of Retroactive Justice and the Demand for Punishment*

There certainly exists the popular demand for punishment of officials who gravely infringed human rights under the old regime. During the authoritarian-military rule, citizens had no opportunity to seek justice. The prosecution of state crimes against human rights was impossible. The ex post facto principle presupposes a possibility that citizens at least had a chance to pursue justice through law enforcement authorities. Nevertheless citizens had to risk their safety to pursue punishment of state crimes against human rights under the authoritarian-military regime. The principle must not be taken advantage of by state authority officials or agents who blocked investigation and prosecution against their own crimes. To prevent prosecution because of the lapse of statute of limitations would hurt the popular sense of justice. For that reason, retrospective application of an amended limitation period to time-barred prosecution should be allowed under very limited and special circumstances. For instance, after the Liberation from Japanese Occupation (1910-1945), the Act for Punishing Anti-Nation Activities⁴² was legislated in 1948 to punish pro-Japanese collaborators. Additionally, after the April 1960 Revolution which ended the authoritarian Rhee Syung-Man government, the Act for Restricting the Civil Rights of Anti-Democracy Personals⁴³ was enacted in 1960 to restrict for five to seven years civil rights of those who had participated in the Rhee

³⁹ *Id.* art. 3.

⁴⁰ *Id.* Appendix, art. 2(1).

⁴¹ *Id.* Appendix, art. 2(2).

⁴² *Banminjok haengwi cheobeol beop* [The Act for Punishing Anti-Nation Activities], Statutes of S. Korea, Law No. 3 of 1948 (abolished by Law No. 176 of 1951). Different from France, however, the Special Committee for Punishing Anti-Nation Activities could not produce meaningful outcomes because of President Rhee Syung-Man's interference and ultra right-wingers' attack of the Special Committee.

⁴³ *Banminjoo haengwicha kongminkweon chehan beop* [The Act for Restricting the Civil Rights of Anti-Democracy Personals], Statutes of S. Korea, Law No. 587 of 1960 (abolished by Law No. 1032 of 1962).

government's illegal activities, including the fabrication of the result of the March 15 general election of 1960.

Different from extending a limitation period before a given prosecution is expired, however, much stricter constitutional review is demanded to apply an amended limitation period retrospectively after the limitation period has already expired.⁴⁴ Procedural legality is required even to punish those who violated human rights under the authoritarian-military rule. If the new democratic regime weakens procedural legality to serve substantive justice, it may satisfy the popular demand but undermine the new regime's commitment to the rule of law. This is the academic reason why the two bills to cease or exclude the application of the statute of limitations did not pass. Ironically, procedural legality, which grew in Korean society after democratization, prevented the retrospective punishment of the perpetrators under the old regime after the limitation period had already expired. The National Assembly was not sure if such an act could pass constitutional review by the Constitutional Court. As a result, it was hesitant to fully advance retroactive justice in criminal cases. However, the National Assembly has been too hesitant in that, regardless of constitutional review, it could and should have passed a bill to retroactively extend criminal statutes of limitations so long as the limitation period has not already run.

IV. RESTORING THE HONOR OF THE DEMOCRATIZATION MOVEMENT ACTIVISTS

A. *The Next Step Is to Honor the Right of Resistance and Provide "Justice as Recognition"*

The next step to punish the perpetrators is to "restore the honor of those sacrificed for the democratization movement and their families, and provide compensation for them."⁴⁵ Under the authoritarian-military regime, a great number of democratization movement activists were not only

⁴⁴ For a leading American decision on the issue, see *Falter v. United States*, 23 F.2d 420 (1928). "Certainly it is one thing to revive a prosecution already dead, and another to give it a longer lease of life. The question turns upon how much violence is done to our instinctive feelings of justice and fair play. For the state to assure a man that he has become safe from its pursuit, and thereafter to withdraw its assurance, seems to most of us unfair and dishonest. But, while the chase is on, it does not shock us to have it extended beyond the time first set, or, if it does, the stake forgives it." *Id.* at 425-426.

⁴⁵ *Minjoohwa undong kawnryeonja myeongye hoebok mit bosang e kwanhan beopryul* [The Act for Restoring the Honor of Democratization Movement Involvers and Providing Compensation for Them], Statutes of S. Korea, Law No. 6123 of 2000, art. 1 (last revised by Law No. 8273 of 2007).

expelled from their schools or companies, but also arrested, detained, and convicted for the violation of a number of laws such as the Anti-Communist Act,⁴⁶ the National Security Act,⁴⁷ and the Act Concerning Assembly and Demonstration.⁴⁸ Punishment under these laws severely restricted political rights and freedoms.

In January 2000, under the Kim Dae-Jung government, the Act for Restoring the Honor of Democratization Movement Involvers and Providing Compensation for Them was enacted (“Democracy Act”). It owed much to the 422-day non-stop sit-in by human rights organizations such as the National Association of Bereaved Families for Democracy (cheonguk minjuhwa undong yukajok hyeopeuihwe) in front of the National Assembly.

The Democracy Act defines “democratization movement” as “activities that contributed to establishing democratic constitutional order and resurrecting and enhancing freedoms and *rights of people by resisting the authoritarian rule* that had disturbed free democratic basic order and violated people’s fundamental rights guaranteed by the Constitution since August 7, 1969.”⁴⁹

The Democracy Act shows that the “right of resistance” against an illegitimate regime,⁵⁰ which is not available in the Constitution, is officially recognized in the Democracy Act. It implies that a number of “illegal” activities against “the” authoritarian rule may be justified as an exercise of “right of resistance.” The act maintains the beginning date of the authoritarian rule as August 7, 1969, when the bill for revision of the Constitution was passed only by the ruling government party in order to let

⁴⁶ *Bangong beop* [Anti-Communist Act], Statutes of S. Korea, Law No. 643 of 1961 (abolished by Law No. 3318 of 1980).

⁴⁷ *Kukgaboan beop* [National Security Act], Statutes of S. Korea, Law No. 3318 of 1980 (last revised by Law No. 5454 of 1997). For more discussion regarding this Act see Kuk Cho, *Tension between the National Security Law and Constitutionalism in South Korea: Security for What?*, 15 B.U. INT’L L.J. 125 (1997).

⁴⁸ *Chiphoe mit siwi e kwanhan beopryul* [Act Concerning Assembly and Demonstration], Statutes of S. Korea, Law No. 1245 of 1962 (last abolished by Law No. 7849 of 2001).

⁴⁹ The Act for Restoring the Honor of Democratization Movement Involvers and Providing Compensation for Them, Act No. 6123, art. 2.1 (emphasis added).

⁵⁰ The right to resist against illegitimate regime was incorporated into the documents of the American and French Revolutions. See THE HUMAN RIGHTS READER 107, 118 (Walter Laqueur & Barry Rubin ed., 1979). The right was explicitly recognized in a number of early American state constitutions. For instance, Article Ten of the New Hampshire Constitution of 1797 states that “whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.” [N.H. CONST. art. 10 (1797), reprinted in THE TREE OF LIBERTY: A DOCUMENTARY HISTORY OF REBELLION AND POLITICAL CRIME IN AMERICA 85 (Nicholas N. Kittrie & Eldon D., Jr. Wedlock eds., 1986).

President Park Chung-Hee be elected once more.⁵¹ Although the revision was approved by popular referendum later, it was the first step to make President Park a permanent president.⁵²

The Act also classifies “democratization movement involvers” into the following categories: (i) those who were dead or lost in connection with the democratization movement, (ii) those who were injured in connection with the democratization movement, (iii) those who fell ill or became dead due to illness in connection with the democratization movement, and (iv) those who were convicted, fired or disciplined in connection with the democratization movement.⁵³ The “democratization movement involvers” in the May 18 Uprising of 1980 are covered by the 1990 Act for Restoring the Honor of Democratization Movement Involvers and Providing Compensation for Them.⁵⁴

The Review Committee for Restoring the Honor of Democratization Movement Involvers and Providing Compensation for Them (“The Review Committee”)⁵⁵ was organized under the prime minister with the task of examining whether or not applicants were “democratization movement involvers”, and deciding what kind of disposition was to be made for them.⁵⁶ Former Constitutional Court Justice Ha Kyong-Chul was appointed as chairman of the Review Committee. Although the Review Committee itself is neither an investigative nor a judicial authority, it has authority to make a necessary inquiry into the case and make a request to the relevant authorities.⁵⁷ It may recommend a pardon for those who were convicted in connection with the democratization movement, or abolishment of the record of their conviction.⁵⁸ It may also make recommendations to state and local governments, or private companies to rehire those who were fired in

⁵¹ See *Daehan minguk heonbeop* [THE CONSTITUTION OF THE REPUBLIC OF KOREA OF 1969], art. 69(3)(amended 1969; last amended 1987).

⁵² The Act does not provide an explanation why the beginning of the authoritarian rule was fixed on August 7, 1969 even though Presidents Rhee Syung-Man and Park Chung-Hee exercised authoritarian rule before the date. It is assumed that the set up of the authoritarian rule in constitutional level on August 7, 1969 was considered.

⁵³ *Minjoohwa undong kawnyeonja myeongye hoebok mit bosang e kwanhan beopryul* [The Act for Restoring the Honor of Democratization Movement Involvers and Providing Compensation for Them], Statutes of S. Korea, Law No. 6123 of 2000, art. 2.2 (last revised by Law No 8273 of 2007).

⁵⁴ See *Kwangju minjuhwa undong kwanryeonja bosang deung e kwanhan beopryul* [Act for Compensation for the Victims in the Democratization Movement in Kwangju], Statutes of S. Korea Act, Law No. 4266 of 1990) (last revised by Law No. 7911 of 2006).

⁵⁵ Minjoo.go.kr, <http://www.minjoo.go.kr>.

⁵⁶ The Act for Restoring the Honor of Democratization Movement Involvers and Providing Compensation for Them, Act No.6123, art. 4(2).

⁵⁷ *Id.* art. 2(1).

⁵⁸ *Id.* art. 5-3.

connection with the democratization movement.⁵⁹ It may also make recommendations to schools to abolish records of discipline on those who were disciplined in connection with the democratization movement and to bestow honorary graduation diplomas to them.⁶⁰

Under the old regime, a number of democratization movement activists were given a label of “pro-communism” or “impure left leaning” radical subversives.⁶¹ Following the examination of the applications by the Review Committee, a number of democratization movement activists have been recognized as “democratization movement involvers.” Disposition for honor restoration and compensation has been made for them. As of December 28, 2006, 543 “democratization movement involvers” have been given a total of \$28,700,000 in compensation.⁶² The decisions of the Review Committee can be considered to give “justice as recognition” and “compensatory justice” to those who sacrificed themselves to fight for democracy.⁶³

One of the most high-profile cases is of the “People’s Revolution Party Rebuilding Committee” (inmin hyeokmyeong dang jaekeon wiwonhwei), (“PRP”). This has been broadly known as a typical case of fabrication by torture. As the anti-Yushin movement by college students and intellectuals was getting stronger in 1974, the KCIA arrested alleged PRP members because they had allegedly pursued a communist revolution with connections to North Korea. Eight members were immediately executed just one day after their conviction was confirmed by the Supreme Court in 1975. For this reason, this case has been often called “judicial murder.”⁶⁴

In January 2006, the Review Committee decided that the conviction of sixteen PRP members was based on facts fabricated as a result of the KCIA’s severe torture, and the genuine reason why they were suppressed was because they had actively developed an anti-Yushin regime movement.⁶⁵ In December 2005, before the decision by the Review Committee, the Committee for Development through Finding Truth of the

⁵⁹ *Id.* art. 5-4.

⁶⁰ *Id.* art. 5-5.

⁶¹ James M. West & Edward J. Baker, *The 1987 Constitutional Reforms in South Korea: Electoral Process and Judicial Independence*, in HARVARD HUMAN RIGHTS YEARBOOK 139 (William Shaw ed., 1991).

⁶² Dong Jung-Min, [*Recognizing 46 Illegal Labor Activists as Democratic Activites*], DONG-A ILBO, Dec. 18, 2006 (last visited Apr. 22, 2007).

⁶³ Barahona, *supra* note 1, at 25.

⁶⁴ Catholic Human Rights Committee, *SABEOP SALIN: 1975 NYEON SAWOL EUI HAKSAL [JUDICIAL MURDER: THE MASSACRE OF APRIL 1975]*, 164-65 (2001).

⁶⁵ The decision is available at <http://www.minjoo.go.kr/section/news/reportcontentDB.html?inum=113&iKind=3&szSearchWord=&szSearchItem=&IGotoPage=1> (last visited Apr. 26, 2007).

Past⁶⁶ under the National Intelligence Service (the successor to the KCIA) also found that the PRP case was fabricated by torture.⁶⁷ On December 27, 2005, the Seoul Central District Court decided to reexamine the conviction of the members⁶⁸ and in January 23, 2007, the court overruled the previous conviction.⁶⁹

B. *The Extent of the Democratization Movement Remains Controversial*

1. *The Case of the Dong-Eui University Students—Embracing Counter-Violence by the Democratization Movement*

In May 1989, students of Dong-Eui University staged a sit-in at the library building on campus to demonstrate against corrupt entrance exam procedures. They also detained five police officers. When the police entered the library to break up the sit-in, some students threw Molotov cocktails at the police. A fire broke out, killing seven police officers. The students were arrested and convicted of murder by arson.⁷⁰ This violent confrontation between college students and the authoritarian regime's police resulted in a terrible tragedy, which poses difficult questions of whether violent and lethal anti-regime activities can be considered a part of the democratization movement.

It was inevitable that the Review Committee's decision to acknowledge forty-six students of Dong-Eui University as "democratization movement involvers," on April 27, 2002 would provoke controversy. The Review Committee focused on the fact that the students' conduct was a routine method of demonstration without intent to kill police officers at that time, even though it resulted in the death of several police officers; the grave

⁶⁶ Baek Ki-Chul, [*NIS Committee for Development through Finding Truth of the Past Starts*], HANKYOREH (S. Korea), Nov. 2, 2004; Park Joo-Ho, [*NIS Begins Truth Finding of the Past*] KOOKMIN ILBO (S. Korea), Nov. 2, 2004; Chang Yong-Hoon, [*NIS Starts out to Find Truth of the Past*], YONHAP NEWS (S. Korea), Nov. 2, 2004.

⁶⁷ Lee Hee-Jin, [*The PRP Case Fabricated as Directed by Park Chung-Hee*], HANKOOK ILBO (S. Korea), Dec. 12, 2005; Son Byung-Ho, [*The Truth Finding Committee Said the PRP Case was Fabricated on the Request of the Former President Park*] KOOKMIN ILBO (S. Korea), Dec. 7, 2005; Chung Joon-Young, [*Behind the PRP Case, There was a Man in Power*], YONHAP NEWS (S. Korea), Dec. 7, 2005.

⁶⁸ Chun Ji-Sung & Chung Hyo-Shin, [*The People's Revolution Party Case Will Be on Retrial After 30 Years*], DONG-A ILBO (S. Korea), Dec. 28, 2005; Choe Young-Yoon, [*The People's Revolution Party Case Is Decided to Be on Retrial*], HANKOOK ILBO (S. Korea), Dec. 27, 2005; Ko Na-Moo, [*The Truth of Judicial Murder Will Be Revealed After 30 Years*], HANKYOREH (S. Korea), Dec. 27, 2005.

⁶⁹ Lee Jong-Suk, [*Sentence of Innocence to the Defendants of the People's Revolution Party Case After 32 Years*], DONG-A ILBO (S. Korea), Jan. 24, 2007; Choe Young-Yoon, [*Sentence of Innocence to the People's Revolution Party Case After 32 Years*], HANKOOK ILBO (S. Korea), Jan. 24, 2007; Park Sung-Woo, [*No Evidence to Prove Anti-State Organization*], JOONG ANG ILBO (S. Korea), Jan. 24, 2007.

⁷⁰ Decision of June 22, 1990, 90 Do 767 & 90 Do 764 (Korean Supreme Court).

result of the students' conduct did not prevent their conduct from being regarded as part of a democratization movement.

The family members of the dead police officers filed a constitutional petition to the Constitutional Court, arguing that the decision of the Review Committee and the Act for Restoring the Honor of Democratization Movement Involvers and Providing Compensation for Them violated their constitutional rights. On October 27, 2005, a 5-to-4 majority opinion of the Constitutional Court rejected the petition because (i) the family members did not have standing for the petition; (ii) the decision did not necessarily cast the dead police officers in a negative light because the officers already received the title of "officers of merit"; and (iii) the Act is constitutional because it does not disadvantage those who stood on the opposite side of the democratization movement.⁷¹ However, the minority opinion argued that the decision of the Review Committee was unconstitutional because, despite the students' desire to resist the authoritarian regime, the students resorted to means which were destructive, which cannot be tolerated in a democratic order. The minority opinion reasoned that if the students' conduct was acknowledged as a democratization movement, the dead policemen would inevitably be considered agents of the authoritarian regime.⁷²

In addition to other police officers, conservative party members and newspapers strongly objected to the Review Committee and the Constitutional Court's two decisions, claiming that these decisions turned cop-killers into democratization movement activists.⁷³ Criticism was raised from a different standpoint as well. Moon Boo-Sik, who as a student movement leader in 1982 burnt the American Culture Center in Pusan, causing an innocent student's death to protest the U.S. government's leniency toward Korea's authoritarian regime, called for serious reflection on the use of counter-violence by a democratization movement.⁷⁴

The Review Committee and the majority opinion of the Constitutional Court seemed to consider the socio-political background of the tragedy, in which tear gas bombs from the police and Molotov cocktails from demonstrating students were exchanged. They also seemed to consider the contribution of student movements toward democratization. Article 2 of the

⁷¹ Decision of October 27, 2005, 2002 HunMa 425 (Korean Constitutional Court).

⁷² *Id.* (Kwon, J., Kim, J., Song, J., Joo, J., dissenting).

⁷³ Editorial, [*Rethinking Democratic Movement*], DONG-A ILBO (S. Korea), Oct. 28, 2005; Editorial, [*The Dong-Eui University Case: The Violence Unallowable Under the Liberal Democracy*], MUNHAW ILBO (S. Korea), Apr. 28, 2006; Editorial, [*Did The Constitutional Court Reflect the Historical Consciousness on its Dismissal of the Dong-Eui University Case?*], SEGYE ILBO (S. Korea), Oct. 28, 2005.

⁷⁴ Moon Boo-Sik, IN SEARCH OF THE LOST MEMORY—THINKING OF THE AGE OF MADNESS (*ileobeorin kieok eul chataseo—kwangkiewi sidae reul saenggak ham*), chap. 5 (2002).

Act seems to consider the deaths of state authority officers as an acceptable collateral consequence of recognizing the “right of resistance” in the 2000 Democracy Act.⁷⁵ The fact that the Dong-Eui University students were given the title of “democratization movement involvers” while the sacrificed police officers were given the title of “officers of merit” shows the complicated situation of the past. Despite the fact that the Dong-Eui University students were legally classified as “democratization movement involvers,” there still remains a more fundamental question about the legitimacy of counter-violence against the old regime. To cite Moon Boo-Sik:

It is not honest to say that several kinds of counter-violence was all inevitable, or had a nature of self-defense. Criticism on the context of democratization movement that did not limit the use of violence as an inevitable means of resistance, defense and last resort for expression, . . . rather advocated violence as a tool to create a new power has been reserved because it may work as a ground to justify the violence of state authority.⁷⁶

2. *The Case of the “National Liberation Front of South Korea” Embraced the Leftist Democratization Movement*

It is also noteworthy that in March 2006 the Review Committee acknowledged twenty-nine members of the “National Liberation Front of South Korea” (Namchoseon minjokhaebang cheonseon, hereinafter “NLF”) as “democratization movement involvers.”⁷⁷

During the late 1970s, the NLF vigorously fought against the authoritarian-military regime with an anti-America, anti-Yushin, and anti-capitalism agenda, and its members were punished heavily for violating the Anti-Communist Act and the National Security Act. Its leader was sentenced to capital punishment, but died after being tortured before his scheduled execution; another leader also was executed.

While the Review Committee fully recognized the radical, left-wing characteristics of the NLF, it acknowledged that the NLF’s activities in

⁷⁵ *Minjoohwa undong kawnryeonja myeongye hoebok mit bosang e kwanhan beopryul* [The Act for Restoring the Honor of Democratization Movement Involvers and Providing Compensation for Them], Statutes of S. Korea, Law No. 6123 of 2000, art. 2.1 (last revised by Law No 8273 of 2007).

⁷⁶ Moon, *supra* note 74, at 165 (translated by this author).

⁷⁷ See REVIEW COMMITTEE FOR RESTORING THE HONOR OF DEMOCRATIZATION MOVEMENT INVOLVERS AND PROVIDING COMPENSATION FOR THEM, REPORT: *NAMINJUHN GWANRYON BODO E DEHAN HAEMYUNG* (2006), available at <http://www.minjoo.go.kr/section/news/reportcontentDB.html?inum=115&iKind=3&szSearchWord=&szSearchItem=&IGotoPage=1>.

general could be considered as political resistance against the authoritarian Yushin regime. Conservative right-wing newspapers and civic organizations strongly criticized the decision of the Review Committee because the ultimate goal of the NLF was a leftist revolution.⁷⁸

The decision shows that the Review Committee understands and embraces the leftist democratization movement in a broad sense. The Anti-Communist Act and the National Security Act reflected the anti-communist ideology of the authoritarian-military regime, and considered all leftist activities “non-democratic” and severely punished them. The Review Committee in this decision aimed to evaluate impartially the contribution of the leftist democratization movement. Its decision fell in line with the decision of the Ministry of Patriots and Veterans Affairs in February 2002 and in August 2005 to confer decorations on a number of leftist activists who fought for national liberation under the Japanese Occupation.⁷⁹ Similar to the liberation movement against the Japanese Occupation, the leftist democratization movement was acknowledged as an integral part of the broader democratization movement against the authoritarian-military regime.

The Review Committee’s decision reveals that Korea has freed itself of the “red complex” which at one time overshadowed it. It also reflects the broader political spectrum of contemporary Korean democracy. A leftist party such as the “Democratic Labor Party” (minju nodong dang), which could have been harshly punished had it been organized under the authoritarian-military regime, is currently legalized and has seats in the National Assembly.

⁷⁸ Editorial, [A “Champion of Democracy” Who Stole Military Weapons Attempting to Communize South Korea], DONG-A ILBO (S. KOREA), Mar. 16, 2006; Editorial, [Ungrounded Decisions Regarding Democratization Movements], SEGYE ILBO (S. KOREA), Mar. 16, 2006.

⁷⁹ Kim Jung-Kwon, [54 Socialists Recognized by Decoration], HANKOOK ILBO (S. KOREA), Feb. 22, 2005; Jun Sung-Chul, [Independence Movement 214 Persons Aug. 15 Decoration], HANKOOK ILBO (S. KOREA), Aug. 3, 2005; Sung Gul Kim, [Decorations Granted to 214 Independence Fighters Including Socialists], HANKYOREH (S. KOREA), Aug. 3, 2005; Media News Team, [54 Socialists Recognized as Fighters for Independence], KYONH-HYANG SHINUM (S. KOREA), Feb. 22, 2002; Choi Hyun-Soo, [The Decorations Awarded to Leftists: No More Ideological Basis.], KOOKMIN ILBO (S. KOREA), Feb. 22, 2002; Yang Sung-Wook, [Independence Day Decoration for Fighters for Independence], MUNHWA ILBO (S. KOREA), Feb. 22, 2002.

V. THE TRUTH COMMISSION'S INVESTIGATION AND SANCTIONS
CONCERNING SUSPICIOUS DEATHS

A. *Choosing Truth-Finding Rather than Oblivion*

Under the authoritarian-military regime a number of democratization activists and critical intellectuals were found dead. State authorities announced that they had died either by accident or suicide. The torture victims' outcries were not heard under that regime and the State ignored the families' requests to re-examine the cause of these suspicious deaths. Suggestions that law enforcement officers tortured citizens during interrogation, or that they concealed such deaths resulting from torture, often were treated as fallacious attacks on the regime's legitimacy. It was only after democratization that victims and their families were given credence.

The Special Act for Truth-Finding about Suspicious Deaths was passed in 2001 under the Kim Dae-Jung government. Like the 2000 Act for Restoring the Honor of Democratization Movement Involvers and Providing Compensation for Them, the Special Act owed much to the non-stop sit-in in front of the National Assembly by the Korea Association of Bereaved Families for Democracy.⁸⁰ The Korean public wanted to disrupt the silence of the past to learn the truth. The Presidential Truth Commission on Suspicious Deaths ("The Truth Commission") was established for this task,⁸¹ and it investigated the circumstances surrounding the suspicious deaths related the democratization movement before June 2004. Professors Yang Seung-Kyu and Han Sang-Beom served consecutive terms as chairman of the Commission.

The Special Act defined "suspicious death" as "deaths that occurred with relation to the democratization movement whose cause has not been identified and which shows probable cause that it might have resulted from direct or indirect illegal exercise of state authority."⁸² The definition of "democratization movement" followed the definition provided by the 2000 Act for Restoring the Honor of Democratization Movement Involvers and Providing Compensation for Them.⁸³

⁸⁰ *Euimunsa chinsang kyumyeong e kwanhan teukbyeolbeop* [The Special Act for Truth-Finding of Suspicious Deaths], Statutes of S. Korea, Law No. 6170 of 2001, art. 1 (last revised by Act No. 7796 of 2005).

⁸¹ *Id.* art. 3.

⁸² *Id.* art. 2.

⁸³ *Id.*; see also *supra* note 53 and accompanying text.

The Truth Commission was given the authority to initiate an investigation of a suspicious death upon the filing of a petition, or by its own decision in the absence of a petition.⁸⁴ Its powers were as follows: it could request relevant individuals to appear for investigation and relevant authorities to submit data and materials pertinent to the investigation;⁸⁵ it also could perform a field investigation in the place where the suspicious death allegedly occurred;⁸⁶ if it found evidence of a crime, it could file a complaint to the Attorney General or the Chief of the Military General Staff,⁸⁷ and request law enforcement authorities to investigate the case;⁸⁸ it could issue an “order of accompanying” to a person who refused to appear without just cause;⁸⁹ if its investigation concluded that the suspicious death resulted from an illegal exercise of state authority in the process of democratization, the Truth Commission was obliged to request the Review Committee for Restoring the Honor of Democratization Movement Involvers and Providing Compensation for Them to review the case.⁹⁰

However, the Truth Commission was neither an investigative nor a judicial authority, and therefore it was given neither the authority to search and seize relevant materials and institute prosecution, nor the authority to subpoena witnesses and suspects. Law enforcement authorities did not want to provide the Truth Commission with such authority. Only administrative fines could be imposed on those who did not cooperate with the Truth Commission’s investigation without just cause or refused to follow the request for appearance without just cause.⁹¹ In this sense, the activities of the Truth Commission were so limited that it had difficulty discovering the truth surrounding suspicious deaths without the voluntary cooperation of relevant persons and state authorities.

⁸⁴ The Special Act for Truth-Finding of Suspicious Deaths, Law No. 6170, art. 21.

⁸⁵ *Id.* art. 22(1).

⁸⁶ *Id.* art. 22(3).

⁸⁷ *Id.* art. 25(1).

⁸⁸ *Id.* art. 25(2).

⁸⁹ *Id.* art. 22 (8).

⁹⁰ *Id.* art. 26.

⁹¹ *Id.* art. 37. Imprisonment may be imposed on those who committed assault or battery to the officials of the Truth Commission. *Id.* art. 34.

B. *Three Major Decisions by the Truth Commission Found Suspicious Deaths Related to the Democratization Movement*

The Truth Commission recognized thirty cases in total as cases of “suspicious death,”⁹² while it classified others as “impossible to investigate”⁹³ due to a lack of evidence and dismissed those that lacked merit. Major decisions are reviewed below.

1. *The Case of Victims Killed Under “Protective Custody”*

In 2001 the Truth Commission acknowledged that the deaths of two inmates, which occurred while they were incarcerated under the pretext of “protective custody” (bohokamho),⁹⁴ were “suspicious deaths.”

In 1980 the military coup committee issued Martial Order No. 13, which was to put vagrants and repeat criminals into concentration camps under the name of “Samcheong Education.”⁹⁵ Later the “Legislative Council for Protection of the State” wrote the Social Protection Act⁹⁶ to provide legal grounds for applying the Martial Order retroactively. The Social Protection Act imposed “protective custody” on repeat felons when they were found to have “danger of recommitting crimes.”⁹⁷ However, under the Act even ordinary citizens who were neither vagrant nor criminal were incarcerated in the camps. Inmates were extremely abused under the harsh and oppressive “education.” Later, those who were put under “protective custody” were incarcerated in strict confinement centers in the Cheongsong region.

⁹² Kim Nam-Kwon, [*The Second Suspicious Death Activites Outlook*], YONHAP NEWS (S. KOREA), Apr. 30, 2003; Choi Sung-Hyun, [*The Second Suspicious Death Activites Report to Cheongwadae*], YONHAP NEWS (S. KOREA), July 30, 2004.

⁹³ The Special Act for Truth-Finding of Suspicious Deaths, Law No. 6170, art. 24-2. The decision of “impossibility of investigation” is made when the Truth Commission finds that it was not clear if the death happened in the process of democratization movement, or resulted from illegal exercise of state authority.

⁹⁴ “Protective custody” is one of “protective security measures” (*boancheobun* or *Maßnahmen* in German). In Korean criminal law, there are two types of criminal sanctions: punishment and “protective security measures.” The Korean Constitution provides legal basis for this distinction, saying that no punishment or protective security disposition shall be imposed without law [The Constitution, §12 (1)]. These two sanctions are distinguished in theory in that the first is imposed on those with the capability to be responsible for their past criminal conduct, while the second is used to rehabilitate criminals and protect society from any future crimes that non-rehabilitated criminals may commit. The second is prescribed mainly in special criminal acts.

⁹⁵ See generally Suh Young-Soo, SAMCHEONG KYOYOOKDAE: POGORYONG 13 HO [SAMCHEONG EDUCATION UNIT: THE MARTIAL ORDER NO. 13] (2004).

⁹⁶ *Sahoeboho Beop* [Social Protection Act], Statutes of S. Korea, Law No. 3286 of 1980, (abolished by Law No. 7656 of 2005).

⁹⁷ *Id.* art. 5.

The Truth Commission found that in 1981, Jean Jeong-Bae had been shot dead in a concentration camp by military officers while protesting against the “Samcheong Education.” It was determined that he was involved in the democratization movement because he contested his illegal detainment by requesting a formal trial and met with a higher-ranking official.⁹⁸ In 1984, jailors cruelly treated Park Young-Doo, and he died in a discipline cell at a heavy confinement facility in the Cheongsong region after he demanded the abolition of “protective custody,” an end to jailors’ violence against inmates, and improvement of treatment for inmates. His body was buried without an autopsy or his family’s attendance.⁹⁹

2. *The Case of Professor Tsche Chong-Kil, Killed During Interrogation by the KCIA*

In May 2002, the Truth Commission acknowledged that the death of Professor Tsche Chong-Kil of Seoul National University College of Law was a “suspicious death.”¹⁰⁰

In 1973, Professor Tsche was found dead in a KCIA building and the KCIA announced that he had committed suicide by throwing himself out of a building after confessing he was a spy for North Korea. The KCIA interrogated him because a self-surrendered North Korean spy had mentioned his name. However, the Truth Commission found that KCIA agents tortured him during interrogation and that he had never confessed to being a spy. They further determined there was a high probability that he was killed and his body was thrown away by the agents; and even if he did throw himself, it was probably to evade additional torture by the agents. They also found the case of a spy group in Europe that the KCIA announced after his death was fabricated.

⁹⁸ Kim Hoon, [*Suspicious Death: Truth-Finding Commission Recognizing the Death at Samcheong Education Camp as a Democratization Movement.*], THE HANKYOREH (S. Korea), Sept. 16, 2001; Oh Nam-Suk, [*Jean Jeong-Bae Shot Dead in a Concentration Camp is Recognized to be Involved in a “Democratization Movement.”*], MUNHWA ILBO (S. Korea), Sept. 17, 2001.

⁹⁹ Yang Ki-Dae, [*First Recognition of Mysterious Death at Samcheong Education: Mr. Park Young-Doo’s Death Due to Prison Official Violence*], DONG-A ILBO (S. Korea), June 25, 2001; Jung Young-Oh, [*Recognition of Park [Young Doo’s Death as Associated with Democratic Movement]*], HANKUK ILBO (S. Korea), June 25, 2001; Kang Young-Soo, [*Mysterious Death of Park Young-Doo: Caused by Prison Official Abuse*], KOOKMIN ILBO (S. Korea), June 25, 2001; Kim Sung-Jin, [*Mysterious Death: First Recognition of Democratic Association*], YONHAP NEWS (S. Korea), June 25, 2001.

¹⁰⁰ Min Dong-Yong, [*Fabricated Espionage Allegation by the Government Proved: Professor Tsche Recognized as a Victim of Suspicious Death.*], DONG-A ILBO (S. Korea), May 27, 2002; Kim Jae-Joong, [*Truth-Finding Commission Concluded Professor Tsche was Killed by the Government Exercising Public Powers*], KOOKMIN ILBO (S. Korea), May 27, 2002; Kim Nam-Kwon, [*Recognition of Professor Tsche Chong-Kil’s Death as Related to Democratization Movement*], YONHAP NEWS (S. Korea), May 27, 2002.

In February 2006, the Seoul High Court decided that the State should provide about 1.8 billion won (equivalent to approximately 1.9 million U.S. dollars) to Professor Tsche's family as compensation. The court reasoned that the state cannot rely on the statute of limitations if state authorities have fabricated and concealed the truth.¹⁰¹ As in Susie Kim's case,¹⁰² this decision reflects that Korean jurisprudence distinguishes retroactive civil sanction from retroactive criminal sanction.

3. *A Controversial Case: North Korean Spies Killed in Prison*

In July 2004, the Truth Commission made a controversial decision. It acknowledged that the death in prison of two former North Korean spies and one former communist partisan during the Korean War were "suspicious deaths."¹⁰³ It found that state authorities tortured and forced them to convert their political beliefs before they were killed in prison under the Yushin regime. The Social Security Act¹⁰⁴ enacted in 1975 enabled the imprisonment of a number of non-converted leftists, including North Korean spies, after they had served their sentences on the grounds that there was a "danger of recommitting crimes."¹⁰⁵ "Security custody," which is another kind of "protective security measures,"¹⁰⁶ was imposed by the Ministry of Justice,¹⁰⁷ not the judiciary, and could be renewed repeatedly until "anti-communism was established" in the leftists' minds.¹⁰⁸ Under this system, leftists who refused to submit a "conversion document" to state authorities faced the danger that they might never be released.

The Truth Commission confirmed that the three inmates were killed by "illegal exercise of state authority," although it was disputed whether their death met the requirement of the "death happening *with relation to the democratization movement*" in the Special Act.¹⁰⁹ The Truth Commission

¹⁰¹ [Seoul High Court decided, "the State should provide about 1.8 billion won to Professor Tsche's family as compensation"], THE LAW TIMES (S. Korea), Feb. 25, 2006.

¹⁰² See text accompanying notes 30-32.

¹⁰³ Kim Sung-Hoon, [A New Controversy: Truth Commission Recognized Leftists' Contribution to Democratization], MUNHAW ILBO (S. Korea), July 1, 2004; Jung Sung-Ho, [Controversy over the Truth Commission Recognizing Non-Converted Leftists to be Involved in Democratization], YONHAP NEWS (S. Korea), July 2, 2004.

¹⁰⁴ *Sahoeancheon Beop* [Social Security Act], Statutes of S. Korea, Law No. 2769 of 1975 (last revised by Law No. 3993 of 1987).

¹⁰⁵ *Id.* § 6 (1).

¹⁰⁶ See *supra* note 94.

¹⁰⁷ Social Security Act, *supra* note 104, § 7 (4).

¹⁰⁸ *Id.* § 7 (1).

¹⁰⁹ *Euimunsa chinsang kyumyeong e kwanhan teukbyeolbeop* [The Special Act for Truth-Finding of Suspicious Deaths], Statutes of S. Korea, Law No. 6170 of 2001, art. 2 (last revised by Act No. 7796 of 2005) (emphasis added).

interpreted the requirement broadly, maintaining that it was unconstitutional and illegal to force them to convert their political beliefs, and that their resistance contributed to the abolishment of the undemocratic “conversion system.” Conservative politicians, newspapers, and civic organizations strongly criticized the decision, arguing that the inmates adhered to their communist beliefs and their resistance could not be classified as a part of the democratization movement.¹¹⁰

Soon after the Truth Commission rendered its decision, the Review Committee for Restoring the Honor of Democratization Movement Involvers and Providing Compensation for Them¹¹¹ rejected the decision of the Truth Commission.¹¹² The Review Committee has the final authority to confirm whether a suspicious death is related to the democratization movement.¹¹³ The Review Committee distinguished North Korean spies from home-grown leftists, as it acknowledged in 2006 that the activities of the home-grown leftist NLF belonged to the democratization movement.¹¹⁴ Separate civil suits may be pursued to compensate for the deaths of the two former North Korean spies and the one former communist partisan.

C. *Conclusion: The Truth Commission Made Great Achievements Despite Limitations*

The Truth Commission was dissolved in 2004. It left a number of unsolved cases. For instance, mysteries still surround the deaths of Chang Joon-Ha, a leading dissident against the Park Chung-Hee regime, found dead on a mountain in 1974, and two student activists, Lee Chul-Kyu and Lee Rae-Chang, who were found dead in a reservoir and on a beach respectively in 1999. Crucial witnesses and evidence were not available after the long lapse of time since their deaths. It is necessary to note, from the beginning

¹¹⁰ Editorial, [*Even Spys are Democratization Fighters to the Eyes of the Truth Commission*], DONG-A ILBO (S. Korea), July 2, 2004; Editorial, [*A Country Recognizing Even North Korean Spys as Democratization Fighters*], MUNHWA ILBO (S. Korea), July 2, 2004; Editorial, [*They Said North Korean Spys Contributed to Democratization*], PUSAN ILBO (S. Korea), July 2, 2004; Editorial, [*A Refusal to Turn From a Spy is a Democratization Movement?*], YONHAP NEWS (S. Korea), July 2, 2004.

¹¹¹ See *supra* notes 55-60 and accompanying text.

¹¹² Choi Young-Yun, [*Military Tribunal Should be Disbanded Except During War Time*], HANKOOK ILBO (S. Korea), July 30, 2004; Kang Ju-Hwa, [*Truth Commission's Report Calls for Invalidating the Convictions Against Democratization Activists and Establishing an Authority to Find the Cause Of Deaths*], KOOKMIN ILBO (S. Korea), July 30, 2004; Cho Sung-Hyun [*The Truth Commission Presses the Government to Establish an Authority to Identify the Cause of Death.*], YONHAP NEWS (S. Korea), July 30, 2004.

¹¹³ *Euimunsa chinsang kyumyeong e kwanhan teukbyeolbeop* [The Special Act for Truth-Finding of Suspicious Deaths], Statutes of S. Korea, Law No. 6170 of 2001, art. 26 (last revised by Act No. 7796 of 2005).

¹¹⁴ See *supra* notes 77-79 and accompanying text.

the Truth Commission had limited legal authority to discover the actual truth about suspicious deaths;¹¹⁵ and other state authorities were reluctant to cooperate with the investigation of the Truth Commission for fear that their own misconduct would be uncovered.¹¹⁶ When concluding their investigation, the Truth Commission recommended that the government and the National Assembly enact a new law to bar application of the statute of limitations to state crimes against human rights, to punish perjury or refusal to submit relevant materials in hearings for rectifying past wrongs, and to require disclosure of all information regarding past wrongs.¹¹⁷

Despite these difficulties, however, the Truth Commission made substantial contributions to advancement of Korean society. Their findings consoled the victims' hurt souls and healed the trauma of the victims' families. They also made Korean people look back on the dark shadow of the painful past and made them determined to maintain democracy in Korean society.

VI. BROADENING THE SCOPE OF ILLUSTRATING PAST WRONGS

A. *Uncovering the Activities of Pro-Japanese Collaborators Under the Japanese Occupation and Reverting Their Property to the State*

The fact that the pro-Japanese Koreans who sided with Japanese rule and oppressed the Korean liberation movement under the Japanese Occupation (1910-1945) were not thoroughly investigated and justly sanctioned even after the Liberation of 1945 has posed a lingering political and social problem for Koreans.

President Rhee Syung-Man and his far right-wing conservative allies, who gained political hegemony over the left after the Liberation, objected to the thorough abolition of colonial legacies. With a strong anti-communist and anti-North Korean agenda, pro-Japanese Koreans supported the party's fight against the leftist movement in South Korea. Although in 1948 the Act for Punishing Anti-Nation Activities¹¹⁸ was enacted and the Special Committee for Punishing Anti-Nation Activities was formed in the National

¹¹⁵ See *supra* note 90 and accompanying text.

¹¹⁶ Park Jung-Hyun & Koo Hye-Young, [*Truth Commission Reports Non-cooperation of State Authorities*], SEOUL SHINMUN (S. Korea), Aug. 18, 2004; Koo Young-Sil, [*Gate of the Military Information Agency Has Yet to Be Open*], OHMYNEWS (S. Korea), June 11, 2004.

¹¹⁷ Sung Ho Chung, [*The Second Report on Suspicious Death Activities*], YONHAP NEWS (S. Korea), Dec. 8, 2004.

¹¹⁸ *Banminjok haengwi cheobeol beop* [The Act for Punishing Anti-Nation Activities], Law No. 3 of 1948 (abolished by Law No. 176 of 1951).

Assembly, President Rhee and his political allies substantially interfered with the activities of the Special Committee. The Special Committee was ultimately dissolved without any meaningful achievement.¹¹⁹ Since then, pro-Japanese Koreans have survived and even flourished in Korea. Successive authoritarian-military governments have not attempted to investigate them. The fact that a number of political and social leaders including Park Chung-Hee had served as a bureaucrat or military officer under the Japanese Occupation was one of the factors that prevented thorough investigation of the pro-Japanese Koreans' activities under the Japanese Occupation.¹²⁰

Although the legacy of the Japanese Occupation in Korean society has received much academic attention, it was not until the Roh Moo-Hyun government that legal action was taken to address these issues. There has been strong pressure from civil society to investigate the pro-Japanese Koreans' activities under the Japanese Occupation. For instance, in August 1999, 10,000 professors signed a declaration demanding that an Encyclopedia of Anti-Nation Pro-Japanese Collaborators be published.¹²¹ Then, in 2001 the Institute for Research of the Nation Issues,¹²² an independent research organization, formed a board of editors to take responsibility for publishing it. The public further demonstrated its interest in and support for this project by successfully completing a fundraising campaign and raising the funds required for the project in 2004 after the government had cut off public funding for the project in 2003.¹²³

Although the Korean Constitution provides "No citizen shall suffer unfavorable treatment on account of an act not of his own doing but committed by a relative,"¹²⁴ a label of descendants of pro-Japanese collaborators is likely to entail significant social and political damage to politicians. Conservatives at first were concerned that legal action could lead to political biases that would harm conservative political leaders,

¹¹⁹ See Yi Kang-Soo, *Banminteuilwi Yeonku* [A Study of the Special Committee for Punishing Anti-Nation Activities], 155-218, 315-320 (2003); Huh Jong, *Banminteuilwi eui Chojik kwa Hwaldong* [The Organization and Activities of the Special Committee for Punishing Anti-Nation Activities], 330-356 (2003).

¹²⁰ Regarding the lives of such leaders under the Japanese Occupation, see Banminjok Moonje Yonkuso [*Institute for Research of Anti-Nation Issues*], 1-3 *Cheonsanhaji Mothan Yoksa* [HISTORY NOT RECTIFIED] (1994).

¹²¹ Kim Nam Kwon, [Petition for the Encyclopedia of Pro-Japanese Collaborators Are Being Propelled], *YONHAP NEWS*, Nov. 29, 2001.

¹²² See Minjok Moonje Yonkuso, <http://www.minjok.or.kr>.

¹²³ Kim Duk-Joon, [*List of 3,093 Pro-Japanese Collaborators Are Disclosed*], *BUSAN ILBO* (S. Korea), Aug. 9, 2005; Shim Hui-Jung, [*List of Pro-Japanese Collaborators*], *KYUNG HYANG SHINMUN* (S. Korea), Aug. 9, 2005; Cho Sung-Hyun, [*List of Pro-Japanese Collaborators: From Selection to Announcement*], *YONHAP NEWS* (S. Korea), Aug. 9, 2005.

¹²⁴ See *Daehan minguk heonbeop* [The CONSTITUTION OF THE REPUBLIC OF KOREA], art. 13(3).

including Park Geun-Hye, a daughter of Park Chung-Hee, but public support for the Special Act overwhelmed their opposition.¹²⁵ The newly-revealed fact that the parents or great-grandparents of some leading liberal politicians, including Shin Ki-Nam,¹²⁶ shockingly were found to have served under the Japanese rule also neutralized the conservatives' concern. As a result, objections to legal action became politically incorrect and politically risky. In 2004, the Special Act for Finding the Truth of Anti-Nation Activities under the Japanese Occupation was enacted.¹²⁷

In 2005, the Presidential Committee for Act for Finding the Truth of Pro-Japanese Anti-Nation Activities ("Presidential Committee") was organized and Professor Kang Man-Kil, a leading historian, was appointed as chairman.¹²⁸ The Presidential Committee is to investigate "pro-Japanese anti-Nation activities"; to collect, analyze, and edit data about "pro-Japanese anti-Nation activities"; and to establish a historical museum about "pro-Japanese anti-Nation activities."¹²⁹

The Special Act classifies "pro-Japanese anti-Nation activities" into twenty categories. These include: attacking or obstructing the liberation movement; killing, abusing, or arresting liberation movement activists or their family members; leading an organization with the purpose of obstructing the liberation movement; spying for the Japanese regime; making or conspiring to make a treaty with the Japanese government to infringe the Korean Nation's sovereignty; receiving a peerage from Japanese government for their activities for Korea's annexation to Japan; forcing females to provide sexual services for the Japanese army; cooperating and participating as a military officer in the Japanese invasion; performing activities as a high-ranking government official to suppress Koreans; and cooperating with the Japanese destruction of Korean culture and carrying Korean cultural heritages out of Korea.¹³⁰

¹²⁵ Media Khan News Team, [Park Geun-Hye Is Against the Pro-Japanese Collaborators Act], KYUNG HYANG SHINMUN (S. Korea), July 13, 2004; Kim Hyun-Jaw & Kim Chung-Sun, [Political Dispute over the Act for Finding the Truth of Anti-Nation Activities under the Japanese Occupation], YONHAP NEWS (S. Korea), July 13, 2004.

¹²⁶ Kim Joong-Bae, [*Shin Admits His Father's Military Service for Japan*], YONHAP NEWS (S. Korea), Aug. 16, 2004.

¹²⁷ *Ilche kangjeom ha banminjok haengwi chinsangkyumyeong e kwanhan teukbyeolbeop* [The Special Act for Finding the Truth of Anti-Nation Activities under the Japanese Occupation], Statutes of S. Korea, Law No. 7203 of 2004 (last revised by Law No. 2937 of 2006).

¹²⁸ Presidential Committee for Act for Finding the Truth of Pro-Japanese Anti-Nation Activities. See Welcome to PCIC, <http://www.pcic.go.kr:8088/pcic/english.htm>.

¹²⁹ Special Act for Finding the Truth of Anti-Nation Activities under the Japanese Occupation, at art. 34(1).

¹³⁰ *Id.* art. 2.

The Presidential Committee was given a four-year mandate to initiate investigations of anti-Nation activities at its own volition.¹³¹ The Committee may request relevant individuals to appear for inquiry, and require relevant individuals and authorities to submit pertinent data and materials.¹³² It may issue an order of accompaniment to a person who has crucial evidentiary proof or information but refuses to appear more than three times without just cause.¹³³ Like the Presidential Truth Commission on Suspicious Deaths,¹³⁴ the Presidential Committee is neither an investigative nor a judicial authority. Most often administrative fines could be imposed only on those who obstructed the inquiry of the Presidential Committee,¹³⁵ although imprisonment may be imposed on those who made a false statement or submitted false materials with the purpose of obstructing the investigation.¹³⁶ The Presidential Committee currently is engaged in preliminary matters.

In the same context that the 2004 Special Act for Finding the Truth of Anti-Nation Activities under the Japanese Occupation was passed, the 2005 Special Act for Reverting the Property of Anti-Nation Pro-Japanese Collaborators to State was enacted in 2005.¹³⁷

The 2005 Special Act was passed in response to public outcry over court rulings, which enabled descendants of pro-Japanese Koreans to retrieve lands and properties from the State. These descendants, who filed lawsuits, won in some instances even though the lands were given by the Japanese government in exchange for their ascendants' pro-Japanese activities.¹³⁸ For example, the great-grandson of Lee Wan-Yong, who as Prime Minister of the short-lived Empire of Korea (1897-1910) facilitated Korea's annexation to Japan and received a peerage from the Japanese government for his pro-Japanese efforts, won back his great-grandfather's lands in a civil trial in the Seoul High Court in 1997.¹³⁹ The public furvor

¹³¹ *Id.* art. 8, 19.

¹³² *Id.* art. 21(1), (2), (3).

¹³³ *Id.* art. 21(8).

¹³⁴ *See supra* note 90 and accompanying text.

¹³⁵ *Euimunsa chinsang kyumyeong e kwanhan teukbyeolbeop* [The Special Act for Truth-Finding of Suspicious Deaths], Statutes of S. Korea, Law No. 6170 of 2001, art. 35 (last revised by Act No. 7796 of 2005).

¹³⁶ *Id.* art. 34(1).

¹³⁷ *Chinil banminjok haengwija chaesan eui kukga kwisok e kwanhan teukbyelbeop* [The Special Act for Reverting the Property of Those Who Did Pro-Japanese Anti-Nation Activities to State], Statutes of S. Korea, Law No. 7975 of 2006.

¹³⁸ Jang Kwan-Soon, [*Descendants of Pro-Japanese Koreans Bringing Suits One After Another to Retrieve Lands*] *KYONG-HYANG SHINMUN* (S. Korea), Jan. 7, 2005; [*8 Land Claims Held for Descendants of Pro-Japanese Koreans Out of 16 Similar Cases*], *YONHAP NEWS* (S. Korea), May 13, 2005.

¹³⁹ Kil Yoon-Hyung, [*Case Brought by Yoon Duk-Young's Great-great Son is now Pending in a Trial Court*], *THE HANKYOREH* (S. Korea), Jan. 7, 2005.

over this result led the National Assembly to pass the 2005 Special Act. The Act aims to prevent the successors or descendants of the pro-Japanese Koreans who received properties from the Japanese government given in exchange for “pro-Japanese anti-Nation activities” from retrieving such properties.¹⁴⁰

B. Making a Politically Neutral Extension of Past Lustration: The 2005 Basic Act for Coping with Past History for Truth and Reconciliation

The two laws—the “2000 Act for Restoring the Honor of Democratization Movement Involveds and Providing Compensation for Them” and the “2001 Special Act for Truth-Finding of Suspicious Deaths”—have received criticism from two different angles. From one side, liberals complain that the laws do not cover past wrongs committed by the state before August 7, 1969,¹⁴¹ and that the Truth Commission on Suspicious Deaths was dissolved without resolving a number of high profile cases.¹⁴² On the other side, conservatives argue that the laws do not cover the terrors and human rights violations committed by those who were antagonistic to the Republic of Korea. In 2004, each political party submitted its own bills to rectify past wrongs.¹⁴³

In 2005 the Basic Act for Coping with Past History for Truth and Reconciliation was enacted in 2005 as a compromise.¹⁴⁴ The Truth and Reconciliation Commission was established as an independent organization, and Catholic Father Song Kee-In, who has been a long-time advisor to President Roh Moo-Hyun, was appointed as chairman.¹⁴⁵

¹⁴⁰ *Chinil banminjok haengwija chaesan eui kukga kwisok e kwanhan teukbyeolbeop* [The Special Act for Reverting the Property of Those Who Did Pro-Japanese Anti-Nation Activities to State], Statutes of S. Korea, Law No. 769 of 2005, at art.3 (last revised by Law 7975 of 2006).

¹⁴¹ See *Minjoohwa undong kawnryeongja myeongye hoebok mit bosang e kwanhan beopryul* [The Act for Restoring the Honor of Democratization Movement Involveds and Providing Compensation for Them], Statutes of S. Korea, Law No. 6123 of 2000, art. 2.1 (last revised by Law No. 8273 of 2007); The Special Act for Truth-Finding of Suspicious Deaths, at art. 2.

¹⁴² See *supra* notes 115 and accompanying text.

¹⁴³ See The Bill for Basic Law for Finding Truth and Reconciliation submitted as of October 20, 2004 (Bill No. 603); The Bill for Basic Law for Investigation and Research of Modern History submitted as of September 30, 2004 (Bill No. 519). The former was submitted by the ruling liberal Uri Party, and the latter was by the conservative Grand National Party.

¹⁴⁴ *Jinsil hwahoe reul wihan kwakeosa cheongri kibon beop* [The Basic Act for Rectifying the Past History for Truth and Reconciliation], Law No. 7542 of 2005. In addition, two other special acts to rectify the past were legislated: The Special Act for Restoring the Honor of the *Keochang* Incident Involveds (Law No. 5148 of 1996) and the Special Act for Truth-Finding and Restoring the Honor of the April 3 Incident of the *Cheju* Province (Law No. 6117 of 2000). Their purpose is to restore the honor of persons who were falsely accused as “reds” and killed by the military during the de facto civil war situation just before the Korean War.

¹⁴⁵ See Truth and Reconciliation Commission, Republic of Korea, <http://jinsil.go.kr/English/index.asp>.

The Basic Act calls for inquiry into the following: (i) the anti-Japanese liberation movement before or under the Japanese Occupation, (ii) the history of overseas Koreans who have maintained the sovereignty of Korea or enhanced national capability since the Japanese Occupation, (iii) the unlawful killings of civilians from August 15, 1945, to the Korean War, (iv) death, injury, and disappearance as a result of unlawful or conspicuously improper exercises of state authority, such as conduct destructive to constitutional order, serious human rights violations and cases of fabricated facts from August 15, 1945, through the period of authoritarian rule, (v) terror, human rights violations, violence, massacre, and suspicious deaths committed by those who denied the legitimacy of the Republic of Korea or were hostile to the Republic of Korea from August 15, 1945, to the period of authoritarian rule, and (vi) cases for which the Truth and Reconciliation Commission has recognized the necessity of investigation.¹⁴⁶

Subsections (iii) and (iv) provided for in the extension of the 2000 Act for Restoring the Honor of Democratization Movement Involvers and Providing Compensation for Them and the 2001 Special Act for Truth-Finding of Suspicious Deaths. They resulted from liberals' requests to broaden the investigative scope of human rights violations by the State. Subsection (v) stems from conservatives' requests to include the investigation of human rights violations committed by North Korean authorities or pro-North Korean leftist civilian organizations. Thus, uncovering the truth remains significantly influenced by politics in the present.

The Truth and Reconciliation Commission was given a four-year mandate to initiate investigations on suspicious deaths when a petition is filed or by its own volition absent a petition.¹⁴⁷ It may request relevant individuals to submit an affidavit and appear for inquiry, and relevant individuals and authorities to submit pertinent data and materials.¹⁴⁸ It may also conduct a field investigation in the place where the cause of a case has occurred.¹⁴⁹ It may issue an order of accompaniment to a person who refuses to appear more than three times without just cause.¹⁵⁰

Like the Presidential Truth Commission on Suspicious Deaths,¹⁵¹ the Truth and Reconciliation Commission is neither an investigative nor a

¹⁴⁶ The Basic Act for Rectifying the Past History for Truth and Reconciliation, at art. 2.

¹⁴⁷ *Id.* arts. 19, 22(3), 25(1).

¹⁴⁸ *Id.* art. 23.

¹⁴⁹ *Id.* art. 23(3).

¹⁵⁰ *Id.* art. 24.

¹⁵¹ See *supra* note 93 and accompanying text.

judicial authority. Primarily, administrative fines can be imposed only on those who make false statements or submit false information, refuse or evade the Commission's field investigation, or refuse to follow an order of accompaniment.¹⁵² However, imprisonment may be imposed on those who submit a false application with the purpose of harming another's honor or with the intent to obstruct the activities of the Commission.¹⁵³ The Truth and Reconciliation Commission may recommend non-prosecution, lesser punishment, or pardon for offenders who actively cooperate with its truth-finding efforts, and the relevant state authority shall respect the recommendation.¹⁵⁴ It is noteworthy that the Commission is given a duty to recommend reconciliation between offenders and victims or their families based on an offender's repentance and the victims' or their families' forgiveness.¹⁵⁵

The Truth and Reconciliation Commission currently is accepting petitions. It will be able to investigate all the cases that the 2000 Act for Restoring the Honor of Democratization Movement Involvers and Providing Compensation for Them and the 2001 Special Act for Truth-Finding of Suspicious Deaths did not or could not cover. In particular, the following high-profile cases are being reviewed: the case of Cho Yong-Soo, who was the president of a progressive newspaper, the case of Minjok Ilbo, who was executed after the coup of May 16, 1961,¹⁵⁶ the case of Cho Bong-Ahm, who was the first Minister of Agriculture under the Rhee Syng-Man government, was accused of spying for North Korea, and was executed after he received phenomenal support from the public as a social democrat presidential candidate of the opposition party in the 1956 presidential election,¹⁵⁷ and a number of unlawful killings of civilians by either the South or North Korean government or by either pro-South militia or pro-North partisans from August 15, 1945, to the end of the Korean War. It was reported that 86.7% of the petitions to the Commission were about such unlawful killing cases.¹⁵⁸

¹⁵² The Basic Act for Rectifying the Past History for Truth and Reconciliation, at art. 47.

¹⁵³ *Id.* art. 45(1).

¹⁵⁴ *Id.* art. 38.

¹⁵⁵ *Id.* art. 39.

¹⁵⁶ Cho was accused and executed for the violation of *Teuksubeomchoe cheobeol e kwanhan teukbyeolbeop* [the Special Act for Punishment of Special Crimes] (Law No. 633 of 1961) after the May 16 coup of 1961. The Special Act was legislated in June 22, 1961, and its appendix stated that the Act shall be *retroactively* applicable for three years and six months before promulgation. In 2007, Cho's brother filed an application for retrial to the Seoul Central District Court. See Kwon yong Tae, [*The Minjok Ilbo Case Goes to Court Again*], THE LAW TIMES (S. KOREA), Apr. 12, 2007; Kim Tae Jong & Sung Hye Mi, [*Application for Retrial of the Minjok Ilbo Case Is Filed*], YONHAP NEWS (S. KOREA), Apr. 10, 2007.

¹⁵⁷ See generally Park Tae-Kyun, CHO BONG-AHM YONKU [A STUDY OF CHO BONG AHM] (1995).

¹⁵⁸ See Truth and Reconciliation Republic of Korea, http://www.jinsil.go.kr/Information_Notice/article2/read.asp?num=31&pageno=1&stype=&sval=.

Presently, it is too early to anticipate how the activities of the Truth and Reconciliation Commission will go on. The Commission is expected to face difficult challenges since the Commission's jurisdiction is very broad, the incidents in question occurred so long ago, and political parties are likely to make use of the lustration of the past wrongs for their political aims.

VII. CONCLUSION—CONSTRUCTING THE FUTURE THROUGH LOOKING BACK TO THE PAST

For nearly a decade, the Korean people have chosen to pursue national reconciliation and unity through disclosing truths and achieving justice instead of forgetting the past. With strong pressure from civil society, the Legislature, the Judiciary, and several committees and commissions have played their own unique roles to rectify past wrongs and reevaluate the past.

The Korean way of dealing with past wrongs may be summarized as follows: (1) retroactive criminal sanction is limited to the core perpetrators who acted under the authoritarian regime; (2) retroactive civil sanction is given broadly to the victims of the authoritarian rule; (3) the contribution by past activists for democratization of Korea is officially recognized; (4) counter-violence by them is leniently examined; (5) even home-grown leftist movements are embraced despite the current ideological and military tension between two Koreas; and (6) uncovering past wrongs without criminal sanction is extended beyond the period of the authoritarian regime to include the Japanese Occupation and the Korean War.

Illustrating past wrongs has provided for a new political and social ground on which Korean society can make a new beginning. With the broader perspective for democracy that has been established by the Special Acts and decisions that follow, the Korean people will be able to internalize their belief in democracy and move forward. In this sense, looking back to their past is a way for Koreans to view and construct their future. To cite E.H. Carr, history is "a dialogue between the events of the past and progressively emerging future ends."¹⁵⁹

This process certainly has not been free from political struggle. Liberals initiated and propelled legislation to achieve the task while conservatives were passive. Although conservatives have criticized such activities to rectify past wrongs as politically biased and responsible for consuming too many social resources, they have come to understand the Special Acts as necessary to relieve the burdens they carry from the period of authoritarian rule. This reflects the complicated psychology inherited by

¹⁵⁹ E.H. Carr, *WHAT IS HISTORY?* 164 (1961).

the Korean people from their experience under the old regime. They were not only victims of the old regime but also passive collaborators or partial beneficiaries.

However, the Special Acts were forged by agreements between the liberal and conservative parties. Although each side has advocated somewhat different methods with differing scopes for rectifying past wrongs, they have come together in the belief that Korean society needs to discard the legacy of the authoritarian regime. In this light, the acts are symbolic statements that officially declare the people's dissatisfaction with the authoritarian regime. They are necessary for Koreans to heal old wounds, and to move beyond their tortured past.