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# Looking Back While Moving Forward: The Evolution of Truth Commissions in Korea

*Andrew Wolman*\*

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## I. INTRODUCTION

Over the last fifteen years, truth commissions have been the subjects of an enormous amount of literature. However, the bulk of that literature has focused on a few relatively prominent cases, among which the South African Truth and Reconciliation Commission is the most prominent.<sup>1</sup> English-language academic literature on Korean truth

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\* Andrew Wolman is an Associate Professor at the Graduate School of International and Area Studies at Hankuk University of Foreign Studies in Seoul, Korea. He specializes in international law and human rights. Prior to teaching at Hankuk University of Foreign Studies, he was an Associate in the New York office of law firm White & Case. He received his J.D. from New York University School of Law and an LL.M. in Environmental Law from the George Washington University Law School. Professor Wolman would like to thank So Young Chang, Hyojin Jeon and Guobin Li for their invaluable research and translation assistance. The 2012 Hankuk University of Foreign Studies Research Fund supported this article. The translations were done by various research assistants.

<sup>1</sup> ERIC WIEBELHAUS-BRAHM, TRUTH COMMISSIONS AND TRANSITIONAL SOCIETIES: THE IMPACT ON HUMAN RIGHTS AND DEMOCRACY 8 (2010).

commissions, on the other hand, is comparatively sparse.<sup>2</sup> Those articles that have been published on the subject have concentrated on exposing the substantive findings of specific truth commissions to a larger audience.<sup>3</sup> Additionally, broader studies have been undertaken focusing on the development of post-1987 transitional justice in Korea, but these works often give relatively little detailed attention to the role of truth commissions.<sup>4</sup>

To some extent, the lack of studies on Korean truth commissions is surprising. Truth commissions have played a particularly important role in Korea's recent politics, where at least ten have been implemented over the past fifteen years.<sup>5</sup> The Truth and Reconciliation Commission of Korea ("TRCK"), which had a broad mandate and addressed several controversial cases, played an especially prominent role in addressing Korea's recent past.<sup>6</sup> Despite the fact that the TRCK has now written its final report and shut its doors, truth commissions still play an important role in the political and social discourse regarding how to deal with the past.

It is the objective of this article to begin to fill this gap in the

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<sup>2</sup> This article will use the terms "Korea" and "Korean" to refer to the Republic of Korea (South Korea).

<sup>3</sup> See, e.g., Gavan McCormack & Kim Dong-Choon, *Grappling with Cold War History: Korea's Embattled Truth and Reconciliation Commission*, THE ASIA-PAC. J. 8-6-09 (Feb. 21, 2009), [http://japanfocus.org/-Kim-Dong\\_choon/3056](http://japanfocus.org/-Kim-Dong_choon/3056); Hong Seuk-Ryule, *Finding the Truths on the Suspicious Deaths Under South Korea's Military Dictatorship*, 42 KOREA J. 139 (2002); Hunjoon Kim, *Seeking Truth after 50 Years: The National Committee for Investigation of the Truth about the Jeju 4.3 Events*, 3 INT'L J. TRANSITIONAL JUST. 406 (2009).

<sup>4</sup> See, e.g., KOREA IN THE GLOBAL WAVE OF DEMOCRATIZATION (Doh Chull Shin et al. eds. 1994); POLITICS AND ECONOMY OF REGIME TRANSFORMATIONS: CASE STUDIES OF SOUTH KOREA AND CENTRAL EUROPEAN COUNTRIES (Chung-Si Ahn & Chon-Pyo Lee, eds. 1999). Many of these works have been comparative in nature. See Sang Wook & Daniel Han, *Transitional Justice: When Justice Strikes Back—Case Studies of Delayed Justice in Argentina and South Korea*, 30 HOUSTON J. INT'L L. 653 (2008); Geoff Gentilucci, *Truth-Telling and Accountability in Democratizing Nations: The Cases Against Chile's Augusto Pinochet and South Korea's Chun Doo-Hwan and Roh Tae-Woo*, 5 CONN. PUB. INTEREST L. J. 79 (2005); Terence Roehrig, *Human Rights, the Military, and the Transition to Democracy in Argentina and South Korea*, in HUMAN RIGHTS AND SOCIETIES IN TRANSITION: CAUSES, CONSEQUENCES, RESPONSES 389-412 (Shale Horowitz & Albrecht Schnabel, eds., 2004).

<sup>5</sup> Young Jo Lee, *Commissioning the Past: South Korean Efforts at Truth and Justice after Democratization*, TRANSITIONAL JUSTICE AND BEYOND IN SOUTH KOREA: SECOND INTERNATIONAL SYMPOSIUM 14 (2010), <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDcQFjAB&url=http%3A%2F%2Fblog.nsocty.org%2Fgenocide%2Fattachment%2F1021265606.pdf&ei=DChjUc3AB6v4igLit4GwDg&usg=AFQjCNE73X2wNVCKdWCL3lmH5fUv6SwJew&bvm=bv.44990110,d.cGE&cad=rja>.

<sup>6</sup> See *infra* Part III.

literature by outlining in more detail the ongoing development of truth commissions in Korea. This article will first review the development of truth commissions in Korea over time, starting with their pre-modern historical antecedents. This will lead into a discussion on the proliferation of issue-specific truth commissions starting in 1996, the work of the TRCK, and the role of truth commissions in Korea's highly polarized political landscape. By highlighting the long history of truth finding in Korea, this article will contribute to a growing literature that examines the disparate geographical and historical origins of truth commissions and other transitional justice mechanisms.<sup>7</sup> The article will then discuss some of the particularities of Korean truth commissions before concluding with some thoughts on the future evolution of truth commissions in Korea.

There is much debate among academics as to the exact definition of a truth commission.<sup>8</sup> Some have proposed relatively narrow definitions, such as Freeman's characterization of a truth commission as an:

ad hoc, autonomous, and victim-centered commission of inquiry set up in and authorized by a state for the primary purposes of (1) investigating and reporting on the principal causes and consequences of broad and relatively recent patterns of severe violence or repression that occurred in the state during determinate periods of abusive rule or conflict, and (2) making recommendations for their redress and future prevention.<sup>9</sup>

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<sup>7</sup> See, e.g., MARK FREEMAN, TRUTH COMMISSIONS AND PROCEDURAL FAIRNESS 22-24 (2006) (showing that truth commissions in Commonwealth countries are institutionally modeled on their domestic tradition of Commonwealth Commissions of Inquiry); Brian Loveman & Elizabeth Lira, *Truth, Justice, Reconciliation, and Impunity as Historical Themes: Chile, 1814–2006*, 97 RADICAL HIST. REV. 43 (2007) (demonstrating that truth commissions in Chile have their roots in that country's long history of governmental commissions and constitutional accusations); Erin Daly, *Between Punitive and Reconstructive Justice: The Gacaca Courts in Rwanda*, 34 N.Y.U. J. INT'L L & POL. 355, 378 (2002) (discussing the indigenous nature of Rwanda's *Gacaca* courts). Other authors have instead stressed the influence of the South African Truth and Reconciliation Commission on contemporary truth commissions rather than indigenous norms. See Robert Rotberg, *Truth Commissions and the Provision of Truth, Justice, and Reconciliation*, in TRUTH V. JUSTICE: THE MORALITY OF TRUTH COMMISSIONS 3, 6 (Robert Rotberg & Dennis Thompson, eds., 2000) ("The South African commission has become the model for all future commissions"); Audrey R. Chapman & Hugo Van Der Merwe, *Assessing the South African Transitional Justice Model*, in TRUTH AND RECONCILIATION IN SOUTH AFRICA: DID THE TRC DELIVER? 1, 8 (Audrey R. Chapman & Hugo Van Der Merwe, eds., 2008).

<sup>8</sup> See generally Eric Brahm, *What is a Truth Commission and Why does It Matter?*, 3 PEACE & CONFLICT REV. 1 (2009), available at <http://www.review.upeace.org/index.cfm?opcion=0&ejemplar=17&entrada=83>.

<sup>9</sup> Freeman, *supra* note 7, at 18.

This definition excludes all investigative commissions that are event-specific, thematic, institutional, or not focused on the “relatively recent” past.<sup>10</sup> Other experts take a broader view. For example, Hayner’s widely used definition of a truth commission as a body “set up to investigate a past history of violations of human rights in a particular country—which can include violations by the military or other government forces or armed opposition forces.”<sup>11</sup> This article will adopt Hayner’s broad definition, which seems to best reflect the term’s usage by Korean legislators and commentators.<sup>12</sup>

## II. HISTORICAL ANTECEDENTS

Although truth commissions are often seen as quintessentially modern reactions to the imperative of addressing past human rights abuses, in Korea there is an extraordinarily long and important tradition of truth-seeking exercises as an integral part of political transition. It can be argued that such traditional methods are antecedents to the current wave of truth commissions that have been so strongly embraced in Korea. The core document in traditional historical truth-seeking in pre-modern Korea was the *sillok*, a written history of a monarch’s reign, composed after their death based on records compiled by court historians during his lifetime.<sup>13</sup> While the *sillok* tradition had been present in other Confucian states and previous Korean dynasties, it became a custom of particular importance during the time of Korea’s highly Confucian Chosun Dynasty (1391-1910).<sup>14</sup>

Although *silloks* dealt with a variety of social, economic, cultural and political matters, the central theme was the Confucian morality of the

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<sup>10</sup> *Id.* In fact, most states have established truth commissions within two years of a transition. Geoff Dancy, Hunjoon Kim & Eric Wiebelhaus-Brahm, *The Turn to Truth: Trends in Truth Commission Experimentation*, 9 J. HUM. RTS. 45, 57 (2010).

<sup>11</sup> Priscilla Hayner, *Fifteen Truth Commissions—1974 to 1994: A Comparative Study*, 16 HUM. RTS. Q. 597, 604 (1994). See Brahm, *supra* note 8, at 4, for a list of other broad definitions adopted by commentators.

<sup>12</sup> While Freeman’s narrower definition may be appropriate in some contexts, it seems ill-suited to the Korean situation, where socio-historical issues, such as collaboration with the Japanese, have important real-world consequences for living individuals. In fact, these issues are dealt with by bodies that are similar in function and composition to those that deal with abuses from the authoritarian era. In the case of the TRCK, one single body dealt with both eras. In addition, it seems arbitrary to classify an event-specific body, such as the Commission on Identification and Restitution of No Gun Ri Victims, as fundamentally different than the TRCK, which had a broader mandate, but otherwise served a similar function.

<sup>13</sup> Hang Nyeong Oh, *The Meaning of Ritual Practices in the Compilation of the Choson Sillok*, in THE INSTITUTIONAL BASIS OF CIVIL GOVERNANCE IN THE CHOSON DYNASTY 161, 162 (John Duncan et al. eds., 2009).

<sup>14</sup> *Id.*

previous king (the Chosun monarchs were all male) and his officials.<sup>15</sup> There was a strong emphasis on restoring the familial honor and reputation of the morally upright members of the prior regime, while morally corrupt officials were condemned.<sup>16</sup> In a society based upon Confucianism, these conclusions mattered. As one historian notes, “[c]ampaigns were frequently waged by aggrieved descendants for the posthumous redress of punishment to their ancestors. And in like manner, the posthumous punishment of deceased enemies by the contemporary ruling group was regarded as a matter of prime importance. Old scores were settled in the pages of history.”<sup>17</sup> In terms of historiographic style, the traditional *silloks* were written in a straightforward descriptive manner with very little analysis aside from judgments of the behavior of the main actors.<sup>18</sup>

The *silloks* themselves were intended to be objective, and the compilers and court historians were therefore granted considerable independence.<sup>19</sup> History compilation offices were established on an ad hoc and temporary basis after the death of a monarch, and were largely composed of prominent scholar-officials.<sup>20</sup> They generally consisted of about thirty officers, including a chairman, three high-ranking officers who were each assigned responsibility for a particular period of the decedent monarch’s reign, and six compilers.<sup>21</sup> In addition, several clerks

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<sup>15</sup> *Id.* at 161. As described in the *Koryosa* (a fifteenth century Korean dynastic history), “[w]e recorded the loyal and deceitful officials as well as the evil and the upright individuals under separate categories . . . only by exhibiting the illustrious mirror of history can we ensure that the consequences of good and evil acts shall not be forgotten by posterity.” Chong Inji, *Dedication to Koryosa 1a-4b*, in SOURCEBOOK OF KOREAN CIVILIZATION, VOLUME I: FROM EARLY TIMES TO THE SIXTEENTH CENTURY 531, 533 (Peter H. Lee, et. al. eds., 1993).

<sup>16</sup> James Palais, *Records and Record-Keeping in Nineteenth Century Korea*, 30 J. ASIAN STUD. 583, 584 (1971). The historians had “the right, if not duty, to indicate by a gratuitous assessment of praise and blame just who were the ‘good guys’—the really morally right ones—and who were not.” *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> As one historian put it, “traditional history was not very analytical. When it tried to analyze an historical event, it tended to do so by judging the behaviour of the actors involved according to traditional Confucian moral categories rather than looking at impersonal social or economic forces.” Don Baker, *Histories and Counter-histories, Writing the History of the Korean People in the Past, the Present, and the Future*, KEYNOTE ADDRESS AT THE INAUGURAL MEETING OF THE INTERNATIONAL SOCIETY FOR KOREAN HISTORICAL STUDIES 1 (June 2009) (on file with author).

<sup>19</sup> SOHN POKEE, SOCIAL HISTORY OF THE EARLY CHOSON DYNASTY: THE FUNCTIONAL ASPECTS OF GOVERNMENTAL STRUCTURE 175-77 (2000).

<sup>20</sup> Palais, *supra* note 16, at 586; Eunha Youn, *Archival Traditions in Korean History: From Medieval Practices to the Contemporary Public Records Management Act*, 13 ARCHIVAL SCIENCE 23, 27 (2013).

<sup>21</sup> GEORGE MCCUNE, THE YI DYNASTY ANNALS OF KOREA 66 (1940).

decided which sources would be included in the annals.<sup>22</sup> The compilers were members of the aristocratic class (*yangban*), who could function at times as a check on royal despotism.<sup>23</sup> In part because of the independence of the drafters and compilers, the *silloks* were given great status as official histories.<sup>24</sup> The documents themselves were treated with utmost respect, with copies carefully maintained in four separate mountain archives, in addition to archives located in Seoul.<sup>25</sup>

The ad hoc *sillok* compilation offices were not modern investigatory commissions, and did not focus on human rights violations. Rather, they compiled full, ostensibly objective histories of the previous monarch's reign.<sup>26</sup> However, in reflecting on the actions of past regimes, modern truth commissions seek to address many of the same societal needs fulfilled by traditional Korean *silloks*. These needs include nation building, distribution of honor to those worthy of it, and provision of moral lessons, albeit with the comparatively modern moral concept of human rights rather than that of Confucianism.<sup>27</sup> They also share the same basic bureaucratic structure: a theoretically independent ad hoc and temporary group of governmentally appointed officials.<sup>28</sup> In any event, while official history writing has maintained a presence in modern Korea, the tradition of *silloks* came to an unceremonious end during the period of Japanese colonization from 1910 to 1945.<sup>29</sup> During that period, the Japanese colonial government established its own history compilation

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<sup>22</sup> *Id.*

<sup>23</sup> Oh, *supra* note 13, at 163-64.

<sup>24</sup> Yongho Ch'oe, *Compilation of History*, in SOURCES OF KOREAN TRADITION, 301 (Peter Lee & Theodore de Bary eds. 1997) (“[f]ew states in world history, it may be said, were as conscious of history as the Choson dynasty.”).

<sup>25</sup> *Id.* at 302.

<sup>26</sup> Pokee, *supra* note 19, at 175-77.

<sup>27</sup> See generally Wiebelhaus-Brahm, *supra* note 1; Greg Grandin, *The Instruction of Great Catastrophe: Truth Commissions, National History, and State Formation in Argentina, Chile, and Guatemala*, 110 AMER. HIST. R. 46 (2006).

<sup>28</sup> Compare Youn, *supra* note 20, at 27 (noting temporary nature of *sillok* committees), and Pokee, *supra* note 19, at 175-77 (describing independence of *sillok* committees), with PRISCILLA HAYNER, UNSPEAKABLE TRUTHS: CONFRONTING STATE TERROR AND ATROCITY 14 (2001).

<sup>29</sup> KANG JAE-EUN, THE LAND OF SCHOLARS: TWO THOUSAND YEARS OF KOREAN CONFUCIANISM 218 (2003).

committee to write *silloks* for emperors Gojong and Sunjong.<sup>30</sup> The resulting histories were rejected by Koreans as biased and inaccurate.<sup>31</sup>

A. 1945-1987: Authoritarianism and Failed Commissions

With the end of the Japanese occupation in 1945, Korea entered into a period of intra-peninsular conflict and authoritarian rule until the democratic election of Roh Tae Woo in 1987.<sup>32</sup> During this period, there was a strong sentiment among large segments of the public to officially investigate past abuses.<sup>33</sup> However, on the only two occasions when official commissions were established, conservative political forces quickly thwarted the truth-seeking efforts.<sup>34</sup>

The first of these occasions took place very shortly after Korea regained its independence in 1948, after a period of U.S. military rule. One of the first actions of the new National Assembly of Korea was its establishment of the Special Committee to Investigate Anti-Nation Activities.<sup>35</sup> This body was formed to address the issue of the existence of pro-Japanese collaborators during the Japanese colonial era.<sup>36</sup> However, Syngman Rhee and his allies undermined the Committee from the start, deriving political support from former collaborators.<sup>37</sup> The Committee was moribund within a year, accomplishing very little.<sup>38</sup>

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<sup>30</sup> *Id.* Gojong and Sunjong were the final two Joseon dynasty monarchs prior to Korea's annexation by Japan. Their *silloks* were compiled by the Office of the Yi Royal Family, under the direction of the Japanese Government-General, and completed in 1935. *Id.*

<sup>31</sup> Yu Seokjae, *Gojong/Sunjong Sillogui "Jjimjimhan" Inteonet Gonggae*, [The "Uncomfortable" Internet Release of Gojong Sillok and Sunjong Sillok], CHOSUN ILBO, Jan. 14, 2007, available at [http://news.chosun.com/site/data/html\\_dir/2007/01/14/2007011400715.html](http://news.chosun.com/site/data/html_dir/2007/01/14/2007011400715.html).

<sup>32</sup> Gentilucci, *supra* note 4, at 88, n. 37.

<sup>33</sup> Chung Youn-Tae, *Refracted Modernity and the Issue of Pro-Japanese Collaborators in Korea*, 42 KOREA J. 18, 35 (2002), available at [http://www.ekoreajournal.net/issue/view\\_pop.htm?Idx=3215](http://www.ekoreajournal.net/issue/view_pop.htm?Idx=3215).

<sup>34</sup> *Id.* at 35-37; Jung Byung-joon, *Attempts to Settle the Past during the April Popular Struggle*, 42 KOREA J. 88, 104 (2002), available at [http://www.ekoreajournal.net/issue/view\\_pop.htm?Idx=3213](http://www.ekoreajournal.net/issue/view_pop.htm?Idx=3213).

<sup>35</sup> 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).

<sup>36</sup> Chung Youn-Tae, *Refracted Modernity and the Issue of Pro-Japanese Collaborators in Korea*, 42 KOREA J. 18, 35 (2002), available at [http://www.ekoreajournal.net/issue/view\\_pop.htm?Idx=3215](http://www.ekoreajournal.net/issue/view_pop.htm?Idx=3215).

<sup>37</sup> *Id.* at 35-37. The first President of Korea, Rhee remains a divisive figure within Korea. Some applaud him as a patriot and independence activist who played the leading role in establishing an independent Korea, while others condemn him as a power-hungry dictator who brooked no dissent. Lee Sang-Hoon, *Syngman Rhee's Vision and Reality: The Establishment of the Nation and Thereafter*, 14(3) REV. OF KOREAN STUD.

Official truth-seeking took a back seat over the next twelve years, primarily due to the Korean War and Syngman Rhee's increasingly authoritarian regime. When the Rhee regime was overthrown in the April Student Revolution of 1960, there was a brief period of hope that democracy could emerge.<sup>39</sup> Soon thereafter, the survivors of the Geochang massacre and other massacres orchestrated during the Korean War era initiated public disclosures of numerous killings by the Rhee regime, which had previously not been officially acknowledged.<sup>40</sup> This led to the establishment of the Special Committee on the Fact-Finding of Massacres by the National Assembly in May 1960.<sup>41</sup> However, the committee's investigation lasted only eleven days, and amounted to three brief investigative tours to Gyeongsang and Jeolla provinces, where some of the worst massacres had taken place.<sup>42</sup> In the highly polarized atmosphere of the time, conservative opposition prevented any serious examination of Rhee era abuses.<sup>43</sup>

The following year, Park Chung Hee took power in a bloodless coup, ruling until his own director of intelligence assassinated him in 1979.<sup>44</sup> Despite his assassination, democracy and truth seeking activities were delayed again. The following year, General Chun Doo Hwan subsequently seized control, brutally massacring hundreds of protesters against his rule in the city of Gwangju.<sup>45</sup> It was not until 1987 that Korea's

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33, 55 (2011).

<sup>38</sup> Kim Cheong-Won, *Pro-Japan Collaborators List Sparks Controversy*, KOREA TIMES, Aug. 29, 2005, available at <http://www.international.ucla.edu/article.asp?parentid=29195>. The Commission investigated 682 cases, and recommended that 559 of them be transferred to a special prosecutor's office, which handed down indictments in 221 cases. Thirty-eight cases were eventually tried, resulting in twelve guilty verdicts. *Id.*

<sup>39</sup> Kim Il-Young, *The Race Against Time: Disintegration of the Chang Myun Government and Aborted Democracy*, 7(3) REV. OF KOREAN STUD. 167, 167 (2004).

<sup>40</sup> Kim Dong-Choon, *Beneath the Tip of the Iceberg: Problems in Historical Clarification of the Korean War*, 42 KOREA J. 60, 72 (2002), available at [http://www.ekoreajournal.net/issue/view\\_pop.htm?Idx=3214](http://www.ekoreajournal.net/issue/view_pop.htm?Idx=3214).

<sup>41</sup> Kim Dong-Choon, *The Long Road Toward Truth and Reconciliation*, 42 CRITICAL ASIAN STUD. 525, 532 (2010).

<sup>42</sup> Jung Byung-joon, *Attempts to Settle the Past During the April Popular Struggle*, 42 KOREA J. 88, 104 (2002), available at [http://www.ekoreajournal.net/issue/view\\_pop.htm?Idx=3213](http://www.ekoreajournal.net/issue/view_pop.htm?Idx=3213).

<sup>43</sup> *Id.*

<sup>44</sup> James M. West, *Martial Lawlessness: The Legal Aftermath of Kwangju*, 6 PAC. RIM L. & POL'Y J. 85, 90 (1997).

<sup>45</sup> *Id.* at 92-96.

first free election was held in the wake of massive pro-democracy protests.<sup>46</sup>

B. *1987-2003: Democratic Transition and the First Truth Commissions*

Former military general Roh Tae Woo, who was Chun Doo Hwan's close confidant and chosen successor, was victorious in the 1987 presidential election, largely because three leaders of the movement for democracy split the opposition vote.<sup>47</sup> Almost immediately upon Roh Tae Woo's election, attention turned to addressing the past, with a focus on victims of the Gwangju massacre of 1980.<sup>48</sup> The massacre is considered the largest incident of state violence in the post-Korean War era.<sup>49</sup> Starting in June 1988, the National Assembly held hearings on the issue, with sixty-seven witnesses, including former President Chun, who apologized for his past actions and entered a Buddhist retreat.<sup>50</sup> The National Assembly also passed a controversial law providing compensation for victims of the Gwangju massacre,<sup>51</sup> and eventually 2224 victims, which included those injured and families of the dead and missing, received a total of 142.8 billion won.<sup>52</sup>

After Kim Young Sam's election in 1992, the focus turned to institutional reforms, especially the removal or reassignment of military leaders closely linked to the deposed authoritarian regime.<sup>53</sup> There were also renewed calls for transitional justice for the military leaders who had been instrumental in maintaining power and suppressing dissent during the Chun regime.<sup>54</sup> Following the disclosure of allegations of large-scale

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<sup>46</sup> See Han Sung-Joo, *South Korea in 1987: The Politics of Democratization*, 28(1) ASIAN SURVEY 52, 52-57 (1988).

<sup>47</sup> *Id.* at 57.

<sup>48</sup> Young Jo Lee, *supra* note 5, at 7.

<sup>49</sup> Cho Hee-Yeon, *Sacrifices Caused by State Violence Under Military Authoritarianism and the Dynamics of Settling the Past during the Democratic Transition*, 42 KOREA J. 163, 174 (2002), available at [http://www.ekoreajournal.net/issue/view\\_pop.htm?Idx=3210](http://www.ekoreajournal.net/issue/view_pop.htm?Idx=3210).

<sup>50</sup> Young Jo Lee, *supra* note 5, at 7.

<sup>51</sup> Gwangju Minjuhwa Undong Gwanryeonja Bosang Deungye Gwanhan Beobyul [Act for Compensation for the Victims in the Democratization Movement in Kwangju], Act No. 4266, Aug. 6, 1990 (S. Kor.).

<sup>52</sup> Ahn Jong-cheol, *The Significance of Settling the Past of the December 12 Coup and the May 18 Gwangju Uprising*, 42 KOREA J. 112, 127 (2002), available at [http://www.ekoreajournal.net/issue/view\\_pop.htm?Idx=3212](http://www.ekoreajournal.net/issue/view_pop.htm?Idx=3212).

<sup>53</sup> Young Jo Lee, *supra* note 5, at 9.

<sup>54</sup> Kuk Cho, *Transitional Justice in Korea: Legally Coping with Past Wrongs After Democratization*, 16 PAC. RIM L. & POL'Y J. 579, 581 (2007), available at <https://digital.lib.washington.edu/dspace-law/handle/1773.1/582>.

corruption against Chun Doo Hwan and Roh Tae Woo, these calls were even stronger.<sup>55</sup> This led to Chun and Roh's 1997 trial and conviction, along with six other military leaders, for military insubordination, subversion of the constitutional order, and corruption.<sup>56</sup> However, their conviction was largely symbolic, as all parties were pardoned and released from prison relatively soon afterward.<sup>57</sup> Other trials of individuals for human rights abuses in the authoritarian era have been prevented due to the expiration of the statutes of limitations.<sup>58</sup> Since that time, truth commissions have been the instrument of choice for dealing with the past, and, unlike the 1948 Special Committee to Investigate Anti-Nation Activities, these commissions have existed in a separate sphere from the criminal justice system.<sup>59</sup> While some have recommended pardons or the retrial of individuals who were illegitimately prosecuted during the authoritarian era, none have been able to initiate prosecutions.<sup>60</sup>

The first post-1987 truth commission was established during the Kim Young Sam administration to investigate the Geochang massacre, where the Korean army slaughtered several hundred unarmed civilians in South Gyeongsang Province.<sup>61</sup> In many ways this set the precedent for future Korean truth commissions dealing with the Korean War period, which were relatively small, independent, incident-specific bodies with limited coercive power.<sup>62</sup>

After Kim Dae Jung's election in 1997, public pressure for truth commissions to investigate past misconduct intensified, and in the wake of high-profile public protests, three important new commissions were established.<sup>63</sup> The Commission for Restoring Honor and Compensation for Victims of Democratization Movements was tasked with deciding whether applicants were involved with the democratization movement and, if so, to make recommendations regarding their treatment.<sup>64</sup> These

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<sup>55</sup> *Id.* at 582.

<sup>56</sup> Young Jo Lee, *supra* note 5, at 10.

<sup>57</sup> Kuk Cho, *supra* note 54, at 585.

<sup>58</sup> *Id.* at 585-87.

<sup>59</sup> *See generally* Young Jo Lee, *supra* note 5.

<sup>60</sup> *See* Kim Dong-Choon, *supra* note 41, at 548.

<sup>61</sup> Geochang Sageondeung Gwanryeonjaeui Myungye Hoebokye Gwanhan Teukbyeol Jochibeob [Act for Restoring Honor for Victims of Geochang and Other Massacres], Act. No. 5148, Jan. 5, 1996 (S. Kor.).

<sup>62</sup> *See generally* Young Jo Lee, *supra* note 5.

<sup>63</sup> *Id.* at 18; Kuk Cho, *supra* note 54, at 597.

<sup>64</sup> Minjuhwa Undong Gwanryeonja Myungye Hoebok Mit Bosang Deungye Gwanhan Beobyul [Act for Restoring Honor and Compensation for Victims in Connection with Democratization Movements], Act. No. 6123, Jan. 12, 2000 (S. Kor.).

recommendations could request that victims be provided with compensation, pardoned for a related conviction, rehired if fired in connection with the democratization movement, or that schools expunge disciplinary records and bestow honorary graduation diplomas.<sup>65</sup> The Commission made a number of controversial decisions during its operation. Among them, the declaration that members of the radical left-wing National Liberation Front of South Korea be honored as “democratization movement participants,” as should a group of Dong-Eui University students involved in a anti-corruption protest where Molotov cocktails were thrown by students, causing a fire.<sup>66</sup> The fire caused the deaths of seven police officers.<sup>67</sup>

The Truth Commission on Suspicious Deaths was also set up to investigate suspicious deaths that occurred during the authoritarian era.<sup>68</sup> It consisted of nine commissioners appointed by the President, and was limited to deaths related to the democratization movement since August 7, 1969.<sup>69</sup> Suspicious deaths were defined 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.”<sup>70</sup> This commission received eighty petitions alleging suspicious deaths, and confirmed that in nineteen of these cases, the deaths had been a result of the unlawful exercise of state power during the democratization movement, while an additional thirty cases were unverifiable.<sup>71</sup> However, the commission’s inability to subpoena documents or compel testimony led to doubts as to whether it had been able to comprehensively examine the facts in all cases.<sup>72</sup>

The third commission initiated under the Kim Dae Jung government was the Commission for Truth-Seeking and Honor Restoration for Victims of the Cheju April 3rd Events.<sup>73</sup> This commission

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<sup>65</sup> Kuk Cho, *supra* note 54, at 591-92.

<sup>66</sup> *Id.* at 593-96.

<sup>67</sup> *Id.* at 593.

<sup>68</sup> See Euimunsa Jinsang Kyumyungye Gwanhan Teukbyeolbeob [Special Act to Reveal the Truth regarding Suspicious Deaths], Act No. 6170, Jan. 15, 2000 (S. Kor.).

<sup>69</sup> *Id.* art. 5.

<sup>70</sup> *Id.* art. 2.

<sup>71</sup> DAE-KYU YOON, KOREAN DEVELOPMENT OF DEMOCRACY AND LAW 181 (2008).

<sup>72</sup> Kuk Cho, *supra* note 54, at 598.

<sup>73</sup> Established by the Cheju 4-3 Sageon Jinsangkyumyung Mit Heesaengja Myeongyehwoebokye Gwanhan Teukbyeolbeob [Act for Identifying Truth and Restoring Honor for Victims of the Cheju April 3rd Massacre], Act No. 6117, Jan. 12, 2000 (S. Kor.).

was established after successful petitioning by well-organized civil groups, such as the Pan-National Committee for Probing the Truth of the Cheju April 3rd Events and Retrieving the Honor of the Victims.<sup>74</sup> The Cheju April 3rd events refer to a series of leftist uprisings and brutal counterinsurgency actions undertaken between 1948 and 1954 on Cheju Island, which caused an estimated fifteen to thirty thousand deaths.<sup>75</sup> The Commission was made up of three parts: the 4.3 Committee, the 4.3 Working Committee, and the Report Task Force. The Committee was the investigative and deliberative body, while the Working Committee carried out practical work, such as accepting victim petitions, conducting an initial screening of victims, and administering financial and medical subsidies.<sup>76</sup> The Report Task Force was in charge of publishing the final report, which was issued in October 2003.<sup>77</sup> In April 2006, President Roh officially apologized for the South Korean government's role in the massacres.<sup>78</sup>

C. 2003-2008: Roh Moo Hyun and a Full Embrace of Truth Commissions

The Roh Moo Hyun administration (2003-2008) witnessed the full entrenchment of truth commissions on the Korean political scene, with the legislative establishment of several new commissions along with continued support for existing ones. The new commissions from this period can be divided into three categories: (1) the commissions that dealt with issues stemming from the Japanese annexation and earlier; (2) the largely issue-specific commissions that dealt with human rights violations from the post-1945 era of authoritarianism; and (3) the TRCK, which was established as a larger and more comprehensive commission that dealt with issues from both the Japanese colonial and authoritarian eras.

The Korean political scene was quite polarized during the Roh era, and the debates regarding truth commissions invariably reflected these divisions. Many political conservatives had direct or indirect connections to the authoritarian era and, according to some, collaborators from the Japanese colonial era.<sup>79</sup> Most notably, Park Geun Hye, daughter of Park Chung Hee, was the conservative Grand National Party chairperson from

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<sup>74</sup> CHOE HYONDOK, HUMAN RIGHTS AS PART OF THE DEMOCRATIZATION PROCESS 22-3 (2002).

<sup>75</sup> Hunjoon Kim, *supra* note 3, at 407.

<sup>76</sup> *Id.* at 421.

<sup>77</sup> *History of the Committee*, NATIONAL COMMITTEE FOR INVESTIGATION OF THE TRUTH ABOUT THE CHEJU APRIL 3RD INCIDENT, <http://www.jeju43.go.kr/english/sub01.html> (last visited May 25, 2013).

<sup>78</sup> Hunjoon Kim, *supra* note 3, at 407.

<sup>79</sup> Jaewoo Choo, *Politics, Price of Seoul's Collaboration Probe*, ASIA TIMES, Mar. 31, 2005, <http://www.atimes.com/atimes/Korea/GC31Dg03.html>.

2004 to 2006.<sup>80</sup> On the other side of the political spectrum, many progressive leaders, including President Roh himself, had been involved in the democratization movement and were closely identified with it.<sup>81</sup> Thus, while there is no debating the sincere desires of activists to address past human rights abuses, many Koreans suspected that progressive politicians were using truth commissions as a partisan tool to embarrass their political rivals by highlighting the crimes of their political (or actual) ancestors.<sup>82</sup> As one commentator noted, “[r]ectifying past wrongs became an important agenda item of the progressive government in order for it to consolidate its support while weakening the moral basis of the conservatives.”<sup>83</sup>

### 1. Commissions Dealing with the Japanese Colonial Era and Earlier

For the first time since the abortive 1948 efforts, the Roh administration organized official commissions to examine Korea under Japanese imperialism. These included the Commission on Truths of Anti-Nation Activities and Pro-Japanese Acts under Japanese Rule,<sup>84</sup> the Commission on Confiscation of Properties of Pro-Japanese Collaborators,<sup>85</sup> the Commission for Identifying Truth Regarding Servitude under Japanese Colonial Occupation,<sup>86</sup> and the Commission on Restitution of Donghak Peasant Revolutionaries.<sup>87</sup> The decision to

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<sup>80</sup> Seong Yeon-cheol, *The Origins and Style of Park Geun Hye*, HANKYOREH, Dec. 6, 2012, [http://www.hani.co.kr/arti/english\\_edition/e\\_national/564102.html](http://www.hani.co.kr/arti/english_edition/e_national/564102.html).

<sup>81</sup> Jamie Doucette, *The Terminal Crisis of the “Participatory Government” and the Election of Lee Myung Bak*, *Journal of Contemporary Asia*, 40 J. CONTEMP. ASIA 22, 33 (2010).

<sup>82</sup> Daqing Yang, *Historical Revisionism in East Asia: What does Politics Have to do with It?*, in CONTESTED VIEWS OF A COMMON PAST 25, 31 (Steffi Richter, ed., 2008).

<sup>83</sup> Dae-Kyu Yoon, *supra* note 71, at 181.

<sup>84</sup> Established by the Iljegangjeomha Chinil Banminjokhaengwi Jinsangkyumyungye Gwanhan Teukbyeolbeob [Act for Identifying Truth of Anti-National and Pro-Japanese Acts under Japanese Colonial Occupation], Act No. 7203, Mar. 22, 2004 (S. Kor.).

<sup>85</sup> Established by the Chinil Banminjok Haengwija Jaesaneui Kukgakuisokye Gwanhan Teukbyeolbeob [Special Act for Returning the Property of Anti-National and Pro-Japanese Collaborators to the State], Act No. 7769, Dec. 29, 2005 (S. Kor.).

<sup>86</sup> Established by the Iljegangjeomha Gangjaedongwon Pihae Jinsangkyumyung Deungye Gwanhan Teukbyeolbeob [Act for Truth on Servitude Under Japanese Colonial Occupation], Act No. 7174, Mar. 5, 2004 (S. Kor.).

<sup>87</sup> Donghaknongminhyukmyung Chamyoeja Deungeui Myungyehwoebokye Gwanhan Teukbyeolbeob [Act for Restoring the Honor of Participants in the Donghak Peasant Revolution], Act No. 7177, Mar. 5, 2004 (S. Kor.). The Donghak Peasant Revolution was an uprising started in 1894 by Korean farmers, protesting oppressive government and increasing foreign influence on the Korean peninsula. *See generally* Ahn Byung-ook & Park Chan-seung, *Historical Characteristics of the Peasant War of 1894*, 34 KOREA J. 101 (1994).

examine the Japanese colonial period provoked intense debate.<sup>88</sup> For progressives, the failure of Korean society to punish pro-Japanese collaborators and eliminate them from positions of power constituted one of the primary flaws in the founding of the Korean republic, leading directly to the imposition of an authoritarian state.<sup>89</sup> Conservatives, on the other hand, generally felt that it was better to move beyond past divisions, and argued that blame would unfairly fall upon the descendants of those condemned for collaborating.<sup>90</sup>

These truth commissions had three main functions. First, the Commission on Confiscation of Properties of Pro-Japanese Collaborators was established to identify and confiscate real property that was gained through pro-Japanese actions during the colonial era.<sup>91</sup> This commission emerged from public outcry as a result of a set of court decisions awarding the descendants of collaborators ownership of valuable property that had been granted to their ancestors in exchange for cooperation with the Japanese regime.<sup>92</sup> At the time of its closure in 2010, the commission had seized 237 billion won worth of property from 168 individuals who had either inherited the properties or purchased them after the passage of a special law on the reversion of collaborators' properties.<sup>93</sup> The commission's work was challenged in the courts as unconstitutional, but the Constitutional Court upheld the seizures in a recent decision.<sup>94</sup>

Second, the Commission on Truths of Damages of Japanese-forced Emigration and the Commission for Identifying Truth Regarding Servitude under Japanese Colonial Occupation functioned as investigative bodies to deal with unresolved issues from the colonial era.<sup>95</sup> The Commission for Identifying Truth Regarding Servitude under Japanese Colonial

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<sup>88</sup> Tessa Morris-Suzuki, *Heroes, Collaborators and Survivors, in EAST ASIA BEYOND THE HISTORY WARS* 164, 165 (Tessa Morris-Suzuki et al., eds., 2013).

<sup>89</sup> Ahn Byung-ook, *The Significance of Settling the Past in Modern Korean History*, 42 *KOREA J.* 7 (2002); Kim Dong-Choon, *supra* note 41, at 534-35.

<sup>90</sup> See Choe Sang-Hun, *Colonial-Era Dispute Agitates South Koreans*, *NEW YORK TIMES*, Apr. 4, 2010, available at <http://www.nytimes.com/2010/04/05/world/asia/05poet.html>.

<sup>91</sup> Dae-Kyu Yoon, *supra* note 71, at 185.

<sup>92</sup> Kuk Cho, *supra* note 54, at 606.

<sup>93</sup> *Investigation on Pro-Japanese Collaborators Closes*, *KBS GLOBAL*, Jul. 7, 2010, [http://world.kbs.co.kr/english/news/news\\_Dm\\_detail.htm?No=73918](http://world.kbs.co.kr/english/news/news_Dm_detail.htm?No=73918).

<sup>94</sup> Park Si-Soo, *Seizing Wealth of Pro-Japanese Collaborators Ruled Unconstitutional*, *KOREA TIMES*, Mar. 31, 2011, available at [http://koreatimes.co.kr/www/news/nation/2011/03/113\\_84250.html](http://koreatimes.co.kr/www/news/nation/2011/03/113_84250.html).

<sup>95</sup> William Underwood, *The Reparations Movement for Chinese Forced Labor in Wartime Japan*, *Midwest Political Science Association 65th Annual Meeting*, Chicago, April 12-15, 2007, at 16, available at [http://williamunderwood.org/uploads/MPSA\\_paper\\_presentation.pdf](http://williamunderwood.org/uploads/MPSA_paper_presentation.pdf).

Occupation was of particular importance. The eighty-five person body received over 200,000 applications for forced labor certification and investigated numerous sites in Japan containing cremated Korean remains.<sup>96</sup> One particularly controversial decision from this commission was its conclusion that eighty-three Koreans in the Japanese military, who had been convicted after the war as Class B and C war criminals for mistreating prisoners of war, should have their honor restored as “double victims” of both the Japanese imperialists and the allied war crimes tribunals.<sup>97</sup>

Third, the remaining commissions focused on the identification of individuals from the period deserving of honor or condemnation for their patriotic or collaborationist behavior during the period. While few of the individuals investigated were still alive, the importance of familial reputation in a traditionally Confucian society such as Korea meant that these commissions’ work remained vitally important to current affairs.<sup>98</sup> Conservatives vigorously opposed such projects, because some prominent political and civil society leaders were descended from alleged collaborators.<sup>99</sup> However, it turned out that some prominent leaders from the left were also related to collaborators, leading to the resignations of several politicians.<sup>100</sup>

## 2. Commissions dealing with the Authoritarian Era

During the Roh regime, there were four commissions set up legislatively to address human rights abuses during the authoritarian era: (1) the Commission on Restitution and Compensation for Samcheong Reeducation Camp Detainees,<sup>101</sup> (2) the Commission on Identification and Restitution of No Gun Ri Victims,<sup>102</sup> (3) the Presidential Commission on

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<sup>96</sup> *Id.*

<sup>97</sup> *83 Koreans Wrongfully Accused of War Crimes: Gov’t*, HANKYOREH, Nov. 14, 2006, [http://english.hani.co.kr/arti/english\\_edition/e\\_national/171442.html](http://english.hani.co.kr/arti/english_edition/e_national/171442.html).

<sup>98</sup> Kuk Cho, *supra* note 54, at 604.

<sup>99</sup> See generally Sheila Miyoshi Jager, *Korean Collaborators: South Korea’s Truth Committees and the Forging of a New Pan-Korean Nationalism*, JAPAN FOCUS, 2170 (2005), [http://www.japanfocus.org/-Sheila\\_Miyoshi-Jager/2170#](http://www.japanfocus.org/-Sheila_Miyoshi-Jager/2170#).

<sup>100</sup> Daqing Yang, *supra* note 79, at 31.

<sup>101</sup> Samcheong Kyoyuk Pihyejaeui Myungye Hoebok Mit Bosangye Gwanhan Beobyul [Act for Restoring the Honor and Compensation for Victims of the Samcheong Training Camp], Act. No. 7121, Jan. 29, 2004 (S. Kor.). The Samcheong Reeducation Camp was set up by the military leaders from 1980 to 1981 to detain and discipline individuals considered by the regime to be harmful to society, including potential rebels and regime critics. *S. Korean Junta Punished Civilians with Military Camp in Early 1980s: Report*, HANKYOREH, Nov. 11, 2006, [http://www.hani.co.kr/arti/english\\_edition/e\\_national/171123.html](http://www.hani.co.kr/arti/english_edition/e_national/171123.html).

<sup>102</sup> No Geun Ri Sageon Heesaengja Simsa Mit Myungye Hoebokye Gwanhan Teukbyeolbeob [Act for Identifying and Restoring the Honor of Victims of the No Geun

Suspicious Deaths in the Military,<sup>103</sup> and (4) the Commission on Truths of and Livelihood Support for Victimized Hansen Patients.<sup>104</sup> In addition, it is worth mentioning the Commission on Compensation for Special Operations Agents, which differed from the other commissions in that it rewarded individuals who served the authoritarian government rather than those who fought against it or were victimized by it.<sup>105</sup>

Aside from these legislatively mandated truth commissions, it is worth noting that the Roh administration established a number of commissions within particular government agencies to bring to light possible human rights abuses by those agencies during the authoritarian era.<sup>106</sup> In part, these commissions were a reaction to the need to produce considerable amounts of information for the statutory commissions discussed earlier. The first of these agency commissions was the Committee for Development through Identifying the Truth of Past Incidents of the National Intelligence Service, which was established in November 2004 to examine the role of the National Intelligence Service (formerly, the Korean Central Intelligence Agency) in wrongdoing during the authoritarian period.<sup>107</sup> The Committee was composed of fifteen members, including ten civilians, and ended up investigating seven well-known cases from the authoritarian period, including the kidnapping of opposition leader and future president Kim Dae Jung and the explosion on Korea Airlines flight 858.<sup>108</sup> Soon afterward, the National Police Bureau

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Ri Massacre], Act No. 7175, Mar. 5, 2004 (S. Kor.). No Geun Ri is a village in North Chungcheong Province where a large number of Korean civilians were shot and killed by U.S. military forces during the Korean War. *See generally* Tae-ung Baik, *A War Crime Against an Ally's Civilians: The No Gun Ri Massacre*, 15 NOTRE DAME J. L. ETHICS & PUB. POL'Y 455 (2001).

<sup>103</sup> Established by the Guneuimunsa Jinsangkyumyung Deungye Gwanhan Teukbyeolbeob [Act for Identifying the Truth regarding Suspicious Deaths During Military Service], Act No. 7626, July 29, 2005 (S. Kor.).

<sup>104</sup> Established by the Hansaenin Pihye Sageoneui Jinsangkyumyung Mit Pihyeja Saenghwaljiwon Deungye Gwanhan Beobyul [Act to Investigate Instances of Victimization of Persons Affected by Hansen's Disease], Act No. 8644, Oct. 17, 2007 (S. Kor.). This Committee investigated the discrimination and human rights abuses committed against individuals with Hansen's Disease in Korea during the authoritarian era, and provided compensation for victims. *Id.* art. 1-2.

<sup>105</sup> Established by the Teuksu Immu Suhaengja Bosangye Gwanhan Beobyul [Act for Compensation for Special Mission Performers], Act No. 7122, Jan. 29, 2004 (S. Kor.). This commission was intended to compensate individuals who carried out national intelligence missions from 1948 to 1994. *Id.* art. 1-2.

<sup>106</sup> Young Jo Lee, *supra* note 5, at 12. While agency-specific commissions are not usually classified as "truth commissions," the agency-specific commissions from the Roh administration can be viewed as part of the trend of appointing independent commissions to address past abuses.

<sup>107</sup> Dae-Kyu Yoon, *supra* note 71, at 196-97.

<sup>108</sup> *Id.*

and Ministry of Defense followed suit with their own truth commissions, each of which was called the Committee to Identify the Truth Regarding Past Incidents.<sup>109</sup> The Police Committee investigated police involvement in massacres, rigged elections, illegal surveillance and fabrication of evidence during the authoritarian period.<sup>110</sup> The Defense Ministry Committee examined cases of forced conscription, military agent training, and a training camp for civilians, among others, eventually recommending that the government issue an apology for its wrongdoing.<sup>111</sup>

### III. TRUTH AND RECONCILIATION COMMISSION OF KOREA

The TRCK needs to be discussed in more detail, as it was the most comprehensive and far-reaching of the Korean truth commission efforts, with a relatively large budget and staff.<sup>112</sup> It was established on July 31, 2005, pursuant to the Framework Act on Clearing up Past Incidents for Truth and Reconciliation, with a stated purpose to “foster national legitimacy and reconcile the past for the sake of national unity by honoring those who participated in the anti-Japanese movements and investigating incidents regarding human rights abuses, violence, and massacres occurring from the period of Japanese rule to the present time; specifically during the nation’s authoritarian regimes.”<sup>113</sup> According to one Commissioner, it was modeled on and named after the South African Truth and Reconciliation Commission,<sup>114</sup> and TRCK reports highlighted the influence of recent international experiences in truth-seeking.<sup>115</sup> However, in practice there were many obvious differences in the work of the TRCK and the South African Truth and Reconciliation Commission.

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<sup>109</sup> *Id.* at 197.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> By 2008, the Commission had a staff of 241 and budget of 19.7 billion won. Truth and Reconciliation Commission of Korea, TRUTH AND RECONCILIATION COMMISSION OF KOREA, TRUTH AND RECONCILIATION: ACTIVITIES OF THE PAST THREE YEARS 18, 29 (2009), <http://justicespeaking.files.wordpress.com/2010/01/trc-report.pdf> [hereinafter Truth and Reconciliation Commission of Korea].

<sup>113</sup> Jinsil Hwahyereul Wihan Gwageosa Jeongri Kibonbeob [Framework Act on Clearing up Past Incidents for Truth and Reconciliation], Act No. 7542, May 31, 2005, art. 1 (S. Kor.).

<sup>114</sup> Kim Dong-Choon, *supra* note 41, at 526, 547. International news articles also often noted that the TRCK was modeled after the South African experience. *See, e.g.*, Choe Sang-hun, *Unearthing War’s Horrors Years Later in South Korea*, NEW YORK TIMES, Dec. 3, 2007, [https://www.nytimes.com/2007/12/03/world/asia/03korea.html?pagewanted=all&\\_r=0](https://www.nytimes.com/2007/12/03/world/asia/03korea.html?pagewanted=all&_r=0); Hamish McDonald, *Truth in Danger in South Korea*, SYDNEY MORNING HERALD, Jan. 23, 2010, available at <http://www.smh.com.au/opinion/politics/truth-in-danger-in-south-korea-20100122-mqq5.html>.

<sup>115</sup> Truth and Reconciliation Commission of Korea, *supra* note 112, at 5.

This article shows that the TRCK can just as easily be contextualized as part of a long line of Korean experiences searching for the truth about past regimes.<sup>116</sup>

#### A. *Mandate*

One of the most controversial elements of the TRCK was the scope of its mandate. Progressives wanted to focus on human rights abuses during the authoritarian era and civilian massacres committed by the South Korean government and U.S. army during the period from 1945 to the end of the Korean War in July 1953.<sup>117</sup> Conservative parliamentarians, on the other hand, thought this would be a one-sided approach, and as a condition for their support insisted that the TRCK also look at massacres by communist or North Korean forces during the Korean War.<sup>118</sup> In addition, some conservatives insisted that the TRCK look at certain positive aspects of Korea's past, such as the contributions of overseas Koreans to Korea's national prestige.<sup>119</sup> After much debate, the final legislation covered five substantive areas:

- (1) Anti-Japanese movements during Japanese rule, as well as in the years following Korea's liberation;
- (2) Efforts by overseas Koreans to uphold Korea's sovereignty and enhance Korea's national prestige from the time of the Japanese occupation to the enforcement date of the Act;
- (3) massacres from 15 August 1945 to the Korean War period;
- (4) incidents of death, injury, or disappearance, and other major acts of human rights violations, including politically fabricated trials that were committed through the illegal or seriously unjust exercise of state power, such as the violation of the constitutional order from 15 August 1945 to

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<sup>116</sup> Compare Kim Dong-Choon, *supra* note 41, at 547-48 (noting TRCK's institutional inability to promote reconciliation), and Ahn Byung-Ook, Achievements and Tasks of TRCK's Activities, speech on Oct. 27, 2009, 27 (transcript on file with author) (explaining that the TRCK was not mandated to look at the underlying causes of human rights abuses), with Marianne Geula, *South Africa's Truth and Reconciliation Commission as an Alternate Means of Addressing Transitional Government Conflicts in a Divided Society*, 18 B.U. INT'L L.J. 57, 64-66 (2000) (describing South African Truth and Reconciliation Commission's mandated objectives of reconciliation and establishing a complete picture of the nature and causes of past human rights violations).

<sup>117</sup> Young Jo Lee, *supra* note 5, at 12.

<sup>118</sup> Interview with Kim Sung-Soo, former head of International Cooperation Team, TRCK (Aug. 4, 2010) (on file with author).

<sup>119</sup> *Id.*

the end of the authoritarian regimes;

(5) terrorist acts, human rights violations, violence, massacres, and suspicious deaths by parties that denied the legitimacy of or were hostile toward the Republic of Korea from 15 August 1945 to the end of the authoritarian regimes; and

(6) incidents that are historically important and incidents that the Commission deems necessary.<sup>120</sup>

However, the legislation did not entirely resolve the question of the scope of the TRCK's mandate. It defined the end point of its mandate under subsections (3) and (4) as "the end of the authoritarian regimes," but there was no consensus as to the exact date when the authoritarian regimes ended.<sup>121</sup> According to former Standing Commissioner Kim Dong Choon, the Commission's mandate ended in 1992,<sup>122</sup> when Kim Young Sam became the first person elected to the Presidency without a background in the military.<sup>123</sup> Others pointed to the end of Chun Doo Hwan's rule in 1988, or Kim Dae Jung's ascension to the Presidency in 1998 as the real end of the authoritarian era.<sup>124</sup> In the end, the Commission settled upon the end of Chun Doo Hwan's rule in February 1988 as an end date, with the caveat that historically important incidents after that time could be investigated pursuant to subsection (6) of the TRCK mandate.<sup>125</sup>

### B. *Composition*

The TRCK was comprised of fifteen Commissioners, including four Standing Commissioners, who were appointed as public officers.<sup>126</sup> Each Commissioner served for a two-year term, with the possibility of reappointment for a second term.<sup>127</sup> Of the fifteen Commissioners, the

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<sup>120</sup> Jinsil Hwahyereul Wihan Gwageosa Jeongri Kibonbeob [Framework Act on Clearing up Past Incidents for Truth and Reconciliation], Act No. 7542, May 31, 2005, art. 2.

<sup>121</sup> Seung-Yun Chung, *Analysis of the Main Legal Issues Relating to Human Rights Abuse Cases under the Framework Act for Truth and Reconciliation*, TRANSITIONAL JUSTICE AND BEYOND IN SOUTH KOREA: SECOND INTERNATIONAL SYMPOSIUM 43 (2010).

<sup>122</sup> Kim Dong-Choon, *supra* note 41, at 545.

<sup>123</sup> YOUNGMI KIM, THE POLITICS OF COALITION IN KOREA 43 (2011)

<sup>124</sup> Seung-Yun Chung, *supra* note 121, at 43.

<sup>125</sup> *Id.* at 43-44.

<sup>126</sup> Jinsil Hwahyereul Wihan Gwageosa Jeongri Kibonbeob [Framework Act on Clearing up Past Incidents for Truth and Reconciliation], Act No. 7542, May 31, 2005, art. 4.

<sup>127</sup> *Id.* art. 5(1).

President appointed eight, four were nominated by the President, and three were nominated by the Chief Justice of the Supreme Court.<sup>128</sup> Although most Commissioners have been lawyers, a number of historians, religious leaders, and civil leaders have also served.<sup>129</sup>

The Commissioners were at all times divided by political orientation, and the relationship between left-wing and right-wing Commissioners was generally contentious.<sup>130</sup> Decisions were taken by majority vote, rather than consensus.<sup>131</sup> The first Commission President was Father Song Ki In, a Catholic priest who had been closely associated with then-President Roh since the democratization era, and has been called Roh's "spiritual advisor."<sup>132</sup> The second was Ahn Byung Ook, a Korean history professor and former Commissioner of the Commission on Truths of Suspicious Deaths.<sup>133</sup> Ahn's term expired in November 2009, and from then on, President Lee Myung Bak's appointees dominated the Commission.<sup>134</sup>

### C. Functions and Powers

The TRCK was essentially an investigatory body, responsive to petitions submitted by the general public. Investigations often included site visits as well as archival research and questioning of pertinent authorities.<sup>135</sup> In cases of alleged massacres, decisions were based on what it called the "two source policy," by which two independent and supporting witness opinions were required in order to verify that an innocent death had occurred.<sup>136</sup>

The Commission had relatively weak powers to compel cooperation. It was able to request that documents be turned over from State authorities, but such requests could be denied if the relevant

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<sup>128</sup> *Id.* art. 4(2), 4(3).

<sup>129</sup> Truth and Reconciliation Commission of Korea, *supra* note 112, at 26-28.

<sup>130</sup> Interview with Kim Sung-Soo, *supra* note 118.

<sup>131</sup> *Id.*

<sup>132</sup> *Four Religious Communities Bid Ex-President Farewell*, UCANEWS DAILY SERVICE, May 29, 2009, [http://tnews.cc/07/newscon1\\_16372.htm](http://tnews.cc/07/newscon1_16372.htm).

<sup>133</sup> Truth and Reconciliation Commission of Korea, *supra* note 112, at 26.

<sup>134</sup> Kim Min-kyeong, *TRCK Relaxes U.S. Bombing Investigation Criteria under New President*, HANKYOREH, Jul. 16, 2010, [http://www.hani.co.kr/arti/english\\_edition/e\\_national/430665.html](http://www.hani.co.kr/arti/english_edition/e_national/430665.html)

<sup>135</sup> Jinsil Hwahyereul Wihan Gwageosa Jeongri Kibonbeob [Framework Act on Clearing up Past Incidents for Truth and Reconciliation], Act No. 7542, May 31, 2005, art. 23 (S. Kor.).

<sup>136</sup> Young Jo Lee, *supra* note 5, at 28. In some borderline cases, an additional category of near certitude was adopted. *Id.*

authority claimed that the documents contained materials sensitive to national security.<sup>137</sup>

#### D. Findings

The TRCK ended its investigations on July 31, 2010, five years after its establishment, and issued its final report on December 31, 2010. In all, the Commission investigated 11,175 claims submitted by the public, of which 8,468 claims (75 percent) were verified, 1,725 claims (15 percent) were dismissed, and 510 claims (4.5 percent) were unverified.<sup>138</sup>

Public attention focused largely on the claims involving civilian massacres and human rights abuses. There were six particular types of massacre claims examined: (1) mass killings after preventive detention of alleged “impure elements;” (2) the Bodo League Incidents;<sup>139</sup> (3) retaliation against alleged collaborators; (4) civilian killings during the search for communist guerrillas; (5) civilian deaths resulting from U.S. bombings; and (6) summary executions during suppression of the Yeosu-Suncheon uprising.<sup>140</sup> As for human rights abuses during the authoritarian era, the TRCK examined cases involving the illegal or unfair exercise of state power; serious infringements of human rights such as death, serious injury or disappearance and instances of unjust court verdicts, often regarding violation of the National Security Law.<sup>141</sup>

Although critics claimed that the Commission’s findings were nothing new, there is no doubt that the Commission’s work brought additional attention to some of the more sensitive elements of Korea’s modern history.<sup>142</sup> For example, the role of U.S. forces in enabling or

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<sup>137</sup> Kim Dong-Choon, *supra* note 41, at 546.

<sup>138</sup> Yong-Jick Kim, *Remembering the Almost Forgotten Killings: The Civilian Victims in the Korean War*, SYMPOSIUM ON TRANSITIONAL JUSTICE AND BEYOND IN KOREA 28 (Nov. 14, 2010).

<sup>139</sup> In 1949, the Korean government organized the Bodo League to re-educate leftists as loyal citizens. Around 300,000 people joined, although many were not in fact leftists but were rather recruited due to the existence of target quotas for each region. When the Korean War started the following year, the government arrested and killed thousands of Bodo League members. Truth and Reconciliation Commission of Korea, *supra* note 74, at 69-70.

<sup>140</sup> The Yeosu-Suncheon Incident refers to the imprisonment and massacre of individuals suspected of collaborating with rebel forces in the wake of a 1948 uprising by the Korean Army’s 14th Regiment in the Yeosu-Suncheon region. *Id.* at 70.

<sup>141</sup> *Id.* at 126-128. Enacted in 1948 and still in place today, the National Security Law criminalizes forming, joining, assisting, or praising “anti-state groups.” During the authoritarian era, the National Security Law was often abused by authorities to crack down on political opponents and legitimate dissent. See Diane Kraft, *South Korea’s National Security Law; A Tool of Oppression in an Insecure World*, 24 WIS. INT’L L. J. 627, 628-32 (2006).

<sup>142</sup> According to an editorial in the Chosun Ilbo, Korean truth commissions such as the TRCK “investigated incidents that everyone knew about and came to conclusions

committing human rights abuses was highlighted in ways that had not previously been well known outside of Korea.<sup>143</sup> More fundamentally, the acknowledgement of truths by an authoritative commission functioned to officially validate truths that, even when widely known, had been denied by the Korean state for decades.<sup>144</sup>

#### E. Recommendations

The TRCK issued recommendations, both on an interim basis, and also as part of the final report. In massacre cases, the recommendations focused on providing State apologies, revising family registries, instituting memorial events, revising historical records, peace and human rights education, law revisions, and medical subsidies for the wounded.<sup>145</sup> In human rights abuse cases, the TRCK recommended retrials, state apologies, deletion of records, and the provision of compensation and medical services for victims and bereaved families.<sup>146</sup> Although the TRCK does not have the power to award compensation, it has recommended that the government pass a law awarding compensation to victims.<sup>147</sup> In addition, several plaintiffs have won compensation from the courts based on TRCK findings.<sup>148</sup>

Government officials have not always followed the TRCK's recommendations, however. It is true that Former President Roh Moo Hyun apologized for the State's role in the Ulsan Bodo League

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that everyone had already drawn." *An Unprecedented Glut of Committees*, CHOSUN ILBO, Apr. 30, 2008, [http://english.chosun.com/site/data/html\\_dir/2008/04/30/2008043061023.html](http://english.chosun.com/site/data/html_dir/2008/04/30/2008043061023.html).

<sup>143</sup> Kobayashi Akira, *The Unknown Korean War: The Truth and Reconciliation Commission of Korea and Excavation of the Remains of Mass-murdered Victims*, ASIA-PACIFIC J., 18-2-10, May 3, 2010, <http://www.japanfocus.org/-Kobayashi-Akira/3351>.

<sup>144</sup> Kim Dong-Choon, *The Truth and Reconciliation Commission of Korea: Uncovering the Hidden Korean War*, ASIA-PACIFIC J., (Mar. 1, 2010), [http://japanfocus.org/-Kim-Dong\\_choon/3314](http://japanfocus.org/-Kim-Dong_choon/3314).

<sup>145</sup> Truth and Reconciliation Commission of Korea, *supra* note 112, at 49.

<sup>146</sup> *Id.* at 50.

<sup>147</sup> Truth and Reconciliation Commission of Korea, *Hankuk Jeonjaeng Jeonhu Manganin Jipdanhoesaengsaganoe Daehan Bae Bosang Teukbyeolbop Jaejeong Geonoe* [Recommendation for the Enactment of Special Act regarding Compensation and Indemnification for Cases of Civilian Massacres Committed before and after the Korean War] (2009).

<sup>148</sup> See, e.g., *Daebeop "Aramhoe Sageon" 90eok Gukgabaesang Hwakjeong (Jonghap)* [Supreme Court's Final Ruling Awards Nine Billion to the Victims and Families of "Aramhoe Incident"], DONG-A ILBO, (Jan. 13 2011), <http://news.donga.com/3/all/20110113/33925063/1>; *"Cha Punggil Gancheopjojak Sageon" Gukgaga 10eok Baesang* [1 Billion Award to the Victims of Fabricated Spy Case - Cha Poong-gil and His Family], YTN NEWS, (May 26, 2009), [http://www.ytn.co.kr/\\_ln/0103\\_200905261228225749](http://www.ytn.co.kr/_ln/0103_200905261228225749).

Massacre.<sup>149</sup> However, the Lee Myung Bak administration has yet to issue any official apologies, and very few local officials have either.<sup>150</sup>

#### IV. TRUTH COMMISSIONS UNDER LEE MYUNG BAK (2008-2011)

In 2007, Lee Myung Bak was elected president, bringing a more conservative administration to Seoul.<sup>151</sup> The Lee Myung Bak administration chose not to renew the mandate of the TRCK, although it was given an additional eight months to complete its final report, which was issued in December 2010.<sup>152</sup> However, because TRCK Commissioners have a two-year tenure, the new administration was able to put its imprint on the work of the Commission by appointing conservative Commissioners who controlled the commission's work during its final year.<sup>153</sup> This sudden switch in orientation led to controversy almost immediately when a newly conservative TRCK chose not to issue an official English-language report printed a few months earlier by the previous progressive administration, and was seen as going too far in its personal criticism of Park Chung Hee.<sup>154</sup> There was also controversy regarding some of the Commission's conclusions during its final months, especially its recommendation that Korea seek compensation from the United States for only eight specific incidents, which were identified as atrocities, committed by the United States forces during the Korean War.<sup>155</sup> The Commission investigated 138 instances of atrocities, but according to the Commission's then-President Lee Jung Yo—a

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<sup>149</sup> Truth and Reconciliation Commission of Korea, *supra* note 112 at 168.

<sup>150</sup> *Id.* at 167.

<sup>151</sup> Doucette, *supra* note 81, at 23.

<sup>152</sup> *Truth and Reconciliation Commission's Disappointing End*, HANKYOREH, Dec. 30, 2010, [http://english.hani.co.kr/arti/english\\_edition/e\\_editorial/456468.html](http://english.hani.co.kr/arti/english_edition/e_editorial/456468.html).

<sup>153</sup> Jinsil Hwahyereul Wihan Gwageosa Jeongri Kibonbeob [Framework Act on Clearing up Past Incidents for Truth and Reconciliation], (Law No. 7542, May 31, 2005), art. 5(1).

<sup>154</sup> Truth and Reconciliation Commission of Korea, *supra* note 112, at 6. The introduction claimed that Park

supported U.S. military interests, and as a former low ranking Japanese officer ... also sympathized with conditions that appealed to Japanese interests. Influenced by the extreme rightist ideology of Japanese nationalism and the sophisticated manipulation skills of the U.S. military, the Park military junta introduced an extreme right-wing fascist regime into Korean society. *Id.*

<sup>155</sup> Choe Sang-hun, *Korean War Panel Finds U.S. Attacks on Civilians*, NEW YORK TIMES, Jul. 9, 2010, <https://www.nytimes.com/2010/07/10/world/asia/10comission.html>. The TRCK's recommendations were seen as weak and insufficient by many survivors. *Id.*

conservative appointee—the other 130 cases were “more like cases of negligence than of liability for war crimes.”<sup>156</sup>

Nevertheless, the Lee Myung Bak administration has not totally abandoned the truth commission concept. In 2008, it set up the Committee for 10.27 Buddhist Persecution Honor-Restoration to restore honor to the victims of a violent attack on Buddhists that took place in October 1980.<sup>157</sup> During this attack, Korea’s Joint Investigation Corps arrested 153 Buddhists and mobilized 32,000 military and police troopers to search 5,731 temples across the country, with victims alleging that they were beaten and tortured.<sup>158</sup> The current administration has also initiated a new commission to address forced emigration during Japanese rule,<sup>159</sup> and established the Committee for Truth of Abduction during the Korean War to investigate the abduction of South Koreans by North Koreans during the Korean War, and to restore the honor of the victims.<sup>160</sup> The retreating North Korean People’s Army allegedly abducted almost 100,000 South Koreans during the war, but to date there has been little official attention to their fates, due to the difficulty in distinguishing between voluntary defectors and abductees.<sup>161</sup>

#### V. CHARACTERISTICS OF KOREAN TRUTH COMMISSIONS

Given the many experiences of truth commissions in Korea to date, it is worth briefly addressing the question of what might be considered the particularities of the Korean use of truth commissions. It is a question that is deserving of more in-depth research, but this section will broach the subject by suggesting a few characteristics of the use of truth commissions in Korea; namely, that they address a particularly broad and comprehensive range of topics, deal with events in the relatively distant past, are generally victim-centered, and have focused on uncovering historical facts rather than providing deeper inquiries into historical question of causation and consequences.

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<sup>156</sup> *Id.*

<sup>157</sup> Established by the 10-27 Beopnan Pihyejaeui Myungye Hoebok Deungye Gwanhan Beobyul [Act for 10.27 Buddhist Persecution Honor-Restoration], Act No. 9947, Jan. 25, 2010 (S. Kor.).

<sup>158</sup> Young Jo Lee, *supra* note 5, at 13.

<sup>159</sup> Established by the Daeil Hangjaengi Kangjyedongwon Pihyejosa Mit Kukwoe Kangjyedongwon Heesaengja Deung Jiwonye Gwanhan Teukbyeolbeob [Act on Finding the Truth of Compulsory Mobilization Damages and Provide Support for Victims of Overseas Compulsory Mobilization during the Anti-Japanese War], Act No. 10143, Mar. 22, 2010 (S. Kor.).

<sup>160</sup> Established by the 6-25 Jeonjaeng Napbuk Pihye Jinsangkyumyung Mit Napbuk Pihyeja Myungye Hoebokye Gwanhan Beobyul [Act for the Truth of Abduction during the Korean War], Act No. 10190, Mar. 26, 2010 (S. Kor.).

<sup>161</sup> Young Jo Lee, *supra* note 5, at 13.

Perhaps the most evident feature of the Korean use of truth commissions is the extraordinarily wide and comprehensive range of issues that have been addressed with a truth commission model, encompassing various types of human rights abuses, collaborationist activities, and massacres from the turn of the twentieth century until the democratic transition of 1987.<sup>162</sup> On occasion, truth commissions even investigated positive elements of the past, one example being the TRCK's findings on the contributions of overseas Koreans to Korea's national prestige, which included reports lauding the positive contributions of taekwondo and Korean miners and nurses in Germany.<sup>163</sup> Clearly, the Korean political establishment has deployed truth commissions or their very close kin particularly liberally. Although a full examination of why this might be is beyond the scope of this article, there are certain cultural explanations that likely help explain their popularity. Truth commissions fill an important role in attaining some form of restorative justice in a traditionally non-litigious society, and have particular resonance in a country where Confucian norms ensure the continuing relevance of individuals' reputations, even many years after their death.<sup>164</sup> Truth commissions also tap into a centuries-long tradition of Korean official historiography, which has customarily produced comprehensive histories as part of political transitions.

Another notable feature of Korean truth commissions is that they have tended to address issues from the relatively distant past. All of the post-1996 Korean truth commissions addressed events from before 1988, and some, such as the Commission on Restitution of Donghak Peasant Revolutionaries, investigated events from up to a century earlier.<sup>165</sup> This is exceptional when compared to the work of truth commissions elsewhere in the world. According to a recent survey of twenty nine truth commissions, only Uruguay's Commission for Peace (2000-2002), the Panama Truth Commission (2001-2002), and the TRCK were mandated to investigate incidents that ended over five years before the commission's establishment.<sup>166</sup> The Korean experience also runs counter to the conventional wisdom that truth commissions should be established soon after a political transition.<sup>167</sup> The continuing study of Korean truth

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<sup>162</sup> See *infra* Parts II-IV.

<sup>163</sup> Truth and Reconciliation Commission, *supra* note 112, at 80.

<sup>164</sup> See, e.g., Stephen Chi-Kong Lee, *Compatibility between Restorative Justice and Chinese Traditional Legal Culture*, in *RESTORATIVE JUSTICE ACROSS THE EAST AND THE WEST* 113, 115 (Katherine Van Wormer ed., 2008).

<sup>165</sup> See generally Young Jo Lee, *supra* note 5.

<sup>166</sup> Wiebelhaus-Brahm, *supra* note 1, at 5.

<sup>167</sup> PATRICIA HAYNER, *UNSPEAKABLE TRUTHS: TRANSITIONAL JUSTICE AND THE CHALLENGE OF TRUTH COMMISSIONS* 215 (2d ed. 2010) ("As a general rule, a truth commission should begin as soon as possible after a political transition.).

commissions may thus be useful in ongoing debates in Brazil, Spain, Taiwan and elsewhere over the appropriate time to initiate a truth commission, and whether in fact it is ever too late to address past human rights abuses.

Korean truth commissions can, with a few exceptions, also be characterized as essentially victim-centered. They have rarely punished or recommended punishment for offenders.<sup>168</sup> In fact, in most cases Korean truth commissions have refrained from publicizing the names of perpetrators.<sup>169</sup> 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.<sup>170</sup> While the Korean post-1987 transition has been criticized for its lack of attention to the perpetrators of political violence, the focus on victims does respond to very real needs.<sup>171</sup> Entire families of individuals persecuted or massacred because of alleged leftist sympathies suffered from discrimination and social stigma during the authoritarian era and into the nineties, because of their alleged links to communism.<sup>172</sup> Official rehabilitation of their reputations was intended to bring them relief and help them regain their sense of honor.<sup>173</sup> The focus on victims also tacitly acknowledges the political difficulty of assigning individual guilt given the significant public support for Korea’s authoritarian regimes and lingering admiration for their economic successes.<sup>174</sup>

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<sup>168</sup> *Roh Attends Memorial for Jeju Massacre Victims*, CHOSUN ILBO, Apr. 3, 2006, [http://english.chosun.com/site/data/html\\_dir/2006/04/03/2006040361023.html](http://english.chosun.com/site/data/html_dir/2006/04/03/2006040361023.html). In the words of former President Roh Moo Hyun, “Righting the wrongs of the past is not aimed at punishing somebody or taking something away from someone.” *Id.*

<sup>169</sup> On one occasion, the TRCK publicly named 492 judges who handled trials on emergency decree violations during the 1970s. This proved very controversial, however, and was condemned by conservative commentators, who questioned why the judges were being singled out for public shaming. *Why Single out the Judges?*, CHOSUN ILBO, Jan. 31, 2007, available at [http://english.chosun.com/site/data/html\\_dir/2007/01/31/2007013161011.html](http://english.chosun.com/site/data/html_dir/2007/01/31/2007013161011.html).

<sup>170</sup> See, e.g., Truth and Reconciliation Commission, *supra* note 109, at 48.

<sup>171</sup> See, e.g., Gentilucci, *supra* note 4, at 101-02; Tae-Ung Baik, *Justice Incomplete: The Remedies for the Victims of the Jeju April Third Incidents*, in *RETHINKING HISTORICAL INJUSTICE AND RECONCILIATION IN NORTHEAST ASIA: THE KOREAN EXPERIENCE* 94, 108 (Gi-Wook Shin et al. eds., 2007) (“[t]he lack of investigation into the identities of the perpetrators constitutes a serious flaw in Korea’s transitional justice.”).

<sup>172</sup> Kim Dong-Choon, *supra* note 41, at 541-42.

<sup>173</sup> *Id.* at 525.

<sup>174</sup> Gentilucci, *supra* note 4, at 92.

Finally, Korean truth commissions have tended to focus on uncovering the historical facts behind a particular incident or set of incidents, without truly engaging in the task of interpreting those incidents to provide a broader narrative that addresses questions of causation and consequences. For example, according to its former President, the TRCK focused on “determining whether or not the petitioner’s claim actually occurred, and cannot look into the structure of how the victimization occurred or the cause and background into why it happened.”<sup>175</sup> This tendency, which was criticized by foreign observers,<sup>176</sup> runs counter to the advice of many transitional justice scholars, who argue that truth commissions should be fundamentally concerned with understanding the causes and consequences of human rights abuses, and not just whether or not they occurred.<sup>177</sup> This straightforward setting forth of purportedly objective fact has strong roots in traditional Korean history writing, which was “more concerned with relating what happened than with trying to explain why it happened or to put what happened into a longer narrative.”<sup>178</sup> This relatively non-analytic style is also likely a product of the fundamental lack of consensus in Korean society on the structural causes and consequences of past abuses and massacres, even when there is widespread acceptance that such abuses and massacres in fact occurred and should be condemned.<sup>179</sup>

## VI. CONCLUSION: THE FUTURE OF TRUTH COMMISSIONS IN KOREA

As the Lee Myung Bak administration comes to a close and Park Geun Hye ascends to the presidency, it is unclear what the future may hold for truth commissions in Korea. During her campaign, Park stressed the idea of unity and reconciliation between past adversaries, most

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<sup>175</sup> Ahn Byung-Ook, *supra* note 116, at 27.

<sup>176</sup> Koen de Ceuster, *When History is Made: History, Memory, and the Politics of Remembrance in Contemporary Korea*, 2 KOREAN HISTORIES 13, 22 (2010) (“The assessment of individual cases and incidents without any fundamental questioning of the historical causes of such violence basically keeps the existing historical narrative intact, a narrative of the nation’s ever onward and upward thrust.”).

<sup>177</sup> See, e.g., Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Truth Commissions 2* (2006) (“The questions of *why* certain events were allowed to happen can be as important as explaining precisely *what* happened”) (italics in original).

<sup>178</sup> Baker, *supra* note 16, at 1. See also Masayuki Sato, *The Archetype of History in the Confucian Ecumene*, 46 HISTORY & THEORY 218, 226 (2007).

<sup>179</sup> Similarly non-analytical styles have been adopted in certain other countries facing a similar lack of consensus on fundamental past issues, such as Indonesia, where 2004 establishing legislation for a truth commission (that in the end was never inaugurated) explicitly prohibited situating human rights abuses in a larger historical context. Greg Grandin & Thomas Klubock, *Editor’s Introduction to Truth Commissions: State Terror, History, and Memory*, 97 RADICAL HIST. REV. 5 (2007).

prominently by visiting the graves of important democracy advocates.<sup>180</sup> This was in part a way to overcome her association by some voters with her father's anti-democratic policies and rights abuses.<sup>181</sup> However, some progressives have dismissed Park's efforts at reconciliation as premature before the truth had been determined.<sup>182</sup> While Park has discussed forming a commission to deal with reconciliation issues, especially those that took place during her father's presidency, it is as yet unclear what the mandate of such a body would consist of.<sup>183</sup> In fact, the progressive former head of the TRCK has already shed doubt upon such plans, stating that Park's real goal is the exoneration of her father's name.<sup>184</sup>

Aside from controversial proposals regarding the recent past, the new Park government may also see a role for truth commissions, or truth commission-like entities, in other fields of investigation, such as North Korean affairs. Specifically, one could see pressure to use the truth commission model to investigate specific North Korean human rights abuses, or the fate of South Korean citizens abducted by the North Korean government in the post-Korean War era. Such commissions would be consistent with statements by Park Geun Hye and other conservatives that more emphasis must be placed on addressing human rights abuses in North Korea.<sup>185</sup> One step in that general direction was the government's March 2011 opening of the North Korea Human Rights Documentation Center and Archive, an organization based on West Germany's Salzgitter

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<sup>180</sup> *Park Geun-Hye Should Make Genuine Effort to Reconcile*, HANKYOREH, Aug. 30, 2012, [http://www.hani.co.kr/arti/english\\_edition/e\\_editorial/549453.html](http://www.hani.co.kr/arti/english_edition/e_editorial/549453.html).

<sup>181</sup> Seong Yeon-cheol, *Park Geun-hye to Traverse Father's Legacy*, HANKYOREH, May 13, 2011, [http://english.hani.co.kr/arti/english\\_edition/e\\_national/477817.html](http://english.hani.co.kr/arti/english_edition/e_national/477817.html).

<sup>182</sup> Park Kyung-Man, *Chang Chun-ha's Family Hopes to Know Truth of his Death After 37 Years*, HANKYOREH, Aug. 16, 2012, [http://www.hani.co.kr/arti/english\\_edition/e\\_national/547355.html](http://www.hani.co.kr/arti/english_edition/e_national/547355.html); Lee Kyung-mi and Choi Yu-bin, *A 28-year-old Plea to President Park Chung-hee*, HANKYOREH, Sep. 27, 2012, [http://www.hani.co.kr/arti/english\\_edition/e\\_national/553677.html](http://www.hani.co.kr/arti/english_edition/e_national/553677.html) ("A true apology will only be possible after there has been an investigation into the act, and an incomplete apology is worse than no apology at all.").

<sup>183</sup> Kim Yun Hee, *Gwagosa Jinsangjosa . . . Park Chung Hee Sidae Kukhan* [Investigation of Nation's Past . . . Limited to Park Chung Hee Era], HERALD KYUNGJAE (Jan. 24, 2013), [http://news.heraldcorp.com/view.php?ud=20130124000424&md=20130127003916\\_AN](http://news.heraldcorp.com/view.php?ud=20130124000424&md=20130127003916_AN).

<sup>184</sup> Kim Deok Ryun and Nam Bitnara, *Park Geun Hye Kijuneun Park Chung Hee Myungae Hwoebok . . . Yoksa Jeonjang Beolil Keut* [Park Geun Hye's Historical Standard is the Recovery of Park Chung Hee's Name...She will have a History War] PRESSIAN, Jan. 10, 2014, [http://www.pressian.com/article/article.asp?article\\_num=60130109175226](http://www.pressian.com/article/article.asp?article_num=60130109175226).

<sup>185</sup> See Bae Hyun-jung, *Human Rights Watchdog Takes on N.K. Issue*, KOREA HERALD, Mar. 30, 2010, available at <http://nwww.koreaherald.com/view.php?ud=20090826000109>.

Center that records instances of human rights abuses in North Korea.<sup>186</sup> Should the North Korean regime lose power at some point, it is quite likely that truth commissions will play a prominent role in the resulting transition.

With continued conservative control of the presidency, it is also likely that we will see an increased focus on the creation of so-called ‘truth commissions’ outside of government organs by various civil society organizations.<sup>187</sup> For example, the recently formed Forum on Truth and Justice has attempted to take up the banner of the now-defunct TRCK in investigating and reporting on past abuses.<sup>188</sup> To a certain extent, the truth commission model has already migrated to civil society over the past decade. This can be seen in the Korea Truth Commission on U.S. Military Massacres of Civilians, for example, which worked actively both in the United States and Korea to publicize incidences of wrongdoing by U.S. military forces.<sup>189</sup> While it does not call itself a truth commission, the work of the Institute for Research in Collaborationist Activities is perhaps the most well known and controversial of the civil society truth-seeking initiatives.<sup>190</sup> This organization has published lists of individuals who collaborated with the Japanese imperial regime.<sup>191</sup> The Institute issued its first list of 3,096 collaborators in 2005, which included Park Chung Hee and several other prominent figures from the post-war era, and released another list of 1,686 names in 2008.<sup>192</sup>

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<sup>186</sup> See Evan Ramstad, *Hey Kim Jong Il, Seoul is Now Taking Names*, WALL STREET JOURNAL (Mar. 16, 2011), available at <http://blogs.wsj.com/korearealtime/2011/03/16/hey-kim-jong-il-seoul-is-now-taking-names/>.

<sup>187</sup> Kim Dong-Choon, *supra* note 41, at 551 (noting that civil society groups are “poised to emerge yet again as the leading force for dealing with the past”).

<sup>188</sup> See Kim Dong-Choon & Mark Selden, *South Korea’s Embattled Truth and Reconciliation Commission*, 9-4-10 THE ASIA-PACIFIC J. (Mar. 1, 2010).

<sup>189</sup> Susan Wood, *RIGHTS: Evidence Mounts of U.S. “Massacres” of Civilians in Korean War*, INTER PRESS SERVICE, Jul. 12, 2000, <http://www.ipsnews.net/2000/07/rights-evidence-mounts-of-us-massacres-of-civilians-in-korean-war/>.

<sup>190</sup> Ser Myo-Ja, *New list of Japanese Collaborators Stirs New Anger*, JOONGANG DAILY, Apr. 30, 2008, <http://koreajoongangdaily.joinsmsn.com/news/article/article.aspx?aid=2889259>.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.* One of the conservative reactions to publication of the list of collaborators was to establish a separate research group to investigate and publish the names of members of Korean society who were sympathetic to the North Korean regime. Do Je-hae, *Publication of NK Sympathizers Triggers Ideological Dispute*, KOREA TIMES, Nov. 23, 2009, available at [http://www.koreatimes.co.kr/www/news/nation/2009/12/117\\_56007.html](http://www.koreatimes.co.kr/www/news/nation/2009/12/117_56007.html).

Of course, the conservative party is unlikely to maintain power indefinitely in Korea, and at some point progressives will take over once more. At that point it is quite likely that calls from the left for new truth commissions will reemerge. Progressive civil society organizations, historians and political activists care deeply about the continuing imperative of truth-seeking, which they have promoted since November 2004 through the campaigns of a coalition of civil society organizations, called the National Coalition for the Proper Settling of the Past.<sup>193</sup> Certainly, those on the left have made clear that they believe that the TRCK was not able to successfully complete its mandate, and there will be calls for its re-establishment.<sup>194</sup> There will also be pressure to officially overturn certain pronouncements made by the TRCK during its conservative period. In addition, there may be calls to establish new issue-specific truth commissions to address certain areas of the past that have not yet been thoroughly explored, such as human rights abuses committed by Korean soldiers in the Vietnam War. However, truth commissions evolve going forward, and it is clear that they have already informed Korean political affairs in numerous ways. While truth commissions may have garnered more publicity in Africa, Latin America and Europe, Korea is in fact one of the countries where they have played an extremely important role as the method of choice for dealing with the after effects of a particularly turbulent twentieth century.

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<sup>193</sup> de Ceuster, *supra* note 176, at 19-20.

<sup>194</sup> *Truth and Reconciliation Commission's Disappointing End*, HANKYOREH Dec. 30, 2010, [http://english.hani.co.kr/arti/english\\_edition/e\\_editorial/456468.html](http://english.hani.co.kr/arti/english_edition/e_editorial/456468.html).