

The Implications of Korea's Transitional Justice Experience

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I. Introduction

Transitional justice is a government-level response to past human rights violations (Teitel 2000). During the twentieth century, Korea, like every other country, suffered serious and systematic human rights violations. The victims of oppression rose to the surface following democratization, and official discussions of this issue became full-blown once Kim Dae-jung took office. A variety of successful transitional justice policies that bore results were implemented. South Korea's experience includes issues that other countries can relate to.

A variety of terms are used to describe transitional justice, including punishment, fact-finding, restoration of honor, and compensation. This principle was adopted by the United Nations in 2004 (United Nations 2004), but its universal application to individual countries is controversial. Therefore, it is important to conscientiously and thoroughly catalog the individual experiences of each country to identify the limitations and possibilities of transitional justice. This work was carried out by private organizations, governments, and academia in the United States, the United Kingdom, Germany, the Czech Republic, and South Korea (Bickford 2007; CEVRO 2021; Dancy et al. 2014).

The English word "transitional justice" has been used to mean justice in a transition, a changeover or turning point, or a transformation (Cho Jung-hyun 2014; Lee Byung-jae 2015; Kim Hun Joon 2017). The word transition means "to move or change to another state," changeover or turning point means "to change to another direction or state," and transform means "to change or move from one state into another." However, the phrase "transitional justice" is a word linked to the transition to democracy, and so this is the phrase used to refer to the concept in Korea. While the concept itself may be unfamiliar, the phenomenon it refers to is not. In Korea, transitional justice has been called "liquidation of the past," "punishment for the person in charge," "restoration of victims' honor," and "fact-finding."

The following events well depict the state of Korea's transitional justice. In 2020, President Moon Jae-in attended a memorial service for victims of the Jeju 4.3 Incident. In his memorial address, the President emphasized that "internationally established universal standards" would be applied to the resolution of the Jeju 4.3 Incident. The next day, the Chosun Ilbo argued that "the state should appropriately comfort, apologize to, and compensate any civilians who suffered unjustly," but that those who perpetrated violence should be distinguished from such civilians.

Interestingly, while the two perspectives on the 4.3 Incident are different, the Chosun Ilbo also believes that the state should "appropriately" comfort, apologize to, and even "compensate" those who sacrificed unjustly.

The common denominator between the two is that the state's response to serious human rights violations is "appropriate" and "an internationally established universal standard." The conservative media's mention of appropriate "comfort, apology, and compensation" for the 4.3 victims shows that Korean society has reached some level of agreement on this. This suggests the possibility that the Korean case will be presented as a model in the international community. This article aims to outline Korea's experience of human rights violations and transitional justice and to explore the implications and limitations that this experience can teach other countries.

II. South Korea's Human Rights Violations and Transitional Justice

Modern Korea endured the Japanese occupation (1910-1945), liberation and the U.S. and Soviet military government (1945-1948), the Korean War (1950-1953), Rhee Syngman's dictatorship (1948-1960), the April 19 Revolution, and Second Republic (1960-1961), the May 16 military coup d'état and Park Chung-hee's military dictatorship (1961-1979), Park Chung-hee's assassination and the Seoul Spring (1979-1980), the December 12 military coup d'état, the May 18 Gwangju Democracy Movement, and the authoritarian regimes of Chun Doo-hwan and Roh Tae-woo (1980-1988), and the June 1987 struggle and institutional democratization. During these processes, numerous human rights violations occurred, including genocide, torture, forced disappearances, suspicious deaths, and judicial and extra-judicial killings. Authoritarian power persisted even after democratization, making it difficult to deal properly with the past at the time. As a result, the limited efforts that began with Kim Dae-jung's civilian government reached their peak during Roh Moo-hyun's tenure in office. These efforts were flagged under the Lee Myung-bak and Park Geun-hye administrations, but the Moon Jae-in government has been active in its efforts to "address past problems to the satisfaction of the public," listing it as the third priority of the top 100 national policy tasks.

Human rights violations in Korea are diverse and heterogeneous. Since they have occurred over a long period of time, the perpetrators (Japanese imperialists, dictators, authoritarians, democratic leaders) and the scale of each instance differ. The nature of each case (rights violations that occurred during subjugation, the war, abuse of power by personnel, or rights violations that occurred during the process of enforcing coercive policies, etc.) and the scale of damages are also different. Incidents, where more than 1,000 civilians were killed, include the March 1st Movement, the Gando Massacre, the Kanto Massacre, the Jeju 4.3 Incident, the Yeosu-Suncheon Incident, the post-Korean War civilian massacres (including the Bodo League massacre, the prison inmate massacre, the No Gun Ri Incident, the slaughter of collaborators, US military bombings, the massacre of the North Korean military and its allies, and massacres of civilians in North Korean territory), the military purge, the period of the National Defense Forces, and the Geochang Massacre. Incidents, where just 100 people were killed, include the Daegu October Incident, the April 19 Revolution, the Brothers' Home, the 5.18 Gwangju Democratization Movement, and the Samchung Re-education Camp.

There are also many incidents that are important even though less than 100 civilians were

killed. These include the Jaemri Massacre, the Japanese military sexual slavery system, forced labor, the Daegu February 28 Incident, the People's Revolutionary Party Incident/Civil Servant Re-education Camp Incident, the Bu-Ma Democratic Protests, The Academy Recording Incident, Seongam Academy, the Seosan Development Group, the Sabuk Coal Mine Labor Struggle, the Silmido Incident, Kim Dae-jung's kidnapping, the suspicious deaths of Chang Chun-ha and Choe Jong-gil, suspicious military deaths, and others. There have also been incidents wherein hostile foreign governments target civilians, such as the 1983 Korean Air 007 shooting incident, and the 1985 bombing of Korean Air 858, which was perpetrated by North Korean agents. While incidents with large numbers of civilian victims have decreased since democratization, human rights violations such as torture and fabricated espionage accusations have continued.

Bereaved families have made continuous demands for compensation, fact-finding, and punishment for those responsible. The dictatorships and authoritarian regimes completely ignored and silenced these families. One example of this is the Park Chung-hee administration's inhuman oppression of the June 25 Korean Society of Bereaved Families of Massacre Victims organized in 1960. However, after the civilian government took over, they began the process of handling the past in earnest, starting with the creation of the Review Committee for the Restoration of the Honor of the Victims of the Geochang Incident and Others. During Kim Dae-jung's tenure in office, the Jeju 4.3 Committee and the Presidential Fact-finding Committee on Suspicious Deaths were established, and the Truth and Reconciliation Committee, the Fact-finding Committee on Suspicious Military Deaths, the Presidential Committee for the Inspection of Collaborations for Japanese Imperialism, the Truth Commission on Forced Labor under the Japanese Imperial Republic of Korea, and the Committee to Investigate the Assets of Japanese Collaborators were established. At the same time, the National Police Agency, the Ministry of National Defense, and the National Intelligence Service established and operated their own committees. The Moon Jae-in government has established a Committee to Investigate Past Prosecutions, the 5.18 Democratization Movement Fact-finding Committee, and a Second Truth and Reconciliation Committee, and is currently organizing a committee on the Yeosu-Suncheon Incident.

The characteristics of North Korea, which has maintained an abnormal Communist Party dictatorship with successive leaders from Kim Il Sung's family, are quite different. Massacres, murder, torture, forced disappearance, forced imprisonment, and forced labor have all taken place, and after the great famine, known as the Arduous March, occurred in the 1990s, there was a second round of abuses against North Korean refugees, forced repatriations, and North Korean refugee women and children. The issue of forced kidnappings and detainees also remains unresolved. Some well-known examples of civilian victims include religious oppression, the execution of the Kapsan Faction, the Changpyeong prison camp massacre, the Frunze Military Academy incident, the Shim Hwajo purge, the Songnim Steel Mill massacre, and the Hoeryeong prison camp massacre. Transitional justice in North Korea emerged when defectors began to talk about the reality of life in North Korea. The term transitional justice was specifically mentioned in a report written by the UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea organized in 2013, and discussions of fact-finding and punishment of those responsible have also been held in Korea and in other countries (Teitel and Baek 2013; Lee Kyu-chang et al. 2016). The following year, civil society organizations, including the Transitional Justice Working Group, began preparations for a transition in North Korea by engaging in work such as monitoring the country, recording

human rights violations, and other related tasks.

The scope of human rights violations and the targets for transitional justice on the Korean Peninsula are broad. They span over one hundred years and geographically encompass South Korea, North Korea, Japan, Manchuria, and international waters. The perpetrators are also diverse and include the Japanese imperialists, Korean dictators, authoritarians, and members of democratic regimes, North Korea, the Soviet Union, and the United States. Therefore, it is not easy to find a comprehensive model for human rights infringement and transitional justice or understand the implications.

III. International Implications for South Korea's Transitional Justice

Human rights violations and transitional justice on the Korean Peninsula is an important factor in the development of democracy due to the diversity of the issue areas. The Korean case has the following international implications as a model for transitional justice.

1. The Positive Impacts of Transitional Justice: Cementing a Culture and Institution of Protecting Human Rights and Democracy

Transitional justice helps to form and solidify systems and cultures that protect human rights and democracy. More than any other country, Korea has attempted to resolve human rights violations in the past by utilizing various (fact-finding/compensation/investigation) committees, criminal and civil trials, and compensation/reparation systems. Efforts have been made by the government to apologize, revise textbooks and official documents, restore the honor of victims and provide reparations through retrials, commemorate victims and excavate their remains, establish commemorative foundations, support victims, and bereaved families, and designate national memorial holidays (Kim Hyunjun 2017). These efforts have generally resolved the injustices inflicted on victims and raised public awareness of human rights. The National Human Rights Commission of Korea or commemorative foundation, which was made at the recommendation of various committees, protects human rights and keeps past human rights violations from being distorted or disparaged.

Of course, the domestic evaluation of the effectiveness of these transitional justice efforts is not very generous. From the perspective of victims and activists, efforts thus far have been insufficient and there is still a lot to be solved. The victims of the Jeju 4.3 Incident have yet to receive compensation or trauma healing; fact-finding and reporting on the 5.18 Gwangju Democracy Movement still need to be performed, and a memorial foundation and research institution need to be established for the civilian victims of the Korean War. These level-headed assessments and reflections should continue. However, in addition, the achievements of transitional justice need to be objectively and separately evaluated and disseminated.

2. The Positive Effects of Ongoing Controversy: The Mutual Interaction of Transitional Justice

Although Koreans seem to be severely divided on the topic of transitional justice by ideology, political orientation, region, age, and gender, everyone is ultimately a member of the same

community. Human rights violations and transitional justice have been the main concerns of the community regardless of the nature of the government. The unusually rough battle over the past is proof of the public's interest in the topic. There has never been a case in which past human rights violations have reached a general settlement or passed without controversy. During the Moon Jae-in administration, there was controversy over the legislation regarding the Yeosu-Suncheon Incident and the rulings of trials regarding the Japanese forced labor and comfort women. During the Lee Myung-bak and Park Geun-hye administration controversies included the March for Love (Nimel Wihan Haengjingok, symbolic protest song commemorating the 5.18 Gwangju Uprising) controversy, reduction of support for victims of Jeju 4.3, and the careless agreement over the comfort women issue. As the Kim Dae-jung and Roh Moo-hyun administrations ran the Presidential Truth Commission, the 4.3. Commission, the Truth and Reconciliation Commission, and committees relating to colonization at the same time, controversy emerged each time a report emerged or a trial was held.

Similar debates will continue when liberal governments come to power in the future, and issues of North Korean human rights, abductees, and persons who performed special military missions will be discussed during conservative rule. Interestingly, the promotion of transitional justice for one period or incident has raised the expectations of victims of other incidents to experience the same, regardless of the nature of the government. The Truth and Reconciliation Commission for Jeju 4.3 had an influence on the handling of the victims of Gwangju 5.18, and the handling of the Soviet Union's Korean Air shooting incident was passed on to agencies investigating North Korea. The North Korean human rights investigation by the Transitional Justice Working Group led to an investigation of the adoption of Korean children overseas. In other words, the experiences of fact-finding, reparations/compensation, trials, and restoration of honor were shared within the community regardless of the nature of the incident, the region, the perpetrator, and the size of the case showing a synergy effect.

3. Transitional Justice as a Process and Not an End

Transitional justice in Korea is ongoing and will continue to be so. Revision and re-revision of laws about history, the ongoing investigations by local autonomous governments, the National Assembly, the Ministry of Defense, and the Fact-finding Committee into the Jeju 4.3 and Gwangju 5.18 incidents, the separate committee formed within the Commission to Investigate Suspicious Deaths to investigate suspicious military deaths, and the investigation into assets following the investigation of Japanese imperial collaborators all show that transitional justice is not a “once-and-for-all” resolution to historical wrongs. In the case of Jeju 4.3, even after the official investigation was closed and the government report published in 2003, there were other investigations carried out by the Jeju 4.3 Peace Foundation, records discovered in the process of fact-finding, and investigations focusing on the damage to education and religion. All of this is the process of transitional justice and is necessary to consolidate democracy and embed human rights within society.

Of course, since many attempts have occurred over a long period of time there is increasing fatigue, and depending on the nature of the ruling party, there has been backlash to these efforts resulting in reductions of support or the abolition of committees and projects. Such actions give rise

to social controversy, and opposing forces actively make legal and political efforts to reverse the previous government's decisions. However, all of these controversies, battles, failures and efforts that have run aground, oppositions, and new attempts are part of the human rights and transitional justice development process and are important factors in the development of democracy. They teach and remember that the slaughter of civilians that occurred during Jeju 4.3, Gwangju 5.18, and before and after the Korean War not only cause direct harm to the victims themselves, but again through the suppression of bereaved families by dictatorships and authoritarian regimes, and the obstruction of fact-finding by military and intelligence agencies.

IV. Limitations of South Korea's Transitional Justice

There are also limitations in discussing Korea as a model of transitional justice. This is entirely due to the specificity of the Korean case

1. The Divided System and the Role of Foreign Countries

Korea's most unique aspect and its biggest limitation is its division. The country's division causes two problems. First, North Korea's human rights violations are continuing, and no proper attempt at transitional justice has yet been made. The North Korean Human Rights Center, the Transitional Justice Working Group, and the Korea Institute for National Unification are performing investigations and preparing for eventual transitional justice, but actual discussions will only become possible after some limited changes occur in North Korea. Second, the division is behind some ideological attacks and splits over Jeju 4.3, the Yeosu-Suncheon Incident, and Gwangju 5.18, and this interferes with the ability to perform comprehensive fact-finding investigations in Korea. Some predict that these events can only be historically assessed and properly commemorated after the country is no longer divided.

Another limitation is the human rights violations that were caused or that occurred under the watch of external forces such as Japan, the United States, and the Soviet Union. Discussions or policies that cover past human rights violations easily become current diplomatic controversies. A well-known example of this is the rulings on the Japanese comfort women and forced laborers which elicited a strong response from the Japanese government. Since Jeju 4.3 also began under the US military government, it has repeatedly been suggested that the US should bear some responsibility and apologize, but it remains to be seen whether the US will respond. After some of the confidential U.S. documents relating to Gwangju 5.18 were released, it was suggested that the US has some responsibility in this incident as well due to the acquiescence of its new military authority. Of course, as seen in the controversy over Germany and Namibia and France and Algeria, the controversy over past human rights violations between imperialist countries and former colonies is not solely a Korean problem. However, Korea has suffered the unique triple structure of Japanese colonization, the US-Soviet military government, and the international support and intervention in the civil war.

2. The Long Path to Reconciliation

The ultimate purpose of transitional justice is to achieve social integration and reconciliation by reaching an agreement on the legitimacy, necessity, effect, and expectations of the relevant measures taken. As mentioned above, the presence of controversy alone is not a negative thing. However, if there is only controversy and society does not come close to reconciliation, then there is no reason for other countries to take this path. Of course, there have recently been meaningful reconciliation attempts in Korea regarding Gwangju 5.18 and Jeju 4.3. The recent apologies and visits to the graves of the victims from the opposition party regarding Gwangju 5.18, President Roh Tae-woo's son visiting the graves of the victims, the testimonies of soldiers who participated in the 5.18 Military and Police Offender Committee, and their individual apologies and reconciliation attempts are not enough in and of themselves, but they are important starting points. In Jeju, there have also been important opportunities for resolution such as reconciliation meetings between the families of the victims and the perpetrators, joint memorial services, apologies from the Vice Minister of National Defense and the National Police Agency, and joint visits to the graves of victims by the ruling and opposition parties.

However, despite these reconciliations, there is still a sharp divide when it comes to determining the scale of and targets for transitional justice. When looking at the extreme chasm between opinions over the rulings regarding the comfort women and forced laborers, or the targets of the Yeosu-Suncheon Incident and Gwangju 5.18 laws, it is clear that there is still a long way to go before meaningful social reconciliation can be achieved. When discussing the international implications of the Korean case, it is necessary to distinguish between incidents where domestic agreements have been reached, those where reconciliation has yet to be reached, and incidents where it seems that it will remain difficult to agree. We already know from other cases, like South Africa, that there is a difficult distance between the implementation of a transitional justice system and actual reconciliation. As it is still unknown precisely to what extent reconciliation will be possible in Korea, there will inevitably be limitations in deriving international implications from the Korean example.

V. Conclusion

Korea, or more broadly, the transitional justice attempted on the Korean Peninsula, is both universal and unique. Human rights violations themselves exist in any political community and humanity has suffered through the shared experiences of imperialism, colonialism, two World Wars, and the Cold War. The Jeju 4.3 incident alone is similar to the Greek Civil War, the Taiwan 2.28 incident, and the 1965 massacre in Indonesia. As human rights violations are universal, efforts to resolve them are also universal. The recent US racial issues (the recognition of the Tulsa Massacre), the Canadian/Australian indigenous issues, attempts to reconcile Germany and Namibia, Germany's continued efforts to pay reparations for the deeds of the Nazis and to reconcile internationally (Merkel's recent visit to Auschwitz) show

However, the South Korean transitional justice is also clearly unique. One recent example is how the recent domestic rulings by the Korean court regarding forced laborers and comfort women have had not only domestic but also international political ramifications on the sensitive ROK-

Japan relations. The continued division of the two Koreas is also a unique factor. The issue of past human rights violations is sensitive in any country due to perpetrators, victims, ideological divides, and persistent conflicts, but in Korea, it tends to spark unusual political disputes. The recent controversy over whether to move the National Cemetery, the debate over whether to enact the Special Act on May 18 Democratization Movement which would designate victims national meritorious persons, opposition to the passage of the Special Act on the Yeosu-Suncheon Incident and the controversy on the proposed bill to punish acts of spreading false information about the Gwangju 5.18 Democratization Movement are all clear examples of this.

When seeking international implications for Korea's transitional justice, it is important to discover and distinguish the universal and unique aspects of the Korean case. However, there is one note of caution. We must not be limited by what we decide is universal or unique about Korea's experience. South Korea developed through the influence of not only the transitional justice experience of countries like South Africa, Taiwan, and Argentina but also by the development of international criminal law and the establishment of the International Criminal Court. Conversely, Korea's transitional justice experience will utilize the developments, achievements, controversy, and conflict to contribute to creating a new international trend.

The following suggestions can be made to countries that are considering implementing transitional justice policies.

Transitional justice regarding decolonization is the first suggestion. South Korea formed a committee to restore the victim's honor and to administer compensation. Although a settlement agreement was signed with Japan, the historical issue has recently become a point of conflict with Japan due to the recent independent rulings of the Supreme Court and continuous uprising from the civil society. This suggests to countries dealing with similar issues that dealing with human rights violations from the past could become a diplomatic issue in the present. Awareness for Human Rights, development of democracy, and transitional justice may not always go hand with efficient foreign policy and sometimes will contradict it. However, the comfort women issue is not just a colonial issue between Korea and Japan. It is a part of the new trend which includes the development of women's rights in international human rights norms and the new victim-centered principle of international law. Therefore, various political and diplomatic solutions that can simultaneously resolve short-term national conflicts should be implemented.

Transitional justice relating to human rights violations during the Korean War and the authoritarian regime is the second suggestion. Korea has promoted various policies to resolve serious human rights violations that occurred pre and post-liberation and during the Korean War, dictatorship, and authoritarian period. In particular, efforts have been made to reveal human rights violations through the overlapping establishment of various central, local, private, and public truth committees. This has, of course, has been met with criticism as a waste of national finances and was stigmatized as a "committee republic" by the opposing party. Various fact-finding and committee operations seem to be conducted individually in a free-for-all manner without a central command. However, from a perspective over time, all these processes have converged in a positive direction towards democracy, the development of human rights, and victim relief. Therefore, countries with similar issues need to continue the truth investigation at the central, local, private, and government levels and must keep records as the basis for future truth committees, trials, reparations, and compensation. Furthermore, this process will provide justification for the reform of major power

agencies such as the military, prosecution, and intelligence agencies when the time comes in the future. ■

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