
Dictators in the Dock: Retroactive Justice in Consolidating Democracies

A Comparative Analysis of Chile and South Korea

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On October 16, 1998, former Chilean leader Augusto Pinochet was arrested in London on a Spanish warrant alleging human rights abuses in violation of international conventions. This landmark event in international law was the beginning of an odyssey that brought worldwide attention to Chile. Indeed, the Pinochet case has inspired renewed debate on the legacy of authoritarian regimes in Latin America and elsewhere. Within a decade of the return of democracy in Chile, the country was again reminded of its troubled and contentious past, except this time under the unprecedented (and often unfavorable) light cast by the international community. The decision by Great Britain not to extradite Pinochet to Spain for prosecution, which led to his return to Chile on March 2, 2000, has led many to see this case in a broader context. Soon after his triumphant return, Pinochet faced renewed efforts to prosecute him in Chile. In a landmark decision, Pinochet was stripped of his legal immunity from criminal prosecution in May of that year. Several months later, in December, homicide and kidnapping charges from his sixteen-year rule led to an indictment and an arrest warrant issued against Pinochet, which were later overturned by the Chilean Supreme Court on procedural grounds. Legal proceedings are likely to remain mired in the Chilean court system indefinitely, as the 85-year-old Pinochet's mental and physical fitness to stand trial are considered. Regardless of

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the results of any legal reckoning of Pinochet's legacy in Chile, its singular importance to the country's future has been confirmed. The personification of power that has characterized authoritarian regimes throughout the world, as was certainly the case in Chile under Pinochet, is reflected in the unique challenges of dealing with former leaders.

In a country thousands of miles away from Chile and seemingly a world apart, a remarkably similar set of circumstances has led to startlingly different results. On August 26, 1996, more than three years prior to Pinochet's detention in Great Britain, two former leaders of South Korea were prosecuted for crimes committed while in power. In what was called the "trial of the century" in South Korea, Chun Doo Hwan and Roh Tae Woo were sentenced by the Seoul District Court on charges of insurrection, treason, and corruption.¹ Kim Young Sam, who succeeded Roh as president in 1993, was a leading figure in their prosecution, which was generally supported by the Korean people. This was followed by a reduction in their sentences and a presidential pardon for both men in December 1997, a troubling culmination to this episode in the history of South Korea. Nonetheless, the fact remains that South Korea decided to punish former authoritarian leaders for acts committed during their rule. Why did Pinochet enjoy immunity from domestic prosecution for more than a decade before his arrest in London, in contrast to what happened to his counterparts in South Korea?

Chile's attempts to deal with its authoritarian past are most often compared to its Southern Cone neighbors, who were also ruled by bureaucratic-authoritarian (BA) regimes until the 1980s.² The basic characteristics of BA regimes, however, were not exclusive to Latin America. South Korea is one of a number of "third wave" democracies that, like Chile, were preceded by military-backed authoritarian regimes.³ Examining what has happened in South Korea allows us to consider the Chilean experience from a cross-regional perspective.

Several additional factors make comparisons between Chile and South Korea appropriate in this context. Despite the obvious cultural differences between the two countries, there are many surprising parallels in their recent histories. First, both countries underwent significant political turmoil and economic distress under democratically elected governments until coups imposed military rule with the objective of restoring social order—as was the case in South Korea with Park Chung Hee in 1961 and in Chile with a Pinochet-led junta in 1973. Second, the perceived threat of communism—from North Korea and China in South Korea and from the Marxist-inspired socialism of president Salvador Allende in Chile—encouraged widespread support for the coups and even for political oppression among certain parts of the population. The specter of communism also shaped the views of international actors, most notably the United States. Third, in both countries the authoritarian regime imposed drastic policy reforms at the behest of insulated technocrats that were widely credited with promoting economic growth. The performance

legitimacy of the Pinochet and Park regimes was enhanced by strongly orthodox neo-liberal reforms in Chile and a dramatic shift of the Korean economy to export-oriented industrialization, which many believe would not have been possible in a pluralistic, democratic political system. The result was the relative stability and growth of the Chilean economy in the 1980s, in stark contrast to the macroeconomic woes of its newly democratizing neighbors in Argentina and Brazil. South Korea underwent a tremendous economic transformation through the 1980s that saw it rise from one of the poorest countries in the world to one of the most prosperous and dynamic. This has greatly influenced perceptions, both domestically and internationally, of the political legacies of their former leaders. Finally, the two countries' democratic transitions in the late 1980s exhibit certain similarities. Both were ultimately the result of tactical elite pacts that resulted in the peaceful transfer of power to democratically elected governments.

These similarities between Chile and South Korea should not obscure the many differences in their respective political experiences, some of which are directly relevant to their contrasting treatments of former authoritarian leaders. Only after fully understanding the similarities between these countries' recent experiences is it possible to identify the political variables that may explain the aforementioned results. By examining South Korea's prosecution of two former leaders, we can cast light on Chile's own attempts at dealing with the living symbol of its authoritarian legacy. South Korea can be considered an illuminating example with a simple yet compelling message of its own: Despite the legal intricacies of criminal and civil proceedings against former dictators in Latin America, the prospects for retroactive justice depend on inherently political factors. Something approaching national consensus among major interests in civil society is crucial for the prosecution of former authoritarian leaders in countries that have democratized through negotiated authoritarian withdrawals, as did Chile and South Korea.

To many in Latin America and elsewhere, the Pinochet case represents a breakthrough, albeit qualified, for human rights and international law. It is retroactive justice at its pinnacle—initiated in the name of the rule of law in Spain, a country that has grappled with its own authoritarian past. Perhaps a network of democracies can serve as watchdogs for transgressions committed by democratically illegitimate leaders in gross violation of basic norms of human dignity. Instead of merely prosecuting subordinates, as had been done in Chile and elsewhere, the international community can help render justice for national leaders ultimately responsible for the atrocities committed by their regimes. Pinochet, who continues to exert political influence in Chile, perhaps can finally be brought to justice.

Yet on the other hand, the Pinochet case reveals the persistence of long-time issues that continue to haunt many Latin American countries even after years of democracy. Political polarization in Chile concerning the circumstances

in which Pinochet assumed power in 1973 and the means by which he maintained power until 1990 serves as a bellwether for similar experiences in Argentina, Brazil, and Peru. Disagreement in Chile about the fate of former military leaders and the inability to bring Pinochet to trial may not only be an affront to past victims of political persecution but also may be a destabilizing force to democratic consolidation. That is, the failure of retroactive justice for former heads of state leaves a social vacuum that hinders the universal acceptance of the current democratic system as the “only game in town.”⁴

The following two sections of this article are devoted to the ongoing Pinochet case in Chile and the historic trial of Chun and Roh in South Korea. Once we have outlined the experiences of Chile and South Korea, it will be possible to explain their divergences by comparing and contrasting the consequences of the countries’ respective democratic transitions. This analytical framework takes into account the unique circumstances associated with the prosecution of former authoritarian leaders in countries such as Chile and South Korea, where the political and economic status quo was left relatively undisturbed by the process of democratization. At this crucial juncture in the history of many nascent democracies, we must recognize the political conditions necessary for retroactive justice within each country—conditions that might yet be found in Chile.

CHILE AND THE PINOCHET CASE:

A NEW ERA IN INTERNATIONAL HUMAN RIGHTS?

For much of the 20th century, Chile was one of the relatively few stable democracies in Latin America.⁵ Indeed, the military coup that led to Pinochet’s 16-year authoritarian rule appears to be an anomaly in the fabric of Chilean democracy. The shortcomings of liberal democracy in Chile, however, precipitated his rise to power and later hindered efforts to deal with his authoritarian legacy.

Ideological polarization in Chilean politics grew tremendously in the 1960s and early 1970s, pervading all major aspects of public life, including civic organizations, universities, and the media.⁶ The fragile centrist coalition anchored by the Christian Democratic Party, which won a plurality of the popular vote in the 1964 presidential election, was undermined by increasingly greater conflicts from both ends of the political spectrum—that is, between reactionary conservatives linked to the economic status quo and leftist, socialist-sympathizing interests. These strongly centrifugal tendencies led to the complete breakdown of democratic-based consensus in the early 1970s.⁷ The future of the country became directly tied to competing political visions regarding the basic role of the Chilean state.

In September 1970, the Chilean left enjoyed a political breakthrough with the election of socialist Salvador Allende as president. The Popular Unity, a coalition of leftist parties, won a narrow plurality with 36 percent of the popular vote. Allende

became the first democratically elected Marxist head of state in the Western Hemisphere and hence an immediate threat to self-proclaimed enemies of communism within and outside of Chile.⁸ Allende's presidency from 1970 to 1973 was a highly contentious time in Chilean history, characterized by the government's efforts to integrate nationalized, mixed, and private sectors of the economy. The nationalization of key industries (including mining, banking, and telecommunications) coupled with growing clamor from the more radical Chilean left galvanized conservatives against this perceived danger to their livelihoods. Meanwhile the relatively sizable middle class and ideological moderates felt increasingly uneasy about the economic and social dislocation caused by mass socialization imposed from above. The disruptive opposition of conservatives and a growing dissatisfaction from more moderate elements of Chilean society led to governmental paralysis and social chaos.

As has often been the case in modern Latin American history, the military intervened in the name of social order. A military junta orchestrated a swift and overwhelming coup d'état on September 11, 1973. Pinochet, who had been appointed commander-in-chief of the army by Allende only 19 days earlier, imposed martial law, which officially remained in effect until 1978.⁹ The ruling junta, which assumed executive, legislative, and administrative powers, proceeded to engage in a brutal crackdown of opposition groups. The most intense and brutal repression was carried out in the initial years under Pinochet, who soon assumed the position of president of the republic. Indeed, it has been estimated that more than 45,000 people were detained and 1,500 killed by the end of 1973 alone.¹⁰ In its 1992 report, the Chilean National Commission on Truth and Reconciliation identified 2,279 deaths or disappearances due to human rights violations and political violence by the Pinochet regime¹¹ and it is widely believed that many more remained unaccounted for.¹² Thousands of Chileans fled to the United States, Canada, Mexico, and Sweden, where they became outspoken opponents of the Pinochet regime while in exile.¹³

Pinochet's early years are replete with shocking episodes of human rights abuses in a concerted, deliberate effort to wipe out the opposition. In Santiago, the nation's capital, thousands of civilians were rounded up in raids and interrogated in the National Stadium in the days and weeks following the coup, a scene replicated elsewhere throughout the country.¹⁴ One of the most notorious human rights violations was the so-called Caravan of Death, an elite military squad that roamed Chile by helicopter to detain and kill suspected leftists.¹⁵ The assassination of former Minister of Defense Orlando Letelier in Washington, DC on September 21, 1976 made newspaper headlines in many parts of the world but generated little legal action.¹⁶

The National Intelligence Directorate (known by its Spanish acronym, DINA) was created in June 1974 as an intelligence and counter-insurgency agency directly accountable only to Pinochet.¹⁷ DINA, composed of military and

police officers loyal to Pinochet, was responsible for most of the political repression committed by the regime from 1974 to 1977.¹⁸ Its tactics included abduction, torture, and summary execution, which became the basis for the Spanish proceedings against Pinochet two decades later. DINA worked with its counterparts in Argentina, Bolivia, Brazil, Paraguay, and Uruguay under the aegis of Operation Condor to eliminate dissidents by extra-legal means.¹⁹ The notorious DINA was dissolved and replaced by the National Center for Information (CNI), which engaged in repressive tactics to a somewhat lesser extent during the remainder of Pinochet's regime.

Amidst the selective political persecution and punctuated social turbulence that characterized Pinochet's rule, Chile enjoyed an extended period of economic growth after enduring the Latin American debt crisis in the early 1980s.²⁰ The Chilean model became the darling of multilateral institutions like the International Monetary Fund.²¹ Decisive neo-liberal economic reforms, implemented by the Pinochet regime, seemed to bear fruit as the country embraced free trade and structural adjustment. Despite the greater prosperity and prestige associated with this economic boom, popular opposition to Pinochet steadily grew in the 1980s, culminating in his defeat in a national plebiscite in 1988.²² This ignominious defeat paved the way for the return of democracy in 1989 with the election of Christian Democrat Patricio Aylwin, the candidate from the center-left Concertación coalition. The negotiated withdrawal of the authoritarian regime featured institutional and legal protections for right-wing supporters in the legislature and judiciary, as well as for the military.

Until his detention in London, efforts to prosecute Pinochet in Chile were hampered by several obstacles. First, an amnesty law promulgated by the Pinochet government in 1978 blocked criminal prosecution of military officers responsible for human rights abuses. This law, upheld by the Supreme Court of Chile in 1990 as constitutionally valid, granted amnesty to those who committed politically-motivated criminal acts during the state of siege between 1973 and 1978, when the worst violations were committed by the Pinochet regime. The paucity of criminal prosecution, especially of high-ranking military officials close to Pinochet, has discouraged open public dialogue on the role of the former leader. Out of nearly 5,000 human rights cases presented in Chilean courts, sentences have been issued in a mere dozen.²³ Second, under the terms of the peaceful democratic transition and the constitution passed under his rule in 1981, Pinochet has enjoyed other extensive legal protections. After stepping down from office in March 1990, Pinochet remained commander-in-chief of the armed forces until March 1998, when he became senator-for-life. Until May 2000, he enjoyed senatorial immunity from prosecution in Chile in part due to the intransigence of the Chilean Supreme Court, which became a bastion of conservatism during Allende's presidency and was a key supporter of the military regime.²⁵

Finally, the democratically elected governments that followed Pinochet have been reluctant to seek justice by prosecuting Pinochet himself, who still enjoys substantial support in Chile. Aylwin and his successor Eduardo Frei, both members of the Christian Democratic party, kept most of Pinochet's economic and social policies, which were even accepted by socialists in the ruling Concertación coalition.²⁵ More importantly, the former presidents were mindful of the continued influence of the armed forces. Unlike in Argentina, where the military regime was discredited after its disastrous defeat in the Malvinas conflict in 1982, the Chilean military is widely respected (and feared) by many citizens. Thus, the specter of military mobilization coupled with the political legitimacy of former political elites resulted in the preservation of the status quo in Chile.

The detention of Pinochet in London in October 1998 sparked a multitude of conflicting responses. The Chilean government demanded the immediate return of Pinochet on the grounds of national sovereignty and the deteriorating health of the aging former general. Chile proposed ad hoc arbitration proceedings to resolve the case, which were declined by Spanish president José María Aznar. In addition, several high-level meetings between British officials and Foreign Minister José Miguel Insulza, who himself went into exile during Pinochet's rule, were arranged in a concerted attempt to resolve the case by diplomatic means. Even the United States responded by releasing documents related to the Letelier case and suggesting that U.S. criminal prosecution could proceed at a later time.

Pinochet's arrest aroused predictable responses along ideological lines in Chile. Protests at the Spanish and British embassies in Santiago by supporters of Pinochet were matched by equally vociferous demonstrations by his opponents in the streets of Santiago and London.²⁶ Pinochet's detention in Great Britain, which lasted nearly twenty-one months, revived longtime cleavages in Chilean politics. The 1999 presidential election featured Ricardo Lagos, the first socialist candidate of the Concertación and an outspoken opponent of Pinochet in the 1980s, and Joaquín Lavín, the popular mayor of the posh Santiago suburb of Las Condes. Lavín, who was the first viable conservative candidate for president since the transition, had strong ties to the Pinochet regime, having served as editor of the conservative daily newspaper *El Mercurio* in the 1980s. Despite the obvious undertones of the election and the shadow cast by Pinochet's uncertain future, both candidates tried to downplay its significance. Emphasizing the utmost importance of reviving the slumping Chilean economy, Lagos and Lavín called for Pinochet's return and declared that they would not interfere with the Chilean judicial process. Lagos reiterated this promise after his run-off victory over Lavín in January 2000.²⁷

Some Chileans argued that Pinochet's extradition to Spain would undermine the delicate political transition process, which was less than a decade old. Undoubtedly, the prolonged legal affair generated an outpouring of opinions that certainly revealed and perhaps exacerbated tensions in Chilean society. Can a

truly democratic society be achieved without openly confronting the past? If the answer is no, then protecting democratic transition in this way is inimical to democratic consolidation. In that sense, the Pinochet case, initiated in legal and political fora thousands of miles away, has helped push along this process of reckoning in Chile by forcing renewed public debate and legal efforts. Nonetheless, despite its promise, retroactive justice and the opportunity for Chilean society to confront its authoritarian past remain uncertain.

**SOUTH KOREA AND THE TRIAL OF THE CENTURY:
RETROACTIVE JUSTICE OR POLITICAL OPPORTUNISM?**

Above all, South Korean politics have been shaped by three distinct yet inter-related historical experiences. First, during its hundreds of years of existence, Korea has been periodically threatened by its larger, more powerful neighbors, Japan and China. More recently, Korea was occupied by the Japanese Empire from 1910 until Japan's defeat at the end of World War II in 1945. This encouraged an insular and fiercely independent collective mindset that sought to ensure the country's political and economic autonomy in Northeast Asia. To many, the preservation of the unique Korean way of life depends on the survival of the South Korean state. Second, South Korea has been undoubtedly influenced by its relationship with its communist counterpart to the north. The Korean War (1950-1953) left the peninsula divided between South Korea and North Korea, which maintain uneasy and tense relations despite the historic summit of the Koreans in the summer of 2000. Sporadic diplomatic crises, often caused by military belligerence on the part of North Korea, repeatedly threaten to lead to the outbreak of war. Thousands of U.S. soldiers remain stationed at the heavily fortified Demilitarized Zone (DMZ) that separates the two countries, which lies less than 100 miles away from the capital, Seoul. The constant fear of attack from the communist North, especially during the height of the Cold War, was used by political leaders as a justification for political repression in the South. Third, the United States has played an influential role in South Korean politics. The U.S. provided millions of dollars of bilateral aid after the Korean War left the country in ruins and it remains South Korea's largest and most important trade partner. U.S. diplomatic relations with the military leaders that ruled South Korea from 1961 through the early 1990s were certainly a result of Cold War politics. Although the United States placed significant political pressure on South Korea to democratize, it nonetheless embraced South Korea as a bulwark against communism, despite its concerns about political repression by the Park and Chun regimes.

The corrupt and inept government of President Syngman Rhee was forced out of power in April 1960 in the wake of university student protests. The short-lived Second Republic, a democratically elected government that struggled to revive

the dormant economy, was ousted in a bloodless military coup led by Major General Park Chung Hee in May 1961. After two years as leader of a self-proclaimed emergency junta, Park was elected president in 1963 with considerable political coercion on the part of the armed forces. He was easily reelected in 1967, 1971, and 1978 under questionable circumstances, akin to Pinochet's highly controversial victory in Chile in 1980. Park sought to eliminate what he considered subversive and destabilizing opponents by enacting a series of decrees that resulted in the arrest or purging of thousands of politicians, civil servants, and public demonstrators. It must be acknowledged, however, that like Pinochet in Chile, Park enjoyed a modicum of diffuse support from South Koreans who yearned for social order and economic prosperity.²⁸ Under Park, South Korea revamped its economy by embracing trade liberalization and facilitating an aggressive buildup of domestic resources through education and large-scale investment in heavy industry. The results were nothing short of extraordinary. After the Korean War, South Korea's per capita gross domestic product of less than \$100 was equivalent to many countries in sub-Saharan Africa. By the mid-1990s, South Korea had emerged as the 11th-largest economy in the world.²⁹

After Park's assassination in October 1979, a political struggle to fill the resulting power vacuum ended with a coup d'état led by Chun Doo Hwan in December 1979. Demonstrations in Seoul and elsewhere erupted in the spring of 1980 against the military junta.³⁰ Chun responded on May 17, 1980 by declaring nationwide martial law, arresting opposition politicians and student dissidents, and banning assemblies and demonstrations.³¹ The following day, government soldiers violently suppressed demonstrations in the city of Kwangju, resulting in the deaths of at least 168 and perhaps as many as 2,000 protesters.³²

The infamous Kwangju incident and the subsequent persecution of opposition leader Kim Dae Jung became rallying cries for the student-driven opposition movement in the 1980s. Their efforts appeared to be successful when Chun's military comrade Roh Tae Woo, the hand-picked successor of the outgoing president, announced the implementation of democratic reforms in June 1987.³³ Roh's decision was undoubtedly influenced by the growing tide of opposition to Chun's authoritarian rule by a burgeoning middle class, which began to clamor for greater political freedoms and participation. In addition, the government was reluctant to engage in repressive measures while under the international spotlight of the upcoming summer Olympic games, which were to be held in Seoul the following year. Roh's decision proved to be a politically shrewd one. He won the December 1987 presidential election, generally considered free and fair by outside observers, with 37 percent of the popular vote, despite his close ties to Chun. Opposition forces split between moderate-conservative Kim Young Sam and former political dissident Kim Dae Jung. In 1992, after joining Roh's ruling party, Kim Young Sam became South Korea's first civilian president in more than 30 years.

The prosecution of Chun and Roh in 1996 was precipitated by two events. In October 1995, allegations emerged of rampant bribery during Chun and Roh's rule. After considerable public pressure, Roh, in a televised address to the National Assembly, admitted to amassing an astounding 550 billion won (\$654 million) slush fund while in power.³⁴ He was arrested on corruption charges on November 15. Chun was accused of taking even greater amounts of bribes totaling 950 billion won (\$1.8 billion) from Korean business interests while in power.³⁵ These revelations sent a tremor through Korean politics and revealed to the general public the extent of government corruption.³⁶ In addition, President Kim abruptly reversed his previous position by actively seeking the prosecution of his predecessors. Earlier he had declared that Chun and Roh's military takeover in 1979 and the Kwangju massacre of May 1980 should be left to the "judgment of history."³⁷ A special law was passed by the National Assembly, with the support of President Kim and opposition parties, authorizing legal action against those responsible for the military coup and Kwangju.³⁸ Charges of corruption against Roh and Chun pending in national district court were coupled with charges of insurrection and treason.

Between March and August 1996, South Korea was transfixed by the "trial of the century" which was televised live throughout the country. Like former military leaders who have come under scrutiny elsewhere, Chun and Roh claimed that the military coup and subsequent political repression were necessary due to the social instability caused by Park's assassination. Regarding Kwangju, both men professed a lack of knowledge about the bloody crackdown and asserted that they had not been in control of the special forces that had been sent to Kwangju to quell street protests.³⁹ Chun, who remained unrepentant throughout the trial, and Roh were convicted on charges of treason and insurrection for their roles in the 1979 coup d'état. They were also found guilty of corruption for having solicited and accepted bribes while in office. The homicide charges related to the Kwangju incident did not result in convictions for Chun or Roh. While the two longtime friends clasped hands in a show of solidarity, the Seoul District Court sentenced Chun to death while Roh received 22-and-a-half years in prison.⁴⁰ On appeal to the Seoul High Court, Chun's sentence was reduced to life imprisonment and Roh's prison sentence was reduced to 17 years. After the election of Kim Dae Jung in 1997, President Kim Young Sam pardoned Chun and Roh in a Christmas Day amnesty just before leaving office.⁴¹ Their release from prison was an anticlimactic end to what had been by far South Korea's most prominent attempt at facing its authoritarian past.

CONFRONTING THE PAST: SIMILARITIES AND DIFFERENCES

Retroactive justice for human rights violations committed by authoritarian regimes greatly depends on the nature of the democratic transition. As demonstrated by the experiences of Chile and South Korea, the prosecution of former leaders after negotiated withdrawals from power is a singular event that requires particularly favorable circumstances.⁴² The democratic transitions in Chile and South Korea in the late 1980s would seem to suggest similarly high levels of scrutiny for such efforts. Certain characteristics of their transitions serve as potential political obstacles to retroactive justice, at least in theory:

- The Chilean and South Korean transitions were predominantly endogenous—that is, the democratization process was by and large triggered by internal political factors. Of course, in both cases, various international actors placed considerable pressure on the regime. Diplomatic ostracism of the Pinochet regime made Chile a pariah state, in large part due to the tireless efforts of the international human rights community, which has developed a vast transnational network of activists.⁴³ A tremendous amount of attention was placed on Chile during the Pinochet regime, as demonstrated by the prominence of Chilean exile José “Pepe” Zalaquett, who served as chair of Amnesty International from 1979 to 1982.⁴⁴ In the case of South Korea, the international spotlight of the 1988 summer Olympics in Seoul made the Chun regime especially reluctant to crack down on public protests. That said, these external factors were not determinative in and of themselves.

- Both were carried out by a qualified consensus after it became evident to the authoritarian regimes that they no longer enjoyed the modicum of popular support necessary to remain in power without resorting to massive political repression.

- The transitions were based on the continuous legal status of the new democratic governments in each country. The Chilean and South Korean legal systems under Aylwin and Roh were kept intact at the behest of the outgoing authoritarian regimes under the terms of their negotiated withdrawals. In Chile, Pinochet and high-ranking military officers preserved their status under the 1980 constitution, which was agreed upon by the ruling Concertación coalition. Roh, a member of the military junta that seized power in 1979, allowed Chun to go into self-imposed Buddhist exile instead of facing charges of human rights abuses and corruption.

- The outgoing authoritarian regimes were given credit for promoting economic prosperity and ensuring social stability. As a result, these military governments stepped down from power with their performance legitimacy intact. The economic success of Chile and South Korea, as compared to their regional counterparts, is often attributed to the radical economic reforms imposed by the Pinochet and Park (and, to a lesser extent, Chun) regimes. Indeed, Chile and

South Korea are often considered models for the so-called authoritarian advantage in international political economy. Furthermore, authoritarianism is associated with the restoration of social order in the wake of the political chaos that characterized Chile in the early 1970s under Allende and South Korea in the 1950s under Rhee. In both cases, political repression was also used as a pretense for eliminating a perceived existential threat, either from leftist elements in Chile or from communist North Korea.

Given these circumstances, the question still remains: What were the salient factors that brought about the prosecution of Chun and Roh in South Korea while Pinochet enjoyed domestic immunity in Chile until last year? By delving deeper into the political reverberations of their democratic transitions, a set of predictive indicators can be used to gauge the political viability of retroactive justice. At least five distinguishing factors are found here:

1. Preservation of popular sentiment against the perpetrators of political repression. The human rights violations attributed to Pinochet and Chun have been epitomized by singularly deplorable events, which are distinguished by their timing and locus in the nations' collective memory. In Chile, the 1973 coup was followed by widespread political repression, perhaps the most notorious being the "Caravan of Death" murders. The more recent coup in South Korea in 1980 was soon followed by the infamous Kwangju massacre. Also, the collective memory for these atrocities in South Korea (especially for Kwangju) was retained by the university student movement, which continued to seek political reforms while Roh and Kim Young Sam were in power.⁴⁵ In contrast, arguably the greatest champions of human rights in Chile, the exile movement and the Roman Catholic Church's Vicariate of Solidarity, became less prominent after the transition. More importantly, these organizations have not been able to cultivate mass popular followings across generations, as has traditionally been the case with university activism in South Korea since the 1950s.

2. Motives of political elites. In the years immediately following Pinochet's rule, Chilean presidents Aylwin and Frei refused to risk their political careers by seeking, or even supporting, the prosecution of Pinochet. As leaders of the Christian Democratic Party that assumed power after Pinochet stepped down, Aylwin and Frei were wary of provoking the ire of the military. Furthermore, their political interests were contrary to the left-wing opponents who bore the brunt of Pinochet's repression. In contrast, Kim Young Sam was a leading figure in the prosecutions of Chun and Roh, even though he had been a member of Roh's party when elected president. Many critics have argued that Kim's abrupt reversal was due to political expediency. President Kim hoped to raise his sagging popularity before upcoming congressional elections in April 1996, just one month before the commencement of the trial. Furthermore, he sought to neutralize Chun and Roh as potential opponents while also silencing rumors of corruption in his own government.⁴⁶

3. **Nature of the alleged crimes.** In South Korea, charges of treason, insurrection, and mass homicide in Kwangju were bolstered by the charge of corruption. Public disgust at the exorbitant sums of money accumulated by Chun and Roh rivaled the condemnation of human rights abuses. Interestingly, evidence of bribery in South Korea cut across ideological lines, which was then directly tied to human rights violations committed by Chun and Roh. In a sense, the radical polarization provoked by the authoritarian legacies in Chile and South Korea was neutralized in the latter case by incidences of other public wrongdoing.

4. **Status of former leaders in the national consciousness.** Among a substantial minority in Chile, Pinochet still enjoys a singular, near mythical status. As the undisputed leader of Chile from 1973 to 1990, he is seen as a national savior among many conservatives. Even among moderates, the Pinochet government is credited with implementing innovative economic and social programs. An analogous public admiration can be found in South Korea, but almost exclusively for Park, who ruled from 1961 to 1979. He is widely regarded as the father of South Korea's remarkable economic progress during his rule. The relative prestige and prosperity enjoyed by South Korea is thus overwhelmingly attributed to him, far more than to Chun or Roh.⁴⁷

5. **Retroactive justice as closure.** It can be argued that the trials of Chun and Roh, no matter how legally or politically dubious they may have been, filled a vacuum of retroactive justice in South Korea. The Chilean National Commission on Truth and Reconciliation, which conducted its work from 1990 to 1992 immediately following the return of democracy, perhaps served this purpose in Chile, albeit in a limited fashion. Nonetheless, the investigations and resulting report of the Commission became an open national forum for discussion of human rights violations committed by the Pinochet regime. The democratic transition in South Korea did not provide for an equivalent public discussion. Thus, the hugely publicized, nationally televised trials of Chun and Roh allowed Koreans to learn about and debate these same controversial issues in a way never allowed before. Public support for the prosecution of Chun and Roh was the result of not only a desire to rectify past wrongs but also to seek the truth about the recent past. The trial of the century served as a way for South Korea to find closure to a troubling chapter in its history.

CONCLUSION

Upon Pinochet's return to Chile, President Lagos pledged to allow the judicial system to decide the fate of the country's former leader, declaring, "Let's not interfere with justice. Let justice speak."⁴⁸ The legal obstacles, not to mention the political ones discussed in this article, are substantial indeed. These considerable doubts aside, after months of waiting in limbo during the Pinochet extradi-

tion proceedings in London, there is hope for retroactive justice in Chile once again. As Pinochet's fitness to stand trial is considered by the courts, there is more hope than ever that he will be tried by his fellow Chileans for crimes committed under his rule.

Perhaps the single most difficult question is whether the prosecution of former dictators is necessary to promote a sense of closure and hence truly transform democracy. Countries throughout the world at similarly critical junctures must face the same question: Is the prosecution of leaders who voluntarily stepped down from power beneficial to the country as a whole? And how can retroactive justice best be carried out without jeopardizing the democratic principles on which it is based? As the experiences of Chile and South Korea demonstrate, these are first and foremost political considerations. The viability and ultimately the success of legal efforts depend on propitious political conditions and political actors amenable to the realization of retroactive justice. In Chile, domestic efforts to prosecute Pinochet were only revived with the assistance of the international community. Only after Pinochet's detention in London and subsequent return to Chile was his immunity from prosecution removed by the judiciary with the acquiescence of the executive branch.

Retroactive justice is based in part on the belief that it is sometimes necessary for a country to reach back into the past in order to ensure its future. Democracy in Chile may very well be hanging in the balance. ■

NOTES

- ¹ Chun Doo Hwan (1979-1987); Roh Tae Woo (1987-1993).
- ² For further discussion on bureaucratic-authoritarian regimes in South America, see Guillermo O'Donnell, "Tensions in the Bureaucratic-Authoritarian State and the Questions of Democracy," in David Collier, ed., *The New Authoritarianism in Latin America* (Princeton: Princeton University Press, 1979), 285-318.
- ³ Political scientist Samuel Huntington uses the term "third wave democracies" in reference to newly democratizing states in Latin America and East Asia, among other regions. See Samuel P. Huntington, "Democracy's Third Wave" in Larry Diamond and Marc F. Plattner, eds., *The Global Resurgence of Democracy* (Baltimore: Johns Hopkins University Press, 1996) for a cross-regional perspective on democratization in the 1980s and its global implications.
- ⁴ Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation* (Baltimore: The Johns Hopkins University Press, 1996), 5.
- ⁵ See Thomas E. Skidmore and Peter H. Smith, *Modern Latin America*, 4th ed. (Oxford: Oxford University Press, 1997), 120-142.
- ⁶ Arturo Valenzuela, *The Breakdown of Democratic Regimes: Chile* (Baltimore: The Johns Hopkins University Press, 1979), 77-83.
- ⁷ *Ibid.*, 81-110.
- ⁸ The role of the U.S. government, in particular the Central Intelligence Agency (CIA), has been well documented. See *Ibid.*, 56.
- ⁹ Neal Bhuta, "Justice Without Borders? Prosecuting General Pinochet" in the *Melbourne University Law Review* (August 1999): 507.
- ¹⁰ *Ibid.*, and Edward C. Snyder, "The Dirty Legal War: Human Rights and the Rule of Law in Chile, 1973-1995" in the *Tulsa Journal of Comparative and International Law* (Spring 1995): 260.
- ¹¹ Report of the Chilean National Commission on Truth and Reconciliation [hereinafter Commission Report], Comisión Nacional de Verdad y Reconciliación.
- ¹² A Chilean non-governmental organization, Comité Nacional de Defensa de los Derechos del Pueblo, has documented 11,536 human rights violations, including 163 murders, between 1984-1988 alone.
- ¹³ The Chilean exile community includes critically acclaimed novelist and Socialist Party member Isabel Allende, daughter of the late president. For a brief retrospective account of her experiences, see Katherine Hite, *When the Romance Ended* (New York: Columbia University Press, 2000), 72-79.
- ¹⁴ Snyder, 260.
- ¹⁵ "Hearing Opens in Chile on Lifting Pinochet's Immunity" [hereinafter Hearing in Chile], CNN.com, April 27, 2000.
- ¹⁶ Bhuta, 508.
- ¹⁷ *Ibid.*, 507-508 and Snyder, 260-261.
- ¹⁸ Commission Report, 469.
- ¹⁹ See Bhuta, 507-508.
- ²⁰ Between 1984 and 1990, economic growth (as measured by GDP) generally ranged from 6 percent to 8 percent, by far the highest in Latin America. In contrast, Argentina under the democratically elected government of President Raúl Alfonsín suffered negative growth rates with hyperinflation during that period.
- ²¹ See Barry P. Bosworth, Rudiger Dornbusch and Raúl Labán, eds., *The Chilean Economy: Policy Lessons and Challenges* (Washington: Brookings Institution, 1994) and Oscar Muñoz, ed., *Economic Reforms in Chile* (Washington: Inter-American Development Bank, 1992).
- ²² Skidmore and Smith, 144.
- ²³ Arturo Valenzuela, "Judging the General: Pinochet's Past and Chile's Future" in *Current History* (1999): 103.
- ²⁴ Bhuta, 510-511.
- ²⁵ For an in-depth discussion of the role of the Chilean left during the democratic transition, see Genero Arriagada Herrera and Carol Graham, "Chile: Sustaining Adjustment During Democratic Transition" in Stephan Haggard and Steven B. Webb, eds., *Voting for Reform* (Oxford: Oxford University Press, 1994).
- ²⁶ "Tensions Heightened in Chile Over Pinochet's Arrest," *The New York Times*, October 24, 1998 and "Pinochet Case Reviving Voices of the Tortured," *The New York Times*, January 3, 2000.
- ²⁷ "Freed by Britain, Pinochet Faces New Legal Battles at Home," *The New York Times*, March 3, 2000.
- ²⁸ Bruce Cumings, *Korea's Place in the Sun* (New York: W.W. Norton & Company, 1997), 351.
- ²⁹ South Korea's tremendous economic growth from the 1960s through the 1990s is a model for the so-called East Asian miracle, which also includes Taiwan, Hong Kong, and Singapore.
- ³⁰ James M. West, "Martial Lawlessness: The Legal Aftermath of Kwangju," *Pacific Rim Law and Policy Journal* (January 1997): 92.

³¹ Ibid.

³² Ibid., 93.

³³ Don Oberdorfer, *The Two Koreas* (Indianapolis: Basic Books, 1997), 172.

³⁴ Ibid., 380.

³⁵ David Waters, "Korean Constitutionalism and the 'Special Act' to Prosecute Former Presidents Chun Doo-Hwan and Roh Tae-Woo," *Columbia Journal of Asian Law* (Fall 1996): 465.

³⁶ Indeed, according to a poll conducted in November 1995, Roh was regarded by 80 percent of respondents in Seoul as "the most loathsome politician." "Roh Named As Most Hated Politician," *Korea Herald*, November 19, 1995. Bribery has long been considered a generally accepted practice in Korean politics; see Daniel Y. Jun, "Bribery Among the Korean Elite: Putting an End to a Cultural Ritual and Restoring Honor," *Vanderbilt Journal of Transnational Law* (November 1996): 1071-1116.

³⁷ "Incident is Mutiny by Chun, Roh," *Korea Times*, October 30, 1994, 1. See also Oberdorfer, 381.

³⁸ This law was dubbed the Special Act Concerning the May 18th Democratization Movement.

³⁹ West, 132-133.

⁴⁰ "Background on S. Korea Trial," *United Press International*, August 25, 1996.

⁴¹ Oberdorfer, 410.

⁴² Carlos Nino articulates a set of criteria for classifying transitions to democracy. These variables—modality, etiology, and legal status—can be used to explain the politics of human rights trials in consolidating democracies. See Carlos Nino, *Radical Evil on Trial* (New Haven: Yale University Press, 1996), 107-108.

⁴³ For a thorough look at human rights advocacy networks in Latin America, see Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders* (Ithaca: Cornell University Press, 1998), 79-121.

⁴⁴ Ibid., 90-91.

⁴⁵ An opinion poll conducted at Seoul National University indicated that students "overwhelmingly" regard the Kwangju incident as "the greatest tragedy in Korean history since 1945," surpassing even the Korean War.

⁴⁶ Waters, 478.

⁴⁷ Oberdorfer, 33-34.

⁴⁸ Quoted on April 26, 2000 in Santiago, Chile.