The development of the rule of law in Korea occurred with much turmoil and uncertainty, much like the path towards democracy in other parts of the world. However, Korean rule of law and its intricate link to Korea’s own rapid economic development offer a unique perspective that demonstrates the variety of ways and forms in which the rule of law may be established. This paper will first describe in more detail various aspects of the development of the rule of law in Korea and the major influences that facilitated it. The lessons drawn from Korea’s experience demonstrate that while development of rule of law in a democratic society is adapted to the unique history and needs of each nation, the same general elements of the rule of law are shared across various cultures and have remained consistent over time. Moreover, the Korean case illustrates that even when a society makes remarkable progress in establishing the rule of law, deeply entrenched distrust of government and legal processes may be a legacy that takes time to overcome.

Keywords: Rule of law, Robust Judiciary, Due Process of Law, International Commitments, Civil Society
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I. INTRODUCTION

The rule of law embodies the general principle that a neutral body of law should govern the government, rather than the arbitrary decisions of the ruler. Legal and political scholars have defined rule of law in several different ways. While defining the rule of law is not an easy task, the key characteristics of the rule of law as described by scholars have remained fairly consistent throughout history and across different cultures. It will be useful for our discussion to briefly summarize key elements of the rule of law.

First, the rule of law is a system in which the law is an outcome of consent by the governed, typically resulting from a democratic process. This was the principle embodied in the Magna Carta in England, and is essential in checking government overreach. Another element of the rule of law is that government action should be executed in accordance with the due process of law. In other words, the government should be governed and limited in its actions by the laws of the nation. An important provision that ensures due process is the opportunity for a hearing prior to the deprivation of individual rights. Due process also includes the fair and consistent application of the law, a feature which is present in the criminal and administrative codes of most modern democracies. This protection is also extended to property and economic rights.

Further, the rule of law requires the existence of an independent body of government to monitor and ensure that the government is governed by law. A system of government where a single institution dominates all aspects of governmental power increases the risk of abuse and distortion of fundamental values in the legal system. Thus, the separation of powers and a system of checks and balances has become an integral element of modern democracies. Critically, an independent judiciary that can interpret the law free of influences from the executive and legislative bodies is vital to the establishment of the rule of law. Similarly, internal watchdog regimes within the government can help ensure that no single part of government grows too powerful.

Finally, the protection of fundamental rights of individuals should be expressly provided for under the rule of law. One of the goals to be achieved by a system in which the government is restrained and its powers checked by law are to ensure the protection of fundamental civil and human rights of individuals.

In the case of Korea, the form of government and legal system has
undergone substantial changes in the 20th century. While modern form of government and legal system has been established over the last 100 years, notably, Korea has achieved a remarkable level of progress in establishing the rule of law in the past twenty years.

Before the annexation of Korea by Japan in 1910, Korea was a Confucian state called the Kingdom of Chosun which was ruled by a monarch and an elite class of aristocrats. The government was regulated by law, and there existed well developed rules and regulations that controlled commoners. However, the law was not strictly applied to the ruling elite.

Under Japanese colonial rule from 1910 to 1945, Korea was subject to the complete despotism of Imperial Japan. There were no constitutional or popular restraints against despotism. The Japanese Governor-General and non-elected Japanese officials in Korea were not accountable even to the Japanese Diet for their actions in Korea. Although codified law was introduced and the judiciary expanded, they merely added to the sternness and dehumanization of colonial rule rather than providing constitutional protections for Koreans. The domestic despotic ruling elite of Chosun were merely replaced by foreign despots. Koreans became accustomed to the abusive and arbitrary exercise of official power without any expectation of official redress. This experience of the Korean nation as a whole has hindered the establishment of rule of law during the modernization of Korea.

The totalitarian nature of the Korean political and legal system persisted until the end of World War II and the removal of the Japanese occupiers from Korea. In 1948, after a three year period under the U.S. military trustee government, Korea drafted and enacted its first Constitution, forming a new democratic republic with establishment of a modern constitutional democracy, which embraced the principles of rule of law. However, the rule of law was not entirely present in these early years, as the threat of

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4. See id. at 78.


6. See HANDESON, supra note 3, at 78.
communism largely dominated the political and legal thought of the time. Early signs of democracy were suspended when the Korean War brought a halt to any further democratization. Additionally, the end of the Korean War was immediately followed by the onset of the Cold War, with a Soviet and Chinese-backed North Korea threatening to “liberate” South Korea. This facilitated the start of an era of military authoritarianism beginning with a series of coups from 1961 on. The military regime lasted until 1987, and during this time the legislature and judiciary were under the substantial influence of the ruling elite. Criticisms of government were strictly prohibited and severely punished, and civil and human rights were greatly restricted. The rule of law was officially proclaimed to exist but its key elements were yet to be a reality in this era.

However, even during this period of suppression of democratic values, significant structural social and economic changes occurred. As Korea rapidly industrialized and modernized, the Korean people gradually became aware of the emergence of democratic process and grassroots movements demanding greater recognition of individual rights. As a result of a series of mass protests in 1987, significant amendments to the Korean Constitution were ratified. Among the key provisions were those providing for the general democratic election of the President and members of the National Assembly. The protection of fundamental human rights was reconfirmed and expanded as a foundation for government. Due process rights were expressly granted for the first time. Perhaps most significant of all, the independence of the judiciary was expressly provided for and mechanisms to ensure that they were indeed independent were also provided for. As a part of judicial independence, the Constitutional Court was established to conduct constitutional review of all governmental actions and to enforce constitutionally protected civil rights. With the peaceful change of government from one dominated by a ruling party to a system featuring opposition parties through a democratic election in 1998, Korea has made enormous progress in the development of the rule of law. These domestic developments paved the way for international discourse, with burgeoning international developments having a substantial impact on the growth of the rule of law during the last decade. Treaties, memberships in international organizations, and the opening of the economy to the global market ensured that the Korean government would have to conform much of its behavior to global standards and democratic norms.

As briefly described above, the development of the rule of law in Korea

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7. After the division of the Korean peninsula in 1945, communist-backed North Korea invaded South Korea in 1950 and the war lasted until 1953.
8. After the Korean War, North Korea has maintained strict Stalinist rule and fortified its military authoritarianism.
occurred with much turmoil and uncertainty, much like the path towards democracy in other parts of the world. However, Korean rule of law and its intricate links to Korea’s rapid economic development offers a unique perspective that demonstrates the variety of ways and forms in which the rule of law may be established. In the following sections, this paper will describe in more detail various aspects of the development of the rule of law and the major influences that facilitated its development in Korea. The lessons drawn from Korea’s experience demonstrate that while the development of the rule of law in a democratic society is adapted to the unique individual history and needs of that nation, the same general elements of the rule of law are shared across various cultures and have remained consistent over time. Moreover, the Korean case illustrates that even when a society makes remarkable progress in establishing the rule of law, deeply entrenched distrust of government and legal processes may be a legacy that takes time to overcome.

II. INDEPENDENCE OF A ROBUST JUDICIARY

The development of independence of the judiciary has been singled out as particularly important to the development of the rule of law within a nation. Montesquieu wrote in *L’Esprit des Lois* that “there is no liberty, if the judicial power be not separated from the legislative and executive.” This lack of separation, however, was precisely the situation in Korea until the 1987 amendments to the Constitution and creation of the Korean Constitutional Court in 1988.

In order to establish the rule of law in a society, there should be a strong public belief that the law is fairly applied to all and that judges are impartial and independent in equally applying the law. 9 Until the late 20th century under the traditional legal system in Confucian Chosun, Japanese colonial rule, and the military regime, the application of Korean law gave special treatment to the ruling elites and the common people were not treated equally. Equal protection under the law by an independent judiciary was not established during the despotic era. Even under a democratic republic, equal protection of the law would take some time to be established.

The development of the Constitutional Court, and the Constitutional provisions providing for a governmental structure that ensured the independence of the judiciary facilitated the development of the rule of law in Korea by greatly restricting the scope of the powers of the legislative and executive branches of the government. Under the amended Constitution, the Supreme Court of Korea consists of 13 justices who are appointed by the

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President with the consent of the National Assembly. The consent of the National Assembly ensures that there is a check on the President’s authority over the judicial branch, much like the system of checks and balances found in Western democracies. All other judges are appointed by the Chief Justice of the Supreme Court and all judges serving the lower courts in Korea are professional career judges. The independence of all justices and judges are expressly provided for in the Constitution.

Established in 1988, the primary function of the Constitutional Court is to protect the people’s fundamental rights guaranteed by the Constitution and to review the constitutionality of all governmental actions. The court consists of nine judges who are appointed by the President. Of these judges, the President appoints three who are designated by the National Assembly and three who designated by the Chief Justice of the Supreme Court. This guarantees that all three branches of government are represented in the selection process, ensuring neutrality of the Court’s judgment. The Constitutional Court has jurisdiction over constitutional rights cases filed by individuals, with essentially all claims being considered on the merits if the claim is based on a constitutional right. The Constitutional Court also has subject matter jurisdiction to review any action by the government including legislative actions by the National Assembly. From its inception, its strength as an independent judiciary was clearly established, and has been further demonstrated over the past two decades. The Constitutional Court has thus far rendered a range of important legal decisions, including the constitutionality of bills passed by the National Assembly. The Constitutional Court’s holdings have been allowed to stand, and have been complied with by the other branches of the government.

With robust independence of the judiciary, powerful rulers and ruling elites have been held accountable to judicial justice. Two former Presidents who were powerful rulers under the military regime were prosecuted for an illegal military coup and corruption and were punished severely. After serving their presidential terms, former Presidents Chun Doo-Hwan and Roh Tae-Woo who took the power through military coup of 1980 were prosecuted in 1995 and found guilty of treason and corruption. See Seoul District Court [Dist. Ct.], 95Gohap1228, 95Gohap1237, 95Gohap1238, 95Gohap1239, 96Gohap12, 96Gohap95, Aug. 26, 1996 (S. Kor.); Seoul High Court [Seoul High Ct.], 96No1892, 96No1893, 96No1894, Dec. 16, 1996 (S. Kor.); Supreme Court [S. Ct.], 96Do3376, 96Do3377, Apr. 17, 1997 (S. Kor.).
held criminally liable for corruption charges while their fathers were in office. The Special Prosecutor responsible for criminal proceedings against high-level public officials and their family members is appointed by the National Assembly, thus limiting the reach of the executive branch. The myth that the ruling elite are not subject to the law and are exempted from judicial review has vanished. The holders of powerful in government and as well as ordinary citizens alike have become increasingly aware of the independence of judiciary, which no longer allows for the unequal treatment of classes in judicial review.

As Korean citizens came to demand increasingly better governance, people began to file lawsuits against government authorities for the illegitimate exercises of government power. In Korea, which has an administration oriented governmental system, the increasing amount of administrative litigation indicates that the legality of government actions is subject to increasing levels and scope of judicial scrutiny. In addition, the court system has become widely accessible for private causes of actions by ordinary citizens. Private rights of action have now been recognized and private citizens may even file a criminal petition with the court if the Prosecutor’s Office fails to initiate criminal proceedings. This private right of action has become increasingly important in the areas of securities law, and consumer and products liabilities laws. Similarly, the rapid increase of litigation initiated by private citizens since the 1990s serves as evidence of the existence that a working independent judiciary exists. At the bare minimum, this fact indicates that the Korean people believe in their judicial system as an effective means of resolving a wide variety of disputes.

### III. DUE PROCESS FOR PROTECTING FUNDAMENTAL RIGHTS

In traditional Korean society, a person ruling by law rather than the rule of law was the source of governing authority. Hence, arbitrary or benevolent governmental action was the norm, predominately depending on the personal

15. The son of President Kim Young Sam was indicted for influence-peddling and tax evasion and found guilty of bribery and tax evasion. See Seoul High Court [Seoul High Ct.], 97No2368, Feb. 17, 1998 (S. Kor.); Supreme Court [S. Ct.], 98Do667, Apr. 9, 1999 (S. Kor.). In 2002, two sons of President Kim Dae Jung were prosecuted and found guilty for corruption. See Seoul District Court [Dist. Ct.], 2002Gohap572, 607 (consolidation), 726 (consolidation), 784 (consolidation) Nov. 11, 2002 (S. Kor.); Seoul District Court [Dist. Ct.], 2002Gohap496, 642 (consolidation), 664 (consolidation), 708 (consolidation), 846 (consolidation), Nov. 1, 2002 (S. Kor.).


17. Injured parties from securities transactions are allowed class actions for damages. Class Action Relating to Securities Act § 2 (S. Kor.).

18. Consumers and Consumer Associations are provided standing to file petition for injunction with the court for the consumer rights infringement. Consumer Basic Act § 70-76 (S. Kor.).
character of the governing person. The protection of individual liberties and rights was at the whim and discretion of the authorities, and frequently the degree of rights afforded the people were subject to the mood of the ruling elite at the time. Although fundamental rights were provided for in the Constitution at the establishment of the Republic, it was not full protection until due process was guaranteed in the legal system. Until the Constitutional amendments of 1987, the greatest power of the government was the power to arrest and imprison its subjects at will. In the criminal context, this meant that the accused could be easily arrested and detained without proper procedures, or safeguards requiring reasonable or probable cause prior to arrest.

The Constitutional amendments of 1987 provided for substantial due process of law in a criminal setting, and had a particularly important impact upon criminal procedure and evidentiary law. In particular, the new Constitution accorded special protection for the fundamental rights of the accused and defendant. Traditionally, arrests and detention were made at the will of the prosecutor, with almost automatic approval by a judge. Subsequent to the amendments, after various reforms of the criminal justice system, arrests and detention have to be based upon a warrant issued by a judge and subject to probable cause. The accused is given the opportunity of an immediate and fair hearing, and the judge can decide whether to issue a warrant, thus limiting the powers of the Prosecutor’s Office. This was a very important development for the rule of law in Korea given the prosecutor’s traditionally broad investigatory and prosecutorial powers. Further, the Constitutional Petition Process was implemented in 1987. It guarantees the right to a trial for the accused. Traditionally, the prosecutor possessed broad powers to extract confessions prior to a trial, against the basic notions of due process. Additionally, the doctrine of the “fruit of the poisonous tree” was recently recognized and adopted in the Korean criminal court system by a decision of the Supreme Court.19 This doctrine provides that any evidence derived from an illegal or unlawful search in violation of a person’s individual rights cannot be admitted into evidence. This was a remarkable development for the rule of law of Korea insomuch as it substantially limited the investigative power of the executive branch, especially in light of Korea’s long history of abuse of executive power.

The right to due process was further expanded from the criminal context to all governmental actions. The Constitutional Court determined that due process is a fundamental constitutional principle and should be complied with in all forms of governmental actions.20 In 1996, the Korean National

19. Supreme Court [S. Ct.], 2007Do3061, Nov. 15, 2007 (S. Kor.).
20. Constitutional Court [Const. Ct.], 94Hun-Ma201, Dec. 29, 1994 (S. Kor.).
Assembly enacted the Administrative Procedure Act which provides that all government actions must conform to and provide due process of law. The Act placed all government action under the scrutiny of the rule of law. The enactment of the Official Information Disclosure Act provided for transparency of government actions, and further ensures that the rule of law would prevent overreaching by the government. An open and transparent government is a key element of democracy and failing such can result in what political scientists often describe as a democratic deficit.

IV. THE IMPACT OF INTERNATIONAL COMMITMENTS

Perhaps one of the noteworthy aspects of the development of the rule of law in Korea is the influence of globalization. The rise of modern Korea out of the ashes of the Korean War has been described as the “Miracle of the Han River”. Korea’s GDP dramatically increased from 1960 to 1990. Yet progress towards establishing the rule of law did not match the rate of the economic growth until the later stages of Korea’s development, partly due to Korea’s own isolationism. Although Korea was the recipient of large sums of international aid, it did not truly become a member of the international community until the 1990s. Until that point, Korea’s engagement with the Western world tended to be focused on the threat of communism and war with North Korea.

Following rapid economic development from the 1970s through the 1980s, and the successes of its automotive, steel, and shipping industries worldwide, Korea began rapidly to open its economic and political system to the outside world. Economic development created significant shifts in Korea’s labor dynamic in a very short period. By joining the International Labor Organization (“ILO”) in 1991, and ratifying treaties thereafter, Korea sought to improve its labor standards in accordance with international standards. The labor standards of the ILO are now considered the basic standards a country must provide for laborers. In 1992, Korea joined the United Nations, striving to be a part of an international set of norms and regimes from various international agreements. Korean trade law went through a significant change after joining the World Trade Organization (“WTO”) in 1994. The norms developed under WTO regimes such as fair trade, national treatment, and independent judicial review of the legality of trade measures enabled better protection of property and economic rights of individuals and corporations. According to the Korean Constitution,

international treaties such as those of the WTO become national law without
the need for further legislation. Additionally, WTO membership has forced
Korea to bring its trade laws into line with the same standard as those of
other member-states.

Corporate governance laws in Korea also underwent significant changes
when Korea joined the Organization for Economic Cooperation and
Development (“OECD”) in 1996. OECD membership placed pressure on the
Korean government to reform its laws to provide for greater protection of the
rights of shareholders, transparency, and responsibility of board members.

Several Korean laws empower shareholders with the right to derivative
actions for improved control of corporate governance.

Membership in such organizations required the modification of its
then-current legal system and structure to conform to the international
standards set forth by those organizations. Additionally, the standards
imposed by the international organizations required that all future laws
passed by the National Assembly and actions taken by both government and
private actors conform to international standards. This meant that even the
drafting of new laws would be influenced by an international rule of law.

Following the Constitutional amendments of 1987, Korea transformed
its economic system from a government-regulated economy to one based on
a free market economy. However, the legacy of government-regulated
economy in which the government controlled banks and businesses remained
a major obstacle to the development of the rule of law into the 1990s. During
the period of government-regulated economy, commercial banks were
controlled by the government. Due to a shortage of accumulated capital
during the period of industrialization from the 1950s to the 1980s,
conglomerates run by families (“chaebol”) relied heavily upon
government-controlled bank loans to conduct business and make
investments. The government ruling elite granted favorable and privileged
loans to the chaebol, which would rarely have been allowed otherwise. It
was widespread practice that the ruling elite received bribes for such
favorable loans. The bank officers and directors were not held accountable
for failing to review the merits of extending loans to companies as long as
they followed the instructions of the ruling elite. Rather, the bankers were

23. DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION], art. 6, para. 1 (S. Kor.).
24. See Duek Gun Ahn, Establishment of Rule of Law and Status of Korea in International
Trading System, in GLOBAL STANDARDS AND RULE OF LAW, supra note 21, at 283.
25. See Joongi Kim, Global Standards of Corporate Governance and Their Influence on the Rule
of Law in Korea, in GLOBAL STANDARDS AND RULE OF LAW, supra note 21, at 132-35.
26. In a derivative suit brought by the minority shareholders of Samsung Electronics Co. against
11 of its current and former directors, including the chairman of Samsung, the Suwon District Court
awarded various damage awards, including 7.5 billion Won (approximately US$7 million) for a bribe.
See Suwon District Court [Dist. Ct.], 98Gahap22553, Dec. 27, 2001 (S. Kor.). See also PARK, supra
note 5, at 181-84.
promoted if they faithfully followed the ill-motivated government instruction for favored loans. This tripartite collusion, i.e., ruling elite-chaebols-banks, was one of the strong sources of mass corruption in the economy and politics and one of strong hindrances to the progress towards establishing the rule of law. While the origin of such behavior can be traced to the Japanese colonial era, the practice of tripartite collusion had been fortified during the authoritarian regimes since 1950s and remained widespread until 1990s.27

It was not until 1997 when Korea faced the Asian Financial Crisis and the subsequent International Monetary Fund (hereinafter “IMF”) bail-out28 that the vicious cycle of bribery and collusion between political circles and conglomerates was broken. In 1997, as the nation faced severe economic hardship, the entire chaebol system was exposed as mismanaged, corrupt, and inefficient. Prior to the Asian Financial Crisis, the government had the power to bail out the chaebols or favored conglomerates in times of financial need. However, by 1997 the Korean economy had become so open and exposed to external forces that the government could not intervene on the chaebols’ behalf to extend favored loans by using its control over the banks. When the national economy was heavily hit by the Asian Financial Crisis, it was impossible for the government to rescue the ailing conglomerates due to the insolvency of banks themselves and threats to the entire financial system. In fact, prior to the Asian Financial Crisis, the judiciary had raised the problem of tripartite collusion and warned of its harm to the soundness of economy and the rule of law in its constitutional court decision the holdings in the famous constitutional lawsuit called the “Kukje case” in 1993. However, the ruling elite and financial authorities failed to heed this wise advice from the judiciary and lost the opportunity to improve their system for a free economy on their own initiative.

The Kukje case is a demonstrative example that underscores the impact of the shift from a closed authoritarian regime to an open democratic Korea governed by the rule of law. The Kukje Business Group was the seventh largest Chaebol in Korea run by a family named Yang. Like other conglomerates, it was highly leveraged by government controlled banks, with a debt-to-equity ratio of 800%. Due to its severe debt burden, the Kukje Group relied upon frequent refinancing and credit to remain solvent. In 1985, when the chairman of the Kukje Group refused to partake in a bribery scheme while most other major chaebols paid bribes at the demand of the then President Chun Doo Hwan, the Kukje Group was immediately placed under bankruptcy proceedings and dissolved. The then Minister of Finance instructed banks to refuse refinancing of Kukje’s debt, and companies within

27. See PARK, supra note 5, at 72-78.
28. Id. at 43.
the Kukje Group became immediately insolvent. The Group’s assets were disposed of at fire sale prices to other chaebol groups which had taken part in the bribery scheme with the then President Chun. While the sale was conducted in the bankruptcy court, the court was also under the strong influence of the Finance Ministry. After the resignation of President Chun, chairman Yang of Kukje Group filed a constitutional petition claiming that the dissolution of the group by the Ministry of Finance was unconstitutional. The Constitutional Court had held in 1993 that the government’s interference in the banking system to favor chaebols was in contravention with the economic order and freedom to conduct business under the Constitution.29 However, this holding was not sufficient to entirely change the vicious circle of bribery and government control, which had developed over a long period of time. In the aftermath of the Asian Financial Crisis, it became clear that had the government enforced the Kukje holding of the Constitutional Court, the impact of the Asian Financial Crisis’s impact on Korea would have been greatly mitigated. Eventually, many of the chaebol groups were dissolved or greatly diminished in size and Korea had to pay enormous social and economic costs for changes to the system. Ironically, however, such international exposure ultimately led Korea to establish the rule of law in the organization of the economy, furthering the development of the free market economy in Korea.30

For instance, as a result of the financial bailout by the IMF, the Korean government was subjected to several significant conditions. Following OECD recommendations, The World Bank and the IMF advised structural reforms for the economy and legal system as well as changes to legal practices and rules of corporate governance. Significantly, Korea reformed the lending practices of banks and established special bankruptcy tribunal in courts. Conglomerates had to survive the merit scrutiny from banks to qualify for loans instead of relying on tripartite collusion as in the past. The bankruptcy court also reviewed merits in determining liquidation and rehabilitation of distressed companies. Thereafter, the ruling elite lost control over banks, reducing the potential for corruption, and bringing the government closer to the democratic principles of transparency and accountability. When the norms of transparency and accountability were introduced into the Korean legal system from the international community, there were strong demands from the public that corrupt officials and business leaders be held liable and accountable. During the last decade, there has been a significant amount of criminal charges and civil lawsuits against corrupt politicians, government officials, and business leaders including the

29. See Constitutional Court [Const. Ct.], 89Hun-Ma31, July 29, 1993 (S. Kor.).
30. See Kim, supra note 25, at 158-60.
chairmen and presidents of major conglomerates. International commitments that required the restructuring of the economic order following the Asian Financial Crisis contributed substantially to the development of the rule of law in Korea.

V. THE CIVIL SOCIETY AND THE RULE OF LAW

Civil participation in Korea emerged during the Japanese colonial period from 1910 to 1945. Students, workers, farmers, intellectuals, and artists were among the members of the growing popular movement against Japanese colonial power. Following the end of the Japanese colonial period, civil movements and demonstrations continued as Korea experienced recurring dictatorships lasting until the 1990s. Since the late 1980s, the dynamics of civil movements underwent a transformation as the Korean nation developed into a liberal democracy. Notably, prior civil movements tended to be organized by students. However, the recent trend has been a shift towards activities by non-governmental organizations (“NGO”). The establishment of organizations including Lawyers for Democratic Society in 1988, the Environmental Law Center in 1991, People’s Solidarity for Participatory Democracy in 1994, Human Rights Solidarity in 1999, the Korea Environmental Litigation Center in 1999, and the People’s Solidarity for Judicial Reform in 2002 demonstrates the efforts of civil organizations to establish and enforce the rule of law in Korean society.

Recent civil movements in Korea have been focused on two primary objectives: expanding the scope of the rule of law, and increasing governmental and corporate transparency and responsibility. The expansion of the rule of law has been pursued through legislation and the filing of public interest lawsuits. Such efforts have led to the Anti-Corruption Act, establishment of the Korean Independent Commission Against Corruption in 2001, enactment of National Human Rights Commission Act, establishment of the Human Rights Commission in 2001, establishment of the Ministry for Gender Equality, and a number of laws providing for the protection of women’s rights. Civil movements have also pursued increases in transparency and corporate responsibility by demanding greater transparency in administrative functions as well as minority shareholder’s rights. Clearly, such activities of civil society have played an instrumental role in the development of rule of law in Korea.

31. See PARK, supra note 5, at 46-50, 72-78.
32. As a result of active women rights movements, various laws were enacted. They include Act on Punishment of Sexual Violence (1993) (S. Kor.), Act Preventing Domestic Violence (1997) (S. Kor.), and Act Prohibiting Male-Female Discrimination (1999) (S. Kor.).
VI. ROAD LESS TRAVELLED

The path towards development of rule of law in Korea has been marred by conflicts and challenges. The impact of globalization and grass roots movements by civil groups has ensured that the rule of law developed in Korea according to generally accepted principles of democratic fairness. International engagement ensured that the rule of law in Korea would conform to commonly accepted values of democratic freedoms and develop a robust body of law enforced by independent branches of the government. Domestic watchdog organizations and NGOs further supplemented the public safeguards by ensuring that the government would not find loopholes in the interpretation and exercise of the law, or abuse their discretion.

Despite the remarkable progress of the rule of law in Korea over the past several decades, challenges remain. Ironically, one of the greatest challenges to the rule of law in Korea is the product of its own success. As was the case when the rule of law was not respected, people who purport to have strong desires for democracy still routinely express criticisms and disobedience toward the government’s law enforcement activities, even by means-outside the legal process. Now, however, with firmer establishment of the rule of law and greater protection for individual rights and due process, their ability to do so, i.e., express criticism through disobedience to law enforcement and government actions, has been greatly enhanced. Public demonstrations have become commonplace, and a protected institution in Korea. An increasing numbers of citizens and public movements are calling for direct action and immediate changes to perceived injustices while neglecting established legal processes. Sometimes, interested groups abuse their right to freedom of expression to achieve their own specific agenda under the guise of public interest and in contravention to legally allowed means.33 During the despotic and authoritarian regimes, resistance and disobedience to the established law were considered virtues. The past few decades have shown that Korea has moved away from regimes lacking legitimacy and started to establish the rule of law. The rule of law has been exercised rather effectively in restraining and checking the powers of the Korean government. Despite such developments, however, due to the after-effects of a long history and collective experiences of illegitimate exercise of powers under despotic and authoritarian regime, distrust of government, including the judiciary—even for legitimate law enforcement

33. Recently, a consumer group made it their tactic to attack judge who render decisions against the consumer litigants by sending out massive insulting emails and phone calls. In extreme cases, some judges were physically attacked by disfavored litigants or their supporters. Many judges are concerned about personal (sometimes physical) attacks when they are dealing with socially sensitive issues.
does not seem to have disappeared. The attempts by civil movements and interest groups to disregard legitimate means to influence policy and the judicial process, and instead to act outside of the established legal channel, can threaten to disrupt the relative stability of Korea’s still-developing rule of law. It will take time for Korea to establish a stable system of the rule of law under which the government exercises its powers with the support and trust from its citizens and the public. The impact of civil movements on the rule of law has yet to be determined, and thus a careful monitoring and assessment of its effects can provide a better insight into the further development of the rule of law in Korea.
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韓國的法治發展

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摘要
法治在韓國的發展曾發生過許多的混亂與不穩定，這就像世界上其他地方在民主道路上的發展。然而，韓國的法治與其快速的經濟發展間的錯縱連結提供了一個展現韓國法治多樣形式的特殊觀點。本文首先描述了法治發展的諸多細節層面及刺激其在韓國發展的主要影響。從韓國自身經驗所得到的教訓證明了民主國家的法治發展已經適應了每個國家特殊的歷史與需求，法治的普遍要素已經被不同的文化所共享且與時俱進的保留。更甚者，韓國的例子說明了當社會在建立法治上創造卓越的進步時，對政府與法律程序所固有的不信任感可以被時間所克服。

關鍵詞：法治、健全的司法、正當程序、國際允諾、市民社會