ABHANDLUNGEN / ARTICLES

The Institution of Presidential Impeachment in South Korea, 1992-2017

By *Hannes B. Mosler**

Abstract: Presidential impeachment is a mechanism used to protect democracy from system-threatening malpractice by an incumbent, which is a phenomenon that is occurring increasingly often in young presidential democracies around the world. This article analyses the institution of presidential impeachment in South Korea by comparing three impeachment efforts during the last thirty years that differed in their processes and outcomes. In 1992, the opposition seriously considered impeaching President Roh Tae-woo; however, eventually, it desisted from initiating a motion. Twelve years later, in 2004, President Roh Moo-hyun was impeached by the legislature but was ultimately reinstated. Another twelve years later, the impeachment trial in 2016 against President Park Geun-hye concluded in 2017 by deposing her from office. Based on a set of variables drawn from the existing literature, this article examines the differences and commonalities of the three cases. Thereby, the purpose of this essay is to describe the process of presidential impeachment in South Korea and to contribute to comparative literature by adding another study of a country to the growing case family.

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A. Introduction

Presidential impeachment is a means of defense against an incumbent's malpractice actions that violate the constitution or other laws or betray the trust of the people. In this way, it guarantees and enforces core principles of democratic quality, such as the rule of law (constitutionality), inter-branch accountability (separation of powers), and responsiveness (popular sovereignty) in a time of crisis.[1] Presidential impeachment thus serves as an instrument

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1 It can be assumed that it constitutes a crisis when presidential impeachment is either explicitly considered or initiated. If it turns out that the submitted allegations constitute grounds sufficiently serious for impeachment, the president in question obviously did violate the constitution in a fundamental way and/or threatened the well-being of the citizens. If there are no grounds for impeachment, the exceptional constitutional right was severely abused or at least misused.

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for legislative, judicial, and popular oversight to ensure the protection of democracy and to promote its consolidation and quality; however, it is still considered a last resort and an "ultimate check on the power of a chief executive in a presidential system, and therefore a fundamental democratic element of these systems".[2] Thus, the performance of the impeachment institution's functions can be conceptualized as a stress test for a given democracy or the degree of its consolidation because it demonstrates the polity's capacity to deal with a situation in which its very basis is challenged.[3]

Several presidential democracies around the world have an impeachment institution in place; however, cases in which a president is removed from office by impeachment are relatively rare. Nevertheless, efforts to depose a president by impeachment power have been observed more often and thus constitute an important phenomenon to investigate.[4] While general cases from the US and Latin America are the most well-known, statistically, impeachment efforts occur most often in Eastern Europe, followed by Asia and sub-Saharan Africa.[5] South Korea (hereafter: Korea) is one of the most interesting cases because legislators have considered removing a president by impeachment in three instances that differed in their processes and outcomes. In 1992, lawmakers in Korea seriously considered impeaching a president, Roh Tae-woo, for the first time; however, they eventually desisted from initiating a motion. Twelve years later, in 2004, President Roh Moo-hyun was impeached by the legislature but was reinstated by the judicature. Another twelve years later, the impeachment trial in 2016 against President Park Geun-hye concluded in 2017 by deposing her from office. Even though impeachment was introduced to the Korean constitution in 1948, all three instances occurred after democratization. The proceedings were initiated and concluded in only two of the recent cases, though with opposite outcomes.

As will be discussed, previous comparative literature has not included cases from Korea, and studies on presidential impeachment in Korea focused almost exclusively on the Roh Moo-hyun case, while the Roh Tae-woo case was disregarded. To date, no study has discussed the recent Park Geun-hye case. The present study fills this gap in the literature and compares all three instances to investigate the process of the institution of presidential impeachment in Korea. Based on a framework drawn from comparative literature as well as research on presidential impeachment in Korea, the main research aim was to identify the

2 *Jody C. Baumgartner*, Introduction: Comparative Presidential Impeachment, in: Jody C. Baumgartner and Naoko Kada (eds.), Checking executive power: presidential impeachment in comparative perspective, Westport 2003, p 3.

3 See *Jongcheol Kim*, No Mu-hyŏn taet'ongnyŏngt'anhaeksimp'an-esŏ hŏnbŏpchaep'anso-ŭi chuyononji-e taehan pip'an-jŏk kŏmt'o [Critical Appraisal of the Constitutional Court's Main Argumentation in the Case of the Impeachment of President Roh Moo-hyun], Segyebŏphakyŏn'gu 9 (2004), p. 19; *Zenonas Norkus*, Carl Schmitt as a Resource for Democratic Consolidation Studies: The Case of the President's Impeachment in Lithuania, East European Politics and Societies 22 (2008), p. 786.

4 *Young Hun Kim*, Impeachment and presidential politics in new democracies, Democratization 21 (2014), p. 520.

5 *Kim*, note 4, Ibid.

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reasons for the differences and similarities in the (non-)initiations, processes, and outcomes of the three impeachment efforts. Thus, the contribution of this study is twofold. First, by adding two cases to the analysis of presidential impeachment in Korea, this paper contributes to empirically understanding the characteristics and effectiveness of the presidential impeachment institution in Korea. Second, by analyzing the Korean cases based on the previous literature's theoretical conceptions, the paper adds to the (comparative) literature in general in that it tests its propositions.

The remainder of the article is structured as follows. The subsequent section discusses the previous literature's theoretical conceptualizations and establishes an integrative catalogue of variables that influence impeachment processes divided into the four domains of constitutional conditions, political context, characteristics of grounds, and public (dis)content. The next section examines the specific manifestation of the constitutional conditions for presidential impeachment by examining the procedural design and the legal threshold as well as the authoritative interpretations of the impeachment norm in Korea. The following subsequent sections are structured by the remaining domains' variables, and each of the three cases is analyzed. The final section of the paper highlights the cases' primary differences and commonalities and presents conclusions regarding the impeachment institution and its implications for Korea's democratic consolidation.

B. Theoretical Conceptualizations

I. Previous Literature

The existing literature on presidential impeachment can be divided into large-N comparative studies and small- or single-N case studies. Comparative approaches have focused on factors that prompt impeachment attempts and on the conditions required to succeed in ultimately removing an incumbent.[6] The literature helps to *explain* the phenomenon of resorting to impeachment power and to *predict* the likelihood *that* or *if* an impeachment motion is filed by a given parliament, it can succeed in deposing the incumbent president. The findings show that a (successful) presidential impeachment depends on factors such as presidential involvement in scandals, strength of presidential powers, distribution of seats in parliament, legal thresholds/design, economic performance, and public opinion. *Understanding* the sufficient conditions, i.e., *why* and *how* an impeachment motion came into being and succeeded, requires a closer examination of the particularities of single cases.[7] This includes historical legacies and other particularities of a given polity, their effects on the dynamics of a political constellation in a given local context in the period studied, and the par-

6 *Baumgartner,* note 2; *Kim*, note 4; *Young Hun Kim and Donna Bahry,* Interrupted Presidencies in Third Wave Democracies, The Journal of Politics 70 (2008); *Anibal Pérez-Liñán*, Presidential Impeachment and the New Political Instability in Latin America, New York 2007.

7 See *Han-su Choi*, No Mu-hyun taet'ongnyŏng t'anhaek-e kwanhan sogo [A Study of President Roh Mu-hyun's impeachment], Taehanjŏngch'ihakhoebo 13 (2006), p. 97-119.

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ticular procedure and interpretation criteria for impeachment. Studies dealing with Korea include constitutional[8] and political scientist approaches that are comparative[9] and neo-institutionalist.[10] The Roh Tae-woo case was likely not investigated because the proceedings were never initiated, even though these "mere" considerations of impeachment should also be researched because they can provide insights into the process that leads to a potential initiation of an impeachment motion.[11] Most of the existing studies on Korea have focused on the impeachment of Roh Moo-hyun[12], which involved his impeachment but not his removal. The Park Geun-hye case, which not only resulted in an impeachment but also the deposition of the president, has not been scrutinized yet in the literature due to its recent occurrence.

The following section, which is mainly based on the research conducted by Baumgartner and Kada (2003),[13] discusses and integrates the existing literature's findings into a catalogue of variables that will be applied to the three cases of this study.

II. Four Domains of Impeachment Process Variables

The first domain involves the constitutional conditions that are based on the principle of the rule of law, and in addition to constitutionality in general, it also involves the design and the interpretation of the impeachment mechanism. The rule of law is central to a working democracy because it guarantees that all persons involved follow the same set of rules[14] – the only game in town.[15] The rule of law provides the boundaries for all other aspects, and it ensures that nobody stands above the law – even the president must submit to the rules.[16]

8 *Cheol-Joon Chang*, Impeachment as Legislative Oversight, Public Law Journal (Korean Comparative Public Law Association) 12 (2011), p. 273-293; *Ki-hong Kang*, 3.12 t'anhaeksoch'u-e taehan hŏnbŏp-chŏk koch'al [Constitutional analysis of the March 12 impeachment motion]," Kongbŏphakyŏn'gu 5 (2004), p. 213-237; *Kim*, note 3; *Youngjae Lee*, Law, Politics, and Impeachment: The Impeachment of Roh Moo-hyun from a Comparative Constitutional Perspective, The American Journal of Comparative Law 53 (2005), p. 403-432; *Jong-Bo Park*, Kukhoe-ŭi taejŏngbu t'ongjegwŏn: taet'ongnyŏng t'anhaek-ŭl chungsim-ŭro [Legislature's oversight over government: focusing on presidential impeachment], Kongbŏpyŏn'gu 32 (2004), p. 1-14.

9 *Choi*, note 7; *Myung-Lim Park*, Hŏnbŏp, hŏnbŏpchuŭi, kŭrigo Han'guk minjujuŭi: 2004-nyŏn No Mu-hyŏn taet'ongnyŏng t'anmhaeksat'ae-rŭl chungsim-ŭro [Constitution, Constitutionalism, and Democracy in South Korea: Focusing on the Presidential Impeachment of Roh Mu-hyun in 2004], Han'gukchŏngch'ihakhoebo 39 (2005), p. 253-400.

10 *Sang-Ho Jeong*, Chedojuŭi kwanjŏm-esŏ pon t'anhaeksat'ae-ŭi punsŏk [Analysis of the impeachment in Korea based on an institutional approach], Tongyanggwajŏnmang 60 (2004), p. 68-96.

11 See *Kim*, note 4.

12 *Chang*, note 8; *Choi*, note 7; *Jeong*, note 10; *Kim*, note 4; *Lee*, note 8; *Park*, note 8.

13 *Baumgartner*, note 2.

14 See *Guillermo O'Donnell*, Why the rule of law matters, Journal of Democracy 15 (2004), p. 32-46.

15 *Juan J. Linz*, Transitions to democracy, Washington Quarterly 13 (1990), p. 156.

16 See *Joseph Raz*, The authority of law: Essays on law and morality, Oxford 1979.

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The president presides over the government but is not a king; however, if a president behaves like a king, democracy can be protected from this enemy by shackling his "political feet" to reassert the rules of the game.[17] Generally, it is important that there is a balance between the rule of law in the books and in reality to a certain extent. The rule of law is the first principle implemented by the impeachment proceeding and can be regarded as a part of the principle of defensive democracy.[18] The concept of defensive, or "militant democracy",[19] was introduced in Germany as an attempt to resolve the dilemma of too much tolerance and freedom for those who "actively threaten" and are a "clear and present danger" to democracy, mainly against the background of the Nationalsozialistische Deutsche Arbeiterpartei (NSDAP) taking power by legal means only to destroy the Weimar Republic's democracy. If a president threatens and endangers democracy, impeachment allows for revoking the legally and democratically legitimate appointment of the elected president.[20] The standard against which the Constitutional Court judges the removal of a president is a comparison of the costs regarding the protection of the constitution and democracy occurring when such a president is deposed with the costs occurring when the president is elected into office.

To prevent the abuse of the exceptional impeachment power, the constitutional design of the procedure demands high standards for the initiation and approval of the proceedings as well as for the final decision on the president's ultimate removal from office; however, as comparative literature shows, even a high legal threshold for an impeachment vote cannot prevent misuse or the attempt of misuse completely.[21] In other words, the quality of impeachment depends not only on how well the procedure is designed but also how well this

17 See *Choi*, note 7, p. 102; *Constitutional Court*, Taet'ongnyŏng (No Muhyŏn) t'anhaek [Presidential (Roh Moo-hyun) Impeachment], P'allyejip 16 (2004), p. 632.

18 See *Markus Thiel*, Germany, in: Markus Thiel (ed.), The 'Militant Democracy' Principle in Modern Democracies, Burlington 2009, p. 125.

19 *Karl Loewenstein*, Militant Democracy and Fundamental Rights I, American Political Science Review 31 (1937), p. 417–32; *Karl Loewenstein*, Militant Democracy and Fundamental Rights II, American Political Science Review 31 (1937a), p. 638–58.

20 Similar "emergency brake-like" institutions can be found in ancient Athens where high officials could be impeached by procedures such as *apocheirotonia* and *eisangelia* (see *Jennifer Roberts*, Accountability in Athenian Government, Madison 1982). The same is true for ancient Korean polities where equivalent procedures were called *taeron*, *taet'an*, or *t'anhaek*. The term "impeachment" was coined in 14th Century England (*John Cannon and Robert Crowcroft*, Impeachment, in: A Dictionary of British History, Oxford 2011, http://www.oxfordreference.com/view/10.1093/acref/9780191758027.001.0001/acref-9780191758027-e-1796 (accessed on 8 February 2017)), but it included scolding or dismissing only officials beneath the state leader, or King. In 1787, the framers of the US Constitution finally introduced presidential impeachment to the Constitution (*Patrick Schmidt*, Impeachment, in: Kermit Hall (ed.), The Oxford Companion to American Law, Oxford 2002). In Germany in 1919, presidential impeachment was introduced to the Weimar Constitution, and after WWII, it also found its way into the Bonn Constitution in 1949.

21 *Kim*, note 4, p. 534.

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design is used.[22] Thus, in polities where the Constitutional Court or other equivalent institutions are the final arbiter, as in the case of Korea, the interpretation by the Constitutional Court and constitutional scholars becomes crucial and makes the presidential impeachment mechanism "a lawyer's solution to a statesmen's problem," which "[t]o some indefinable extent [makes] an impeachment investigation or an impeachment trial […] an elaborate ritual to legitimize a political decision".[23] In turn, therefore, the selection modus of the Constitutional Court's justices and the subsequent (partisan) constitution of the bench can become an important variable for the (outcome of the) impeachment trial.

The second domain involves the political context of a given time and place. This includes the mediate and immediate historical circumstances, dynamics, and legacies (trajectories) as well as factors such as the president's powerfulness and the distribution of power among political parties and within political parties. All polities have their own histories and thus exhibit particular constellations of powerful political actors that are crucial in determining (or distorting) the initiation, execution, and outcome of an impeachment procedure. This includes the general political culture, ideological or other cleavages, and the way of interpreting as well as realizing formal political institutions (informally) that shape the preconditions of the political arena in a fundamental way.[24] Regarding a president's powerfulness, it is argued that the more power a president has, the fewer incentives there are for the president to build and maintain cooperative or collaborative relations with parties or individual members of parliament based on concession and compromise.[25] Accordingly, this leaves the president vulnerable when a decision is made regarding an impeachment motion in parliament. In the same vein, the distribution of seats in parliament is crucial for determining the success of an impeachment motion because it is conceivable that a large majority party on the side of the president (i.e., government party) would probably be able to shield the president against an impeachment motion by either voting against it or boycotting the poll altogether.[26] Also, the general structure of party politics, such as the degree of institutionalization and of party-internal cohesiveness regarding voting discipline, can become a crucial factor.[27]

Impeachment is one of a set of instruments that parliament can utilize for legislative oversight.[28] It is not a frequently used instrument but rather an "extreme measure"[29] and is

22 See *Larry Diamond and Leonardo Morlino*, The quality of democracy. An overview, Journal of Democracy 15 (2004), p. 20-31.

23 *John R. Labovitz*, Presidential Impeachment, New Haven 1978, p. xi.

24 For example, this relates to the feasibility of formal institutions that determine interaction in parliament for conflict resolution or mediation and possible informal remedies.

25 See *Kim*, note 4, p. 522 and 534.

26 *Pérez-Liñán*, note 6, p. 142.

27 *Baumgartner*, note 2.

28 See *Chang*, note 8; *Constitutional Court*, note 17, p. 632.

29 *Choi*, note 7, p. 102; see Baumgartner, note 2, p. 2.

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only used after all other instruments have failed. Other – milder – forms of "political constraints of [the] political system",[30] such as checking and balancing the excessive (ab)use of power of the president, include classical instruments, such as veto rights and decision rights on the side of the legislature through which the executive can be influenced. Thus, even before resorting to impeachment power, parties in parliament can prevent or fend off an overly powerful president by aligning against her, which of course would presuppose a political constellation and atmosphere that produces a majority sufficiently critical of the president as well as capable and willing to challenge the executive.[31] Likewise, there is always the danger of a majority in parliament using impeachment power as a "partisan weapon"[32] and/or for "purely political retribution".[33] This aspect is also related to another factor that must be considered, namely *internal* party dynamics, which include diverging interests between party leadership and the party or between factions that motivate strategies and behaviors regarding presidential impeachment, for example.[34] Overall, the dynamics in the legislature become more precarious when there is a fundamental imbalance of the political (ideological) spectrum with one side enjoying hegemony, leading to an uneven playing field in parliament or in general. Another variable involves the extent to which political parties perform their functions by conveying the people's will to the institutionalized political arena or whether parliament is rather decoupled from civil society, which can lead to low responsiveness and weak accountability.[35] Within parliament, the success of an impeachment also depends on the capacity of legislature to address conflicts in society and between state powers as well as gridlock within the National Assembly.[36] The less parliament is able to resolve these various potential conflicts, the higher the probability of resorting to impeachment becomes.

The third domain involves the specificity of the accusation, which refers to the characteristics of the impeachment grounds' contents, the way the alleged offenses became public, and the attitude and behavior exhibited by the president towards these allegations. In other words, the characteristics of the grounds for impeachment and their mode of occurrence affect the subsequently evolving development.[37] The type of accusations being made, the perceived severity or moral seriousness of the allegations, and the parties involved in the mis-

30 *Labovitz*, note 23, p. 92.

31 See *Labovitz*, note 23, p. 30.

32 *Labovitz*, note 23, p. 28.

33 *Martin F. Richman et al*, The Law of Presidential Impeachment, The Committee on Federal Legislation, New York Bar (1974), http://www2.nycbar.org/Publications/reports/show_html_new.php?rid=33 (accessed on 9 February 2017).

34 See *Choi*, note 7, p. 106.

35 See *Jeong*, note 10, p. 79.

36 See *Jeong*, note 10, p. 72.

37 A concise summary of the relevant literature on the factors leading to the initiation of presidential impeachment (and in part influence the further development of the process) can be found in *Choi*, note 7, p. 8-9 and *Kim*, note 5, p. 521.

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deeds are important factors. Allegations of malfeasance or abuse of power represent a potential threat to the legitimacy, reputation, and credibility of an incumbent president. In particular, the entanglement of the president in a publicized incident that brings about disgrace or offends the moral sensibilities of society (i.e., a scandal) opens a window of opportunity for an attack on the president by the legislature in that it provides tangible grounds for investigation and possible dismissal of the president. The morality and ethics of a president is crucial, which include her and her supporters' attitudes and behaviors after the misdeeds became public, as they can weaken their credibility within the legislature, the judicature, and the public. Therefore, these factors are closely related to the variable of public opinion because grounds for impeachment that are hardly convincing will probably cause the citizens to be less in favor of an impeachment, while credible suspicions about dubious behavior of the president and her aides are likely to trigger the public's discontent towards the president. Another factor that is identified as crucial for facilitating presidential impeachment is the economic performance of a national economy, namely that economic adversity is likely to promote impeaching a president because economic distress affects the majority of the populace immediately and thus can easily be framed in a way that the president appears to be incapable of effectively executing state affairs (lack of capacity).

The fourth domain involves actions and reactions by the populace as an important factor that affects the impeachment process' evolution and outcome. This is related to the principle of popular sovereignty and the concept that the authority of a state and its government is created and sustained by the consent of its people who are – de jure – the source of all political power. Through the proceedings of an impeachment, the people indirectly (i.e., the people's *representatives*) practice this sovereignty, i.e., their right to revoke this authority from the president, even though they bestowed her with this power by having elected her.[38] Once the president loses credibility due to "violating the constitution" and/or "betraying the people," the people can hold the president accountable for that and demand the president's removal from office. In addition to the interface of the representatives in parliament, the Constitutional Court's decision also takes public opinion into account to a certain extent. This is true in general, as courts and justices are not completely insulated from but are embedded in society and thus are (supposed) to reflect the general will of the people, opinion makers, or the tendencies and atmosphere in a given society at a given moment in time. In particular, the Korean Constitutional Court is known for decisions in salient cases that have the tendency to generally follow public opinion reflected in surveys, media reports (incl. new media), election outcomes, and demonstrations, which can potentially erode the legitimacy of the president and at the same time empower or mobilize legislators to challenge the executive, or vice versa.

38 *Constitutional Court*, note 17, p. 632.

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Table 1. Variables for (un)successful presidential Impeachment

Domain	Variables
Constitutional conditions	• Procedural design (incl. thresholds) • Characteristics of Constitutional Court • Institutional presidential power (de jure)
Political context	• De facto political power constellation • Political party structure and dynamics • Presidential performance & leadership (behavior/attitude)
Characteristics of grounds	• Credibility and validity of accusations • Degree of scandal • Quality and severity of offences
Public (dis)content	• News media reports • Public opinion polls/surveys • Internet sentiment, demonstrations, election results

C. Constitutional Conditions

I. Procedural Design - How to impeach a President in Korea

According to the Constitution, the Korean polity is a unicameral system, and the legislature, the National Assembly, has the exclusive right to initiate a motion for presidential impeachment.[39] In parliament, the proposal for an impeachment motion must be supported by more than half of the parliament's members.[40] Thus, only a majority of lawmakers can initiate the process at the outset. The successful motion may be referred to the Judiciary Committee for review based on the Law on Inspection and Investigation of State Affairs.[41] For the next step, the constitution requires an even larger majority of two thirds of the National Assembly members to approve the proposal; only then is the petition sent to the Constitutional Court for review.[42] Once it reaches the Constitutional Court, the nine judges of the bench have a maximum of 180 days for deliberating and deciding on the case.[43] The Constitution-

39 Constitution, Art. 65. So, for example, no other institution can file a motion, such as a second chamber, the prosecution, or a court. Also, there is no way to recall the president directly by popular vote, as is the case in Taiwan, for example. This right is exclusively given to the parliament.

40 Ibid.

41 National Assembly Act, Art. 130 and 131.

42 Constitution, Art. 65. This resembles the proceedings in Germany, where the Constitutional Court also decides on the removal of the federal president, and it is rather distinct from the US case, where the senate (second chamber) tries the president, not the Supreme Court.

43 Here, it is noteworthy that the constitution of the judge bench neither follows the US case, where the president nominates and appoints justices, nor the German case, where the Bundestag (first

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al Court Act demands that the criminal procedure is applied.[44] At least six judges must decide for the dismissal of the president to remove her.[45] If the Court orders the president's deposition, elections for a successor must be held within 60 days after this ruling.[46]

This brief overview demonstrates that presidential impeachment is a means of a last resort, and thus it includes an intentionally rigorous procedure with several formal hurdles (institutional barriers) to overcome before a president is impeached and/or deposed. In other words, it is designed to prevent an easy removal from office that misuses impeachment power as a "partisan weapon." To that end, the impeachment procedure is divided into two subsequent stages, providing the legislature with the accusatory function (legislative oversight) and the judiciary with an adjudicative function (judicial oversight). In the first stage, the political parties must deliberate and evaluate the necessary and sufficient conditions for impeachment and removal of the president in question. At the outset, whether the call for tabling an impeachment proposal is reasonable among those parties or individual lawmakers who call for an impeachment as well as whether other lawmakers could engage with them on the issue must be deliberated and negotiated; however, when the proposal is referred to the judiciary committee for review, all legislators are responsible for taking all facts and circumstances into account before deciding to table it to the plenary and voting on the motion. Theoretically, this provides ample opportunities to deal with the issue beneath the level of the institution of impeachment. Lawmakers are supposed to judge whether the alleged offenses constitute sufficient conditions for a removal by Constitutional Court before deciding to send the motion to the Constitutional Court.[47] The second stage is under the jurisdiction of the Constitutional Court, which might not be completely free from partisan influence. Thus, it is not absolutely immune to misuse, but it submits to the rigorous rules of constitutional interpretation, including the criterion of proportionality. In other words, the judges must determine whether the offense of the president is so serious that she has to be removed because the damage to the Constitution or other laws is too severe otherwise. This logic also includes the idea that milder means than dismissal would probably suffice to deal with the offense in question. As for the basic characteristic of the Korean Constitutional Court, the literature attests that it "exhibits […] a reactive but cautious judicial attitude" and thus "has rarely directed its decisions against the political majority's preferences or sentiments".[48] In other words, the court is likely to be affected by public opinion or sentiment, though not invariably.

chamber) and the Bundesrat (second chamber) each nominate an equal number of judges. Rather, the method somewhat resembles the Austrian model in that the president, the Supreme Court's president, and parliament as a whole each nominate three out of nine judges in total.

44 Constitutional Court Act, Art. 40.

45 Constitution, Art. 113; Constitutional Court Act, Art. 23.

46 Constitution, Art. 60.

47 See *Labovitz*, note 23, p. 192.

48 *Jiunn-rong Yeh and Wen-chen Chang*, The Emergence of East Asian Constitutionalism: Features in Comparison, The American Journal of Comparative Law 59 (2011), p. 827.

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II. Legal Threshold – Constitutional Norms and Interpretations of the Impeachment Criteria

First, the criteria used to employ this type of last resort protection mechanism should be examined. What are the grounds for a presidential impeachment in Korea? The text of the Korean Constitution states that a president can be impeached if she violates the Constitution or other laws in the performance of her official duties.[49] This definition is intentionally broad, which is why it is important to evaluate how the Constitutional Court defines these clauses. In 1994, when dealing with postponing the initiation of the election of governors by the president despite the fact that the concerned law requested to hold elections in 1992, in their absenting opinion two Constitutional Court justices stated that conditions of impeachment are provided when the president intentionally does not execute the duties imposed upon her by law and thereby breaches the respective law and violates the basic rights of the citizens[50] as well as abuses governmental power and thus violates the constitution.[51] In the decision of the first impeachment trial in 2004, the Constitutional Court provided that:

> *„ [...] a decision to remove the President from his or her office shall be justified [...] where the maintenance of the presidential office can no longer be permitted from the standpoint of the protection of the Constitution, or where the President has lost the qualifications to administrate state affairs by betraying the trust of the people [...].”*

Breaching the constitution can be defined as violating the free democratic basic order (*chayuminju-jŏk kibonjilsŏ-rŭl wihyŏphanŭn haengwi*), which includes principles of the rule of law, such as fundamental human rights, separation of powers, independent judiciary, and democratic principles, such as the parliament system, party pluralism, and the election system. The violation of one of these principles constitutes a breach of the free democratic basic order and thus represents a ground for removal from office.[52] The betrayal of the people's trust (*kungmin-ŭi sinim-ŭl paebanhan haengwi*) involves corruption, harming state interest, interfering with other branches, infringing upon people's fundamental rights, such as acts of oppression through state organizations, and violating election law.[53] If the president is found to have committed one of these misdeeds, and if the severity of the malpractice is of a certain degree, the president can be removed from office. Here, the severity is assessed by weighing the profits and losses of the constitution and the nation. Put different-

49 Constitution, Art. 65.

50 *Constitutional Court*, Chibangjach'idanch'e-ŭi sŏn'gŏil pulgonggo wihŏnhwagin [Verifying the violation of the constitution due to not announcing the election date of local government heads], P'allyejip 6 (1994), p. 219-222.

51 *Constitutional Court*, note 50, p. 229 and 235.

52 *Constitutional Court*, note 17, p. 656.

53 Ibid.

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ly, a president can be deposed only if the advantage achieved by removing her is far greater than the nation's loss due to her removal.[54]

D. Impeachment considered but not initiated – President Roh Tae-woo (1992)

Since the establishment of the republic in 1948, Korea has been dominated by rightist-conservative forces that secured and consolidated hegemony through anti-communist discourse and by way of politics of fear. Thus, except for the short-lived Second Republic (1960-61), all governments were headed by rightist-conservatives, and at the end of the 1980s, in the wake of the successful democratization movement, the opposition had a realistic chance to achieve government alternation for the first time; however, during the presidential elections in 1987, the liberal opposition was not able to take advantage of the opportunity because it was divided between the two contenders Kim Dae-jung and Kim Young-sam, who both wanted to become the first liberal president and thus both ran for office. This led to a split in the liberal votes and ultimately Roh Tae-woo was elected president. Roh was not only the designated successor of President Chun Doo-hwan, who had taken over the government in a coup after long-term dictator Park Chung-hee was assassinated in 1979, but he was also involved in the 1980 Kwangju massacre along with Chun. Therefore, in addition to the disappointment over the lost elections, the liberal camp was naturally critical of Roh Tae-woo due to misdeeds in the past. At the general elections in April 1988, two months after Roh's inauguration, the liberal opposition parties of Kim Dae-jung, the Democratic Peace Party (*Pyŏnghwaminjudang*; DPP), and Kim Young-sam, the Democratic Unification Party (*T'ongilminjudang*; DUP), together controlled 129 seats in parliament, which were five seats more than Roh's Democratic Justice Party (*Minjujŏngŭidang*; DJP). This made the president potentially weak regarding policy making but also regarding possible challenges by the opposition. In fact, on several occasions, lawmakers of the opposition threatened to initiate an impeachment motion against Roh on the grounds that the corruption and other malpractice during the Fifth Republic (1980-1988) were not investigated and that the responsible persons were not prosecuted accordingly. While these first attempts fizzled out shortly afterwards, a year later, they accused Roh of violating his duty for neutrality as well as the election law when he openly asked for the support of a candidate of his DJP. This threat also subsided eventually.

In January 1990, Roh successfully merged his DJP with liberal Kim Young-sam's DUP and rightist-conservative Kim Jong-pil's New Republican Democratic Party (*Sinminjugonghwadang*; NRDP). The new emerging Liberal Democratic Party (*Minjujayudang*; LDP) gained the absolute majority in parliament with 213 seats, which thus resolved the hitherto difficult situation of divided government for the time being. In March 1990, Kim Dae-jung accused President Roh of misusing presidential power and again violating the

54 *Constitutional Court*, Taet'ongnyŏng (Pak Kŭn-hye) t'anhaek [Presidential (Park Geun-hye) Impeachment], P'allyejip (2017), p. 19.

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election law. In addition to a couple of similar instances, the impeachment of President Roh was seriously debated and considered after Roh made his decision public in January 1992 (the year of the presidential election) to postpone the governors' election that had been scheduled by law for 1992 for four years.[55] This time, along with the opposition parties, civil society organizations, newspapers, and constitutional scholars also argued for an impeachment if the president did not revoke his decision.[56] The planned extension of self-government was not only one of the core demands by the democratization movement but also central to Roh's June Declaration[57] as well as his campaign pledges in 1987. Moreover, the 1990 amended Self-Government Act explicitly stated that regional elections, including governors, would take place in 1992, which made the president's decision an indisputable violation of the constitution and the law.[58] The seriousness of this impeachment threat was amplified by the fact that in March 1992 at the general elections, the government party won only 149 out of 299 seats, and thus it was again unable to achieve a supermajority in the house. In response, in August 1992, the opposition parties threatened boycotting parliament if Roh did not revoke his move to postpone governors' elections; however, only two weeks later they decided to decouple their participation in parliament from this matter due to strategic reasons in the run-up to the presidential elections in December 1992.[59] The leading figure of the opposition, Kim Dae-jung, stated that he did not refrain from the motion because the opposition would be too weak but because he thought that an impeachment process would destabilize the political situation and impede the development of democracy in Korea.[60] At this point, Kim Dae-jung's oppositional DP occupied only 97 out of a total of 299 seats in parliament, and thus even with the help of the other oppositional Citizens' Party for Unification (CPU), it would not have been strong enough to initiate an impeachment motion. An additional reason might have been that the public's majority (ca. 54-59%) was

55 *Ch'ae-ch'ŏng Im*, Tanch'ejansŏn'gŏ yŏn'gi-nŭn wŏlgwŏn [Delaying regional elections is malfeasance], Donga Ilbo, 11 January 1992, p. 3.

56 *Hankyoreh Sinmun*, Roh taet'ongnyŏng t'anhaek yogu hwaksan [Demands of impeaching President Roh proliferates], Hankyoreh Sinmun, 23 June 1992, p. 15; *Kyunghyang Sinmun*, Taet'ongnyŏng t'anhaekan ildan poryu [Proposal for presidential impeachment suspended for the time being], Kyunghyang Sinmun, 14 August 1992, p. 3; *Yŏng-ŏn Song*, Tanch'ejangsŏn'gŏ yŏn'gi, yŏ kanghaeng ya chŏji ch'ongnyŏkchŏn [Postponing regional elections, government pushes ahead, opposition all-out war to block], Donga Ilbo, 11 January 1992, p. 3.

57 On 29 June 1987, the designated successor of military dictator Chun Doo-hwan declared significant concessions to the democratization movement, including the alongside strengthening of local autonomy in a total of eight points, such as the re-introduction of direct presidential elections, extension of the right of habeas corpus, and restoration of the freedom of the press.

58 See dissenting opinion of *Constitutional Court*, note 50, p. 217-235.

59 See *Tong-gwan Yi*, Silli kyŏngyang, kanggyŏng sŏnhoe [Practical interest in respect and modesty, turn of tough stance], Donga Ilbo, 19 June 1992, p. 3.

60 *Donga Ilbo*, 'Roh taet'ongnyŏng t'anhaek ank'etta' ['Won't impeach President Roh'], Donga Ilbo, 18 June 1992, p. 7.

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in favor of postponing regional elections.[61] Also, general media reports on the accusations did not actively push for impeachment, as was the case in the following two presidential impeachments.

In summary, the main reasons brought forward as grounds for impeaching Roh were violations of his duty of neutrality, breaching election law, neglect of his duties as president, and contradicting and overriding law in force. In particular, Roh's obvious and serious disregard of the Self-Government Act sufficiently constituted grounds for an impeachment;[62] however, despite this scandalous violation, the misdeeds were not part of a scandal in the classic sense of dubious activities or secretive deals and collusion. Roh's malpractice was well-known and was either bitingly accepted or ignored by the media and the general public. Also, the rightist-conservatives were still powerful enough to withhold crucial information regarding corruption and the Kwangju massacre. Holding the majority in parliament, the conservative parties were able to potentially shield Roh if the opposition attempted to file an impeachment motion in parliament. Finally, Kim Dae-jung, who was the key actor on the side of the opposition, ultimately changed his mind and did not opt for this exceptional means because he anticipated that a motion would probably not be successful and would rather backfire during the upcoming presidential election. Thus, almost all of the main factors for a successful impeachment were either not in place or too weak.

E. Impeached but reinstated – President Roh Moo-hyun (2004)

After winning the presidential bid a year before, in 2003 President Roh Moo-hyun became the successor of Kim Dae-jung, who had been the first liberal president, and thus Roh prolonged the liberal government by another five years. The conservatives refer to this period as the "lost decade," a choice of words that points to the self-perceived crisis of the conservatives, who were not used to being the opposition. Trying to prevent another liberal president led to an unprecedented case of election fraud, where the oppositional Grand National Party (GNP; *Hannaradang*) literally received a truck load of cash for financing their presidential-bid against Roh in 2002. The very close and last-minute defeat was a shock to the conservatives and made it even more difficult to accept the result.[63]

This was not only a crisis for the conservatives; it was also a crisis for the vested political elites and the older generation in general.[64] Even the government party of Kim Dae-jung (New Millennium for Democracy Party – NMDP; *Saech'ŏnnyŏnminjudang*), which Roh

61 *Maeil Kyŏngje*, 'Tanch'ejang sŏn'gŏyŏn'gi charhanil' 54% [54% say delay of regional elections was well done], Maeil Kyŏngje, 14 January 1992; *Sŏk-hong Yun*, 'Tanch'ejang sŏn'gŏyŏn'gi charhanil' 59% [59% say delay of regional elections was well done]," Chosun Ilbo, 11 January 1992.

62 *Constitutional Court*, note 50, p. 235.

63 See *Hee Min Kim*, Korean democracy in transition: a rational blueprint for developing societies, Lexington 2011, p. 90.

64 See *Lee*, note 8, p. 409; *Kim*, note 64, p.89.

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used as a platform for his presidential bid, felt challenged by the reformists. During his election campaign, Roh made it clear that he would also reform the government party, and if it resisted, he would leave the party to form a new one, a reformist party. Thus, in November 2003, he founded the new government party called Our Open Party (OUP; *Yŏllin Uridang*) on the basis of 47 lawmakers mainly recruited from the liberal DP as well as from the Reformist People's Party (RPP; *Kaehyŏk Kungmindang*) but also from the conservative GNP. This changed the distribution of the parliament's total 273 seats to the disadvantage of the president and resulted in a divided government constellation in which a minor government party (47 seats) faced a super-majoritarian opposition camp (224 seats). Roh was fighting two frontiers; however, he was accustomed to this role. He had been a human rights lawyer during the 1980s, defending mostly politically persecuted persons, and later, he ran several times for higher political offices at the regional as well as national level. Roh is the only president of Korea without a college degree (to become a lawyer, he passed the national bar exam). He is said to have had charisma, and his speaking manner was often perceived as reckless and incautious. So, overall, from the perspective of the conservative elites, Roh Moo-hyun was not simply a challenger but one who was also not even coequal. Thus, he was viewed as being weak and unworthy but dangerous at the same time. This threat perception existed because people supported Roh so strongly; even today, in most of the public opinion surveys asking which president contributed most to the nation's development and who the people liked most, Roh Moo-hyun receives the highest results.[65]

The first opportunity for Roh's challengers to attack him arose in October 2003,[66] one month before the OUP was formed, when some of Roh's aides were arrested for accepting illegal campaign funds at the presidential bid in 2002. Roh attempted to resolve the situation by proposing a national referendum, by which he intended to reassure the people of his leadership; however, this move only worsened the situation because per Constitution, the president could not hold national referenda on this type of matter. The Constitution only allows referenda on diplomatic issues, matters of national defense, unification, or similar important issues (Art. 72).[67] In addition, at one point, Roh admitted that in 2002, his presidential campaign camp received illegal funds. He made the public promise to resign if the amount of these illegal funds exceeded one-tenth the amount that the GNP had received; however, it was only in February 2004, about two months before the upcoming general

65 *Hae-sik Park*, Han'guk-i kajang choahanŭn taet'ongnyŏng-ŭn Pak Chŏng-hŭi anin No Mu-hyŏn [The president Koreans like most is not Park Chung-hee but Roh Moo-hyun], Donga Ilbo, 12 March 2015, http://news.donga.com/3/all/20150312/70087665/2(last accessed on 16 March 2017); *Real Meter*, Yŏktae taet'ongnyŏng kukka kiyŏdo: No Mu-hyŏn 36%-ro 1-wi [Roh Moo-hyun contributed most among all Korean presidents to the development of the nation], Real Meter, 12 December 2016, http://bit.ly/2mNJgx8/ (last accessed on 16 March 2017).

66 The first calls for Roh's impeachment by legislators came as early as about one month after this inauguration in March 2003, and then the GNP later threatened to file a motion against him several times (see *Lee*, note 8, p. 410, footnote 57).

67 Constitution, Art. 72.

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election in April, when President Roh provided the ultimate pretext for his later impeachment. During a live discussion on television, he stated that he expected the people to strongly support his party, the OUP, at the elections, which prompted the National Election Commission (NEC) to determine that he violated his duty for neutrality. The NMDP used this authoritative interpretation by the NEC as a pretext to threaten him with impeachment. After Roh Moo-hyun not only refused to comply with the NMDP's demand for an apology over his faux pas but also rejected the NEC's judgment, the NMDP aligned with the conservative GNP and Liberal Democratic Party (LDA; *Chayuminju Yŏnhap*). Even though the accusations were substantial and the way Roh attempted to deal with the situation was rather provocative, the situation developed into a government crisis but not into a full-scale scandal because most of the facts were publicly known and there were no dubious grey areas or other suspicious enmeshments that would have negatively affected the moral and ethical values of the people.[68]

On March 9th 2004, the impeachment bill that was signed and proposed by 108 GNP lawmakers along with 51 NMDP lawmakers was tabled in the 273-seat National Assembly, and three days later, it was approved by 193 lawmakers out of 238 lawmakers who attended the plenary session that day, including ten lawmakers from the LDA. Two lawmakers voted against the motion, while the OUP abstained from the poll altogether. The impeachment bill listed a total of 21 different allegations that were filed under three domains of offenses.[69] Examples for "bringing the order state law in disorder by violating the constitution as well as other laws" include the violation of the Public Office Election and the Election Fraud Prevention Law, mainly due to his remarks regarding support for his government party despite his duty to be neutral;[70] articles of the constitution included the state's duty to protect parties (Art. 8), to guarantee fundamental rights (Art. 10), freedom of consciousness (Art. 19), the right to vote (Art. 24), and the president's duty to protect the constitution (Art. 66) and to obey the constitution (Art. 69).[71] The second domain encompassed the allegation that President Roh "lost the minimum of moral and legal legitimacy to normally carry out state affairs because of corruption by himself and his close aides"[72] based on various norms of the Criminal Code (Art. 30-34). Finally, Roh was accused of "causing more severe pain and misfortune to the citizens than at the time of the IMF crisis by mismanaging the economy," thereby violating Art. 10 (right to happiness) and Art. 69 (president's faithful execution of office).[73]

68 See *Choi*, note 7, p. 107 and 116.

69 *National Assembly*, Taet'ongnyŏng (No Mu-hyŏn) T'anhaeksoch'uŭigyŏlsŏ [Presidential (Roh Moo-hyun) Impeachment Bill], Seoul 2004.

70 Public Office Election and the Election Fraud Prevention Law, Art. 9, 59, 60, 85, 86, 87, 237 and 255.

71 *National Assembly*, note 70, p. 2-5.

72 Ibid., p. 5-13.

73 Ibid., p. 13-14.

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The clear majority of public opinion denounced the impeachment. In a survey the same day, seven out of ten stated they found the impeachment inappropriate.[74] In the aftermath, mass demonstrations took place for several weeks demanding the cancellation of the impeachment. Most civil society organizations declared their opposition against the motion.[75] Ultimately, Roh's OUP won by a landslide at the general elections and controlled the absolute majority of seats in parliament with 152 seats a month prior to the ruling by the Constitutional Court. The electorate clearly punished the opposition by holding them responsible at the poll stations.

Of the various allegations by the initiators of the impeachment motion, the Constitutional Court focused mainly on violation of election law, complicity in corruption, and poor management of the economy. It found that Roh indeed violated the law in three instances: The Court held that the president violated the mandate for neutrality of public officials by openly advocating for his party before elections; that he violated his duty to observe the Constitution by challenging the validity of the Election Law; and that he violated his duty to observe the Constitution by proposing a national referendum without constitutional basis; however, for the Court, these violations were not so serious as to impeach him. In addition, the majority of constitutional scholars were not convinced of the sufficiency of the accusations to impeach Roh.[76] So, the Court resolved the issue by referring to the severity or the degree of the violation because the Court must also take into account the principle of proportionality when judging a violation. The seriousness of the offense is a crucial part of the criteria. The deliberation by the Constitutional Court lasted 63 days, during which the president was suspended from office. He was then reinstated.

The impeachment of President Roh was obviously pursued for retaliation against the new reformers by the alliance of the old generation and vested politicians, consisting of the liberal NMDP and the conservative GNP and LDA. The fact that these actually opposing political parties joined forces can be understood as the manifestation of a strategic reasoning along the lines of "the enemy of my enemy is my friend." Both the liberal NMDP as well as the conservative GNP and LDA utilized the opportunity to attack the new president in an attempt to overturn the result of the presidential election.[77] Under the guise of safeguarding the constitution and by taking advantage of the principle of majority rule, they misused the impeachment power. It is reasonable to evaluate the motion as an intentional

74 *Yŏng-bae Kim*, Kungmin 10-myŏng chung 7-myŏng 't'anhaek pandae', Hankyoreh Sinmun, 11 March 2004; *Samuel Lenmarch*, President's Impeachment Stirs Angry Protests in South Korea, The New York Times, 13 March 2004, http://www.nytimes.com/2004/03/13/world/president-s-impeachment-stirs-angry-protests-in-south-korea.html?_r=0 (last accessed on 10 February 2017); *Hwa-ju Yi*, 'T'anhaek pandae' 65% [65% against impeachment], Hankyoreh Sinmun, 10 March 2004.

75 *Kim*, note 64, p. 97.

76 See *Chang*, note 8, p. 288.

77 See *Jeong*, note 11, p. 71-72; *Park*, note 8, p. 258; *Kwang-Yeong Shin*, Limited Democratization and the Future of Democracy in Korea, in: Asian New Democracies: The Philippines, South Korea and Taiwan Compared, edited by Hsin-Huang Michael Hsiao, Taipei 2008, p. 157.

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misuse of the impeachment power due to the fact that at one point, the NMDP issued an ultimatum to President Roh not to impeach him if he apologized for his alleged misdeeds. Similarly, the GNP revealed its disguise by calling for cancelling the impeachment after mass demonstrations by the people against the motion. Moreover, in response to the strong protests of the people in both parties, the forces that had pursued the impeachment motion most actively were isolated.[78] Thus, in both cases, the accusers themselves proved to find the alleged malfeasance insufficiently grave. In other words, the initiation of the impeachment motion against President Roh is a representative case of willfully mobilizing legal reasoning for the achievement of political aims,[79] or using impeachment power as a "constitutional weapon";[80] however, public opinion opposed the impeachment motion. Not only were there repeated opinion surveys that showed that the people did not agree with the anti-Roh alliance that his misdeeds constituted a sufficiently severe offense to impeach him, but mass demonstrations also took place, where people of all walks of life peacefully participated to show their active protest against the impeachment motion. In addition, for the most part, the media was critical of an impeachment of Roh. Ultimately, in mid-April 2004, the people expressed their will as the electorate in the general elections that took place before the ruling of the Constitutional Court by voting 103 OUP candidates into parliament, while the DP shrank to merely nine seats. In other words, the demos had spoken quite clearly in favor of Roh and against the abuse of power by the liberal-conservative political elite.[81]

F. Impeached and deposed – President Park Geun-hye (2016/17)

Park Geun-hye won the presidential bid in 2012 mostly because there was no potent contender on the side of the liberals and because a large share of the Korean voters longed for a savior who solves all problems. This was supported by the fact that many older people saw her respected father and mother in her and came to believe her claim that she lived for the nation's good only.[82] Also, the fact that she was neither married nor had children made people believe that there was little danger of corruption of family members or among relatives, as had been the case with almost all of her predecessors. Finally, as the first woman in the presidential office, her bid also promoted progressiveness and liberalism, which she herself advocated by relating herself to Germany's Angela Merkel as well as to Britain's Margaret

78 See *Park*, note 8, p. 266; *Chong-bin Yun*, 17-dae ch'ongsŏn-esŏ nat'anan t'anhaekchaengjŏm-ŭi punsŏk [Analysis of controversial impeachment issues at the 17th general elections], Han'gukchŏngdanghakhoebo 4 (2005), p. 225.

79 See *Park*, note 8, p. 267.

80 See *Park*, note 8, p. 257.

81 See *Chang*, note 8, p. 287.

82 Park Geun-hye is the daughter of former President Park Chung-hee, and she served him during his authoritarian rule as a First Lady when she was only 20 years old because her mother died in an assassination attempt on her father. Park vanished from the political stage after her father was assassinated in 1979, and she became a leading figure of the conservative Grand National Party after she had entered politics at the end of the 1990s when the conservatives fell into crisis.

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Thatcher. Moreover, Park's campaign successfully coopted issues such as elderly welfare, employment, and economic democratization, facilitating her support from voters.

After she took office in 2013, it soon became clear that her capacities as a state leader were crucially limited. Her domestic as well as her foreign policies were disappointing and disillusioning to many.[83] Park heavily and exclusively relied on a very small circle of close aides that consisted either of those who had served under her father or who belonged in one or another way to the group of people who strongly supported her father's legacy. In particular, the way Park handled the (founded) allegations of the election rigging of the 2012 presidential election, the Sewol ferry disaster in 2014, and the Blue House leakage (2014) were criticized. Cases of state repression included restriction of press freedom, police violence, and blacklisting artists and civil society organizations critical of the government. Regarding foreign policy, the Park administration focused extensively on the interest of the US, while respectively neglecting the promotion of relations with neighbor countries, such as China, Japan, and North Korea. Ultimately, this not only led to worsening foreign relations in the region but also to negative implications domestically; however, the scandal surrounding Choi-gate was crucial in inducing the initiation of the impeachment motion against her. In October 2016, media reports began to uncover that President Park might have been involved in conspiring with her long-term friend Choi Soon-sil in extorting money of more than around $70 million and might have received favors from large domestic companies, such as Samsung, SK, and Lotte, for funding the Mir Foundation as well as the K Sports Foundation.

The Korean public was outraged and began Saturday demonstrations that grew to mass demonstrations of millions of citizens demanding her apology and resignation. The public prosecutor, the parliament, and the special prosecutor investigated the case simultaneously. Ultimately, on December 3, 2016, 171 lawmakers of the total 299 members of parliament of the three oppositional political parties – TDP, PP, and JP[84] – proposed an impeachment motion against President Park. The actual distribution of seats in parliament was in favor of Park, with 129 members belonging to her governing party, New Frontier Party (NFP; *Saenuridang*),[85] which would make it difficult for the opposition to reach the necessary two-thirds share of at least 200 votes; however, on December 9, 234 lawmakers, including members of the NFP, approved the impeachment, while only 56 voted against the motion.[86] No less than 62 lawmakers of Park's NFP dissented from party discipline to vote for the impeachment of the president. Park was immediately suspended from her duties, and Prime

83 See for example *Jamie Ducette and Se-Woong koo*, Pursuing Post-democratization: The Resilience of Politics by Public Security in Contemporary South Korea, Journal of Contemporary Asia 46 (2016), p. 198-221.

84 The acronyms stand for Together Democratic Party (TDP), or *Tŏburŏminjudang,* People's Party (PP), or *Kungminŭidang*, and Justice Party (JP), or *Chŏngŭidang*.

85 The NFP is the successor party of the GNP.

86 Two lawmakers abstained from voting (*kigwon*), one lawmaker did not attend the assembly, and seven votes were declared void.

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Minister Hwang Kyo-ahn took over as acting president instead. The dissenting lawmakers belonged to non-Park factions that had been in constant conflict with the influential pro-Park faction, and they obviously anticipated the upcoming presidential election. They later split from the NFP to form the Upright Party (URP; *Parŭnjŏngdang*), while the pro-Park faction gave up the NFP and established the Korean Liberty Party (KLP; *Han'gukchayudang*).

The impeachment motion[87] listed serious allegations, such as having breached the constitutional principles of popular sovereignty (Art. 1), representative democracy (Art. 67, Sec. 1), and the duty to comply with and protect the constitution in executing her power (Art. 66, Sec. 2 and Art. 69) by allowing her close aide Choi Soon-sil to wield influence over state affairs that are limited to the elected president. By allowing Choi to decide the nomination and resignation of civils servants, such as ministers and vice-ministers, Park allegedly violated the constitutional principles of the professional civils servants' system (Art. 7), the president's (sole) right to nominate civil servants (Art. 78), and the principle of equality (Art. 4). In addition, Park was said to have pressured private companies to extort funds and intervene in internal decisions, such as with personnel, which violates the constitutional guarantee of property rights (Art. 23, Sec. 1), market economy order (Art. 119, Sec. 1), and the freedom to choose one's occupation (Art. 15). The motion stated that Park violated freedom of the press (Art. Art. 21, Sec. 1) when she forced the president of a media outlet to resign for having made documents public that insinuated the illegal activities of Choi. Later, the Special Prosecutor's investigation found that Park also ordered the creation of blacklists to exclude critical artists and cultural events from state funding, which the parliament viewed as evidence of her violations of the constitutional principle of freedom of expression as well as the freedom of conscience (Art. 19), academic freedom, and freedom of the arts (Art. 22). Furthermore, Parks was accused of failing to protect citizens' lives (Art. 10) in the 2014 Sewol ferry disaster that killed over 300 people. The eight cases of bribery and/or extortion of private businesses that the motion listed constitute violations of the Criminal Code, such as the crime of accepting bribes (Art. 129, Sec. 1 and Art. 130), misuse of power (Art. 123), and coercion (Art. 324) as well as a violation of the Act on the Aggravated Punishment, etc., of Specific Crimes (Art. 2, Sec.1, No. 1).

The Constitutional Court held 17 trials during three months and heard 26 testimonials. Of the 13 grounds for impeachment, the Constitutional Court deliberated on five accusations: violation of popular sovereignty and the rule of law due to interfering in state affairs by organizations not officially constituted, misuse of presidential powers, violation of press freedom, violation of the duty to protect the lives of citizens, and violations of criminal law concerning bribery. Ultimately, Park was found guilty of supporting Choi Soon-sil in intervening in state affairs, thereby violating the constitution as well as the law. The Constitutional Court confirmed that by using her presidential power to make several corporations

87 *National Assembly*, Taet'ongnyŏng (Pak Kŭn-hye) T'anhaeksoch'uŭigyŏlsŏ [Presidential (Park Geun-hye) Impeachment Bill], Seoul 2016.

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contribute to foundations established by Choi Soon-sil, Park violated these enterprises' constitutional rights to free operation and property and thus various criminal laws.[88] The Court also found that Park violated her constitutional duty to maintain state secrets when she presented Choi with classified documents on matters such as human resources, president's schedules, and even foreign policy.[89] The justices pointed out that Park repeatedly abused her presidential powers for personal purposes, which constitutes a grave violation of law.[90] Moreover, the Constitutional Court held that Park constantly attempted to conceal the existence of Choi throughout her incumbency and thereby obstructed legislative and judicial oversight as well as checks by civil society.[91] By doing so, the justices found that Park did not show any will to fulfill her duties of protecting the constitution, and thus she betrayed the people's trust.[92] Overall, Parks misdeeds amounted to the violation and defamation of the principle of representative democracy and the rule of law, which is a grave violation of the president's duty to act in the interest of the public.[93] In addition, three of the eight justices added individual opinions to point out that Park acted irresponsibly in managing the Sewol Ferry disaster by not acting in accordance to the presidential duty of diligently executing her duties[94] and that misuse of presidential power, collusion of politics and business, and interfering in state affairs by unelected persons must be eliminated in the future.[95]

While Park before the impeachment had made several appearances on television to react to the ever-increasing accusations and stated that she would cooperate with the investigating agencies, she not only rejected giving testimonials but also rejected all of the allegations brought forward by the parliament's investigative committee, the prosecutor, the special prosecutor, and the Constitutional Court. This attitude of complete neglect was also demonstrated by the attorneys representing Park in the Constitutional Court, who behaved in an irritating manner. Meanwhile, demonstrations continued even after successfully impeaching the president for almost half a year until Park's removal in March 2017, and the number of participants even grew. Also, opinion polls between December 2016 and March 2017 showed that the majority of the public (ca. 77-81%) supported the removal of President Park.[96] Right before Park's deposition, her approval rate had decreased to a mere

88 *Constitutional Court*, note 54, p. 44-46.

89 Ibid., p. 47.

90 Ibid., p. 55.

91 Ibid., p. 56.

92 Ibid., p. 57.

93 Ibid., pp. 56-57.

94 Ibid., pp. 58-47.

95 Ibid., pp. 74-88.

96 *Hye-jŏng Choe*, Kungmin 77%-ga 'Parktaet'ongnyŏng t'anhaek ch'ansŏng [77% of the people support the impeachment of President Park], Hankyoreh Sinmun, 4 March 2017, p. 1.

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4%,[97] and after Park's removal, a majority of more than 85% supported the deposition of their (former) president.[98]

G. Conclusion

The purpose of this article was to examine the institution of presidential impeachment in Korea by comparing the three impeachment efforts since democratization. The analysis showed that all three cases included factors that are required for presidential impeachment put forward by the existing literature on cases of other world regions (see table 2). Despite clear breaches of the constitution and laws, in 1992, an impeachment against President Roh Tae-woo was seriously considered but ultimately not initiated because there was neither a scandal nor a public opinion in favor of it. Moreover, the opposition only held a minority parliament, and finally opted not to initiate a motion to avoid endangering its success at the upcoming presidential election. It is reasonable to suggest that if only one or two of these factors would have been favorable, at least the initiation of an impeachment motion would have been probable. Twelve years later in 2004, President Roh Moo-hyun, de jure a powerful president, de facto was perceived by the opposition and his former party as a weak outsider who challenged the vested political elite. He acted resolutely against any type of accusation from the opposition but also from official organs, such as the National Election Commission, and his new party accounted for a minority in parliament, making Roh vulnerable to partisan usage of impeachment power. President Roh was not subject to any additional investigations, and he did not neglect the facts he had been accused of but did object to their unconstitutionality. Because Roh was not entangled in a scandal and because the majority of people were against an impeachment, which they expressed through mass demonstrations as well as in the general elections right before the court's ruling, Roh was impeached but not removed from office; however, another twelve years later, in the case of President Park Geun-hye, almost all factors were in place, consequently leading to her impeachment and also to her deposition. First, Park had not only weakly performed in domestic as well as international politics, but it was also revealed that she was entangled in a large-scale scandal of unprecedented quality. The offenses were grave and the accusations credible, so she was investigated not only by the legislature but also by the public prosecutor as well as the special public prosecutor. Public opinion was against her from the beginning, and people massively and continuously demonstrated in mass protest rallies against her. Park's attitude and behaviors, which she displayed when reacting to the allegations be-

97 *The Guardian*, Choi-gate: South Korean president's approval rating tanks at 4% , The Guardian, 25 November 2016, https://www.theguardian.com/world/2016/nov/25/choi-gate-south-korean-presidents-approval-rating-tanks-at-4 (last accessed on 12 March 2017).

98 *Yu-mi Chŏng*, Pak chŏn taet'ongnyŏng chukka susa 68.4%, kusuk susa 61.2% [68.4% for immediately investigating ex-President Park, 61.2% for arresting her], SBS News, 14 March 2017, http://news.sbs.co.kr/news/endPage.do?news_id=N1004091321&plink=COPYPASTE&cooper=SBSNEWSEND (last accessed on 18 March 2017).

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fore the impeachment, after it, and even after her removal from office, were characterized by explicit ignorance of facts, obstruction of investigations by the national assembly, prosecution, and special prosecution, and implicit rejection of the Constitutional Court's ruling.

Table 2. Summary comparison of the main factors influencing the three impeachment efforts[99]

	Presidential attitude/behavior	Political party shield	Public opinion	Gravity of offenses (scandal)
Roh Tae-woo (1992)	+	+	+	+
Roh Moo-hyun (2004)	+	–	+	+
Park Geun-hye (2016/17)	–	–	–	–

In addition to a general concurrence of the factors leading or not leading to impeachment and removal of the president provided by the previous literature, in particular, the two recent presidential impeachment instances in Korea represent opposite cases regarding their initiation motives, processes, and outcomes. The failed attempt to remove President Roh Moo-hyun in 2004 was apparently a representative case of misuse of the impeachment power by the opposition as a "political weapon" for "retribution." On the other hand, the successful impeachment and deposition of President Park Geun-hye in 2016/17 constitutes a case of legitimately resorting to the institution of presidential impeachment for protecting Korea's democracy against its enemies from within. In this respect, it is important to note the different order of events. In the case of Roh, the impeachment motion by the opposition and government party came first, and then mass demonstrations arose opposing the impeachment; however, in the case of Park, mass demonstrations for removal arose first, and only afterwards the majority of the National Assembly's members initiated and approved the impeachment motion. Thus, people were against the impeachment of Roh in 2004 because they believed an impeachment was unreasonable, but they supported the impeachment of Park in 2016 because they believed it necessary. In both instances, the people played a crucial role in pressuring political parties to fulfill their duties. In 2004, the people also voted for Roh's party during the general elections to signal their political will to the Constitutional Court. In 2016, the people demonstrated to force Park to step down, which ultimately caused the parties to impeach Park.

In other words, in both cases, the political parties were not able or willing to perform their functions of conveying the will of the people or resolving the issues at hand in the arena of parliament before the situation escalated to a critical degree at which impeachment became an option. The legislature failed to practice its oversight function towards the executive, which can mainly be explained as a result of the distorted institutionalization of

99 A "+" stands for conditions favorable for the president, while "–" stands for conditions unfavorable for the president.

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weak political parties vis-à-vis an overly strong president—a well-known and often diagnosed shortcoming of the institutionalized politics of Korea that is closely related to other characteristics of Korean politics, such as its particularly antagonistic cleavage structure as well as strong traditions of regionalism, personalism, factionalism, and collusion between business and politics.[100] By the same token, the people of Korea demonstrated their strong political awareness and will to a degree that led to international praise and envy. The impressive power demonstration of the people is undeniable; however, it also indicates that this ad-hoc democracy is not feasible in the long-term and needs to be reformed accordingly. The quality of democracy is continuously threatened, and the people are forced to fulfill the responsibilities of politicians too often. The institution of presidential impeachment in Korea works well in protecting democracy; however, the presidential government system should be considered to be changed in the future. As one of the Constitutional Court's justices emphasized, the historical impeachment and deposal of Park Geun-hye presents an opportunity to once and for all do away with the bad habits of misuse of presidential power, collusion of politics and business, and interfering in state affairs by unelected persons.[101]

100 For a good overview see *Jang-Jip Choi*, Democracy after Democratization. The Korean Experience, Stanford 2012.

101 *Constitutional Court*, note 54, p. 87.

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