

Out of Power and On Trial: The Corruption Trials of Former Leaders in East Asia

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Abstract

In the last four decades, ten former national leaders in East Asia have been placed on trial for crimes committed while they were in office. The alleged crimes, some economic, some political, were also presented as abuses of office. The purpose of these trials was less to advance the rule of law than to serve the political interests of these former leaders' opponents. They had three purposes: to seal the leaders' removal from power, to cast doubt on the capacity of the democratic system to elect honest leaders, and to give retrospective justification to removals from power that breached normal procedures.

Keywords: East Asia, Southeast Asia, political trials, elite rivalry, judicial discretion, political vengeance

Introduction

Since the late 1970s in Eastern Asia, at least ten former heads of state or heads of government have been brought before the courts to face criminal charges based on allegations of corruption. Tanaka Kakuei (Japan), Chun Doo-hwan (Republic of Korea, hereafter Korea), Roh Tae-woo (Korea), Chen Shui-bian (Taiwan), Nambaryn Enkhbayar (Mongolia), Joseph Estrada (Philippines), Gloria Macapagal Arroyo (Philippines), and Thaksin Shinawatra and his sister and political successor Yingluck Shinawatra (Thailand) have all faced prosecution. Korea's ousted former President Park Geun-hye is currently awaiting sentencing since her impeachment followed by arrest in March 2017. Setting aside the unresolved case of Park, these prosecutions for the most part led to the conviction of the accused and in most cases to harsh sentences, including prison terms and even death. Subsequently, however, all of these sentences were significantly reduced by various forms of remission.

The trials under discussion are scattered over four decades from 1976 to the present. The earliest was the trial of former Japanese Prime Minister Tanaka Kakuei over his alleged acceptance of \$1.8 million in bribes from the Lockheed Corporation to facilitate the purchase of Lockheed aircraft by a Japanese airline. He had resigned as prime minister in November 1974 in response to other corruption allegations. He was found guilty and was sentenced to four years in prison and a fine of 500 million yen.¹ Chun Doo-hwan (Korean president, 1980-1988) and Roh Tae-woo (Korean president, 1988-93) were tried in 1996 and found guilty of murder (relating to the coup d'état of May 17, 1980, and the subsequent 1980 Gwangju massacre), insurrection (relating to the military coup of December 12, 1979) and bribery. Chun received a death sentence and Roh a sentence of 22 years and six months.² Chen Shui-bian, who was president of the Republic of China or Taiwan for two terms (2000-2008), was charged with corruption, the investigation and trial commencing after he had left office. He was found guilty and received a life sentence and a fine of NT\$200 million.³ Nambaryn Enkhbayar, Mongolian president from 2005 to 2009, was charged with corruption in 2012, related to his government's program of privatizing state assets. He was sentenced to four years' jail time and a fine.⁴

Joseph Estrada, who had been ousted as Philippine president in 2001, was charged with 'plunder' in 2007. He was found guilty and sentenced to life imprisonment.⁵ His successor, Gloria Arroyo (2002-2010), was herself charged in 2011 with electoral fraud and plunder but was acquitted in 2016.⁶ Thaksin Shinawatra, prime minister of Thailand from 2001 to 2006, was removed from office in a military coup. He fled abroad and was tried in absentia for abuse of power and sentenced to two years in prison.⁷ His sister Yingluck Shinawatra, who took over the leadership of his movement and served as prime minister from 2011 to 2014, was also removed from office by the constitutional court and sentenced to five years' jail *in absentia* in September 2017 for her mismanagement of a rice subsidy scheme which was set up to help farmers.⁸ Park Geun-hye was elected Korean president in 2012, but was removed by impeachment in March 2017 and was subsequently arrested and charged with eighteen counts of bribery, abuse of power, and other offences.⁹

The trial of deposed leaders is not a new phenomenon. Such trials differ from impeachment, the removal of an elected ruler on the basis of a trial conducted by the legislature. Impeachment trials have the purpose of removing an incumbent from office, whereas the trials discussed in this paper pursued leaders after they had lost office. In the mid-17th century, the deposed English king, Charles I, was tried on charges of high treason, convicted, and executed. At the end of the 18th century, the deposed French King Louis XVI was tried on charges of attempting to impose tyranny. He too was found guilty and executed. Both trials marked a dramatic shift from monarchical rule to forms of parliamentary rule. The crimes for which the two kings were charged and executed were crimes of state; they reflected changes in the standards of behaviour that were expected of ruling monarchs in an era of emerging popular sovereignty. Japan's wartime leader Tojo Hideki was tried at the International Military Tribunal for the Far East in 1946-48 along with other Japanese wartime leaders and was found guilty of war crimes and crimes against peace. He was hanged in 1948. Zulfikar Ali Bhutto, former prime minister of Pakistan, was tried in 1977-78 for the murder of a political opponent and was subsequently executed. Sheikh Hasina, former prime minister of Bangladesh, was tried for extortion and

murder in 2007-2008, though the charges were apparently dropped after she won the next election. And Khieu Samphan, former head of state of Democratic Kampuchea, was arraigned for crimes against humanity in 2007, three decades after the crimes were committed. In 2014 he was convicted and received a sentence of life imprisonment.

The East Asian trials, however, are distinctive because of their number—nowhere else in the world have so many former leaders been prosecuted for actions taken while in office¹⁰—and because of the extensive political implications of the prosecutions. Although trials of former rulers have often been conducted under the claim that all persons should be subject to the rigours of law, such prosecutions are always intensely political. They have commonly had three associated purposes: to seal the removal from power of a leader who may have the potential for a comeback, to cast doubt on the capacity of the democratic system to elect honourable leaders, and to give retrospective justification to a removal from power that did not happen according to normal procedures. The modest sentences imposed in most cases suggest, however, that the trials have not breached a general pattern of elite solidarity.

In this paper, we argue that aims of advancing the rule of law and of enhancing the accountability of political leaders, although not absent, have been secondary to political purposes in the staging of these trials. The principal effect of these trials has been to create a new forum within which elite rivalries and accommodations are fought out and worked through. Although the trials have consistently been presented as reflecting an enhanced rule of law in countries emerging from authoritarianism, or even upgrading the level of democracy in the countries concerned, there has been a high level of political discretion in both the decision to prosecute and in the management of any sentence imposed upon these convictions. It would be hard to argue convincingly that any of these cases reflects the impartial operation of legal processes. The public is both audience and participant in this process, but is not in control. Although formulated as setting a high standard that all subsequent leaders will be obliged to uphold, they have in fact been one-off events. By virtue of the political discretion that they entailed,

moreover, those trials often brought law into disrepute as a tool of political vengeance ('victors' justice').¹¹

Forestalling a Comeback

In the democratizing societies of East Asia, the sense of historical trajectory—of movement from authoritarianism towards democracy—has long weighed heavily on politics. Japanese democratic politics operated under the shadow of a political accommodation put in place by U.S. occupation forces and Japanese elites after the Second World War, under which a low international profile and a political system based on patronage were the price of expunging Japan's imperialist past. This accommodation had aroused massive, violent protests in 1960 at the time of revisions to Japan's Treaty of Mutual Cooperation and Security with the United States. In Korea and Taiwan, authoritarian regimes from the 1950s to the 1970s provided the context for both rapid economic development and a growing appetite for freedom and democracy. In both countries, however, political opinion was sharply divided between those who supported or acquiesced to anti-communist authoritarian governments as a means for continued growth, and others who pushed for all-out 'people power' movements for bottom-up democratization. Similarly, in the late 1980s, Mongolia emerged abruptly from communist authoritarianism and faced the dilemma of whether the reformed communist party was the most suitable force to lead the country in its changed circumstances.

The repressive Cold War-era Marcos regime in the Philippines (1965-1986) had challenged the power of the country's old oligarchy without delivering peace or prosperity, but the promise that it offered of firm government to remedy the country's ramshackle governance was still appealing. Thailand's long run of military regimes had largely ended in 1973, and subsequent democratic governments had delivered impressive economic growth, with the country being widely identified as a 'Newly Industrializing Country' (NIC) expected to follow in the path of the celebrated 'Asian Tigers,' which included Korea and Taiwan. However, growing economic inequality and public impatience with the remnants

of authoritarian practice had created space for new populist politics. Politics in all five countries were thus not just about the classic political questions defined by Lasswell of who gets what, when and how,¹² but rather raised deeper, largely ideological questions about the direction in which the national polity would proceed.

Although ideological disagreement is not impervious to evidence, it is often resistant to political resolution. Each of the national leaders who was put on trial stood before the court not just because of his or her personal political status but because he or she stood for deeper forces within society. Already out of power, they did not for the most part present the threat of a political comeback. Rather, an important aim of the court cases was to discredit the broader political current of which they were leaders. Chun Doo-hwan, Roh Tae-woo, and Park Geun-hye, for example, all stood for the Korean tradition of anti-Communist development represented by President Park Chung-hee (father of Park Geun-hye), who throughout his almost 18-year authoritarian rule (1961-1979), presided over the country's accelerated modernization. Prosecuting Chun and Roh for murder, treason and bribery was a vivid means of reminding the Korean public that the developmental regime had been based on the authoritarian repression of dissent in the name of national discipline. Prosecuting all three, Chun, Roh, and Park, for corruption was a strong reminder that lack of political accountability even under the façade of anti-Communism and development could easily slide into impunity for venal acts of self-enrichment.

Chen Shui-bian had been Taiwan's first president not to come from the Kuomintang (KMT) party, which was dominated by Nationalist forces who had retreated to Taiwan in 1949 at the time of the Chinese Communist Party's victory on the mainland. The party, which had controlled the island's politics since this retreat, remained strongly committed to a single China, a view also held by the Chinese government in Beijing, which regards Taiwan as a rebellious province. A significant group among the native Taiwanese of the island, however, has aspired to independence and international recognition. These Taiwanese saw Chen as their champion. Discrediting his rule as corrupt was thus a tool used by his KMT successors to discredit the independence movement.

Enkhbayar's prosecution in Mongolia, which had taken place shortly before the 2012 national elections, was used by his successor Tsakhiagiin Elbegdorj as a technical ground to disqualify him from participating in politics again. However, deeper issues were at stake as well because Enkhbayar had been leader of the former ruling communist Mongolian People's Revolutionary Party (MPRP). Discrediting him, therefore, was a means to re-associate the MPRP with the abuses of the Soviet era.

Thaksin and Yingluck, in contrast, stood for the poor of Bangkok and the poor farmers in the north and east of the country, groups that had not shared in the growing prosperity that showed up in Thailand's national-level statistics. They stood also for a growing lower middle class and an entrepreneurial elite that felt politically excluded from the decision-making circles of the old Bangkok elite. Disciplining Thaksin and Yingluck by legal means made them technically ineligible to participate in politics again; it also presented elite members of the *nouveau riche* such as Thaksin as morally unfit to present themselves as champions of the poor. Joseph Estrada in the Philippines, too, had been a champion of the poor, one of a series of so-called 'white knights'—charismatic, populist politicians not drawn from the country's entrenched landed oligarchy—who rose to power on promises of 'no-nonsense' tackling of corruption and abuse of power. The old elite, therefore, had strong incentive to demonstrate that Estrada was no better than they and that resorting to such outsiders was futile. Estrada's successor, Gloria Arroyo, by contrast, was drawn from the heart of the old elite, but she was rather a sacrificial lamb, offered up to public indignation as a gesture to show that the oligarchy was not wholly blind to corrupt behaviour. A 2007 poll of Filipinos identified her as the most corrupt Philippines president of all time.¹³

Rebuking the Democratic System

All the defendants, except Chun Doo-hwan who obtained his presidency through two separate military coups in 1979 and 1980, had been democratically elected, and their trials were in some respects intended as a rebuke to the electorate, making a dramatic statement that the

voters had got it wrong. In this respect, the trials acted as a brake on the democratization process underway in each of the countries involved, except in Japan. Estrada, Park, Thaksin, and Yingluck had become national leaders in landslide electoral victories. Estrada had obtained 39% of the vote with the Philippines' biggest-ever margin, and in Korea, Park Geun-hye won an absolute majority with 51.6% of the vote, the only one out of Korea's seven democratically elected presidents since 1987 to achieve this. In the 2001 elections, Thaksin had obtained 40.6% of the vote and 248 seats in a 500-seat parliament; in 2011, Yingluck's party had won 265 seats and 48% of the popular vote, an unusually strong performance in Thailand's fragmented political system.

Factor	Tana ka	Chun	Roh	Park	Chen	Enkh- bayar	Estrada	Aroyo	Thaksin	Ying luck
National leader democratically elected	Y	N	Y	Y	Y	Y	Y	Y	Y	Y
'People power' election context	N	N	Y	N	N	N	Y	N	Y	N
Elected by majority/minority of vote (%)	60% seats LDP	NCD 100%	37%	51.6%	39%	95% Seats	40%	32%	248 seats	PTP 265 seats
Abuse of power/corruption	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
People presidency support/ condemnation	S	C	C	S to C	S70% To C	S	S	N	1. S 2. C	1. S 2. C
Trial(s) result of politics/court/people	Co	Pe	Pe	Pe-Po- Co	Po Pe	Co	Po	Po	Po (MC)	Po (MC)
Original Sentence (yrs)	4	Life	22.5	Pend-ing	Life	7	Life	0	2 <i>in absentia</i>	5 <i>in absentia</i>
Commuted/pardoned sentence (to yrs)	0	0	17 To 0	N/A	20	To 4 To 2.5 To 0	0	0	-	-
Sentence served (yrs)	0	1.7	1	N/A	4+MP	0.08+MP	0.12	.06 4.5MP	In exile	In exile
Commutation/pardon nullified accountability	Y	Y	Y	N/A	Y	Y	Y	Y	N	N
Trial(s) affirmation of accountability to the people	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Trial(s) carried out demands of "people power"	N	Y	Y	Y	N	N	Y&N	N	Y&N	Y&N

Table 1. Map of the Common Patterns of Ten Asian Leaders' Incumbencies and Trials

*Source: Compiled by the authors based on articles on these leaders listed in the bibliography

*Note: MP – Medical Probation, MC – Military Coup, C -Condemnation, S – Support

Table 1 lists all the nominated national leaders, other than Chun, as having been democratically elected, albeit in four of nine cases with less than a majority of the total vote in first past-the-post elections, and three

by appointment as leader of the party with the majority of seats. Massive 'people power' movements affected only three of these elections, those of Roh, Estrada, and Thaksin. Nevertheless, given the respective democratic processes of each of the countries involved, it is fair to say that the elections of eight of the above nine national leaders were substantially democratic and reflective of the people's choice. Presenting these leaders as having acted illegally thus offered a message that the people got it wrong in terms of their choice of leader.

Regarding the people's subsequent support for or condemnation of their national leader, however, in the three cases of Tanaka, Thaksin, and Enkhbayar, the people maintained their strong support throughout the leader's incumbency despite the allegations, often due to the leader's effective reform policies and core support base, and thus the people continued to 'get it wrong.' In other cases, public opinion shifted to condemnation of the leader, whether by public protest, by political action, through the legal system, or by non-democratic means such as a military coup. Hence, the people in those cases came to recognise that they had 'got it wrong' in their choice of elected leader. In regard to how the people got it wrong, the patterns are not necessarily the same, especially in terms of how that wrong persisted as each case moved through inherent contradictions to sentencing, imprisonment, and the subsequent commutation of sentences. Tanaka, Thaksin, and Enkhbayar retained strong support from their people their respective incumbencies. As the popular and democratically elected 40th Prime Minister of Japan from July 1972 to December 1974, Tanaka, for example, was a central figure in several political scandals, especially the Lockheed bribery scandals exposed in 1976, which led to a four-year prison sentence in October 1983. Yet, public support for Tanaka increased despite his trials and thus he was able to make an appeal against the Supreme Court's decision. He subsequently won the 'Second Lockheed Election' of December 1983, with an unprecedented margin of more votes than any other candidate in the country. Similarly, the massive demonstration led by Enkhbayar's supporters and his Party led to his release, albeit temporarily, before he was sentenced and then pardoned on August 1, 2013 by President Tsakhiagiin Elbegdorj. In the case of Park, the Korean

prosecutors requested a 30 year prison sentence for her on February 27, 2018, and she is expected to be sentenced in late March or early April.

Overall, the trials of Thaksin and Yingluck demonstrated the inherent contradiction not only in the rule of law, but also in the people's continuous support of their national leader, while the trial and release of Enkhbayar showed the intrinsic ambiguity in sentencing, imprisonment, and the commutation of sentences.

Legitimizing Non-Electoral Political Change

Chun, Roh, Chen, Enkhbayar, and Arroyo were all charged after they had left office at the normal expiration of their terms. Tanaka was charged while still a member of the Japanese Diet, but was never removed from parliament. Based on his electorate's support, furthermore, Tanaka dramatically enlarged his 'faction' in the Diet from 97 supporters in 1981 to an unprecedented 114 following the election of December 1983,¹⁴ and ultimately avoided his impending jail sentence, dominating politics from behind the scenes of the administrations of two successive prime ministers from his Democratic Liberal Party until he suffered a cerebral haemorrhage in February 1985. Estrada, Thaksin, Yingluck, and Park, on the other hand, were removed from office by irregular means. In late 2000, impeachment proceedings had begun against Estrada in the Philippines Senate on the basis of accusations that he had profited massively from illegal gambling operations. Early in 2001, however, it began to seem likely that Estrada supporters in the Senate would derail the impeachment process. In response, his opponents organized massive public protests, identified at the time as 'People Power II' or the Second EDSA Revolution (the first EDSA Revolution was the 'People Power' revolution that had toppled President Ferdinand Marcos in 1986). At the same time, leading figures and institutions, including the army, announced that they had withdrawn their support for him. Estrada did not resign, but his presidency ended in effect when the Supreme Court declared the presidency vacant and authorized the swearing in of the vice-president, Gloria Macapagal Arroyo, as his successor.

Thaksin's removal from power in Thailand in 2006 also followed

extensive public demonstrations by both the pro- and anti-Thaksin forces. The most notable of these would be the ‘Red-Shirt Uprising’ of 2010 in opposition to the yellow-shirted People’s Alliance for Democracy (PAD) or the National Liberation Alliance against the government of Thaksin.¹⁵ In fact, the Red-Shirt Uprising led to the victory of Thaksin’s sister Yingluck Shinawatra in the July 2011 general election. In 2013, Yingluck faced massive demonstrations against her government and she called a general election that she was widely expected to win. During the election period, when she was formally caretaker prime minister, however, the Thai constitutional court found that she had corruptly replaced the national security chief in 2011 with a member of her own party, and she too was ousted in a coup in early May 2014, backed by the anti-Thaksin PAD.

Somewhat similar to the removal of Estrada from office by irregular means initially started by ‘People Power II,’ Park Geun-hye in Korea was also ousted from office by irregular means initiated by anti-Park candle-holding public demonstrations, or what became known as the “Candlelight Revolution.”¹⁶ The highly ideological and political drama that took place every weekend from December 2016 to March 2017 was led by a coalition of 2,400 civic organizations and groups. These groups, whose members predominantly came from the middle class progressive, urbanite, younger generations, pushed reluctant lawmakers to vote to impeach Park in the National Assembly, a decision that was later unanimously upheld by the eight judges of the Constitutional Court.¹⁷ Counter to these anti-Park candle-holding ‘people power’ protests, however, pro-Park supporters’ national flag-waving protests also claimed to represent ‘people power,’ vowing to resist what they called a ‘political assassination.’¹⁸ These extremely adversative protests nevertheless followed broadly constitutional procedures, but the dismissal of the Korean president in this fashion was unprecedented and created not just a new forum within which political rivalries were fought through and worked out, but also a new form of departure from normal procedure, especially for legitimizing non-electoral political change. In fact, in his inauguration speech, President Moon Jae-in publicly pledged that he would open a new era of what he called the ‘Gwanghwamun [Plaza]

President,¹⁹ honouring and legitimizing the popular candle-bearing anti-Park forces. In all four cases of irregular removal, the subsequent trials provided a formal, although retrospective, legal confirmation of the appropriateness of removing the culprits from power.

Sentences and Their Aftermath

The trials of former leaders in Korea, Taiwan, Mongolia, the Philippines and Thailand were driven by powerful political motives, but those motives were largely satisfied by the guilty verdicts (where delivered), and by the pronouncement of heavy punishments. By contrast, the outcomes that followed the initial sentences were relatively mild. Tanaka Kakuei never went to prison. Rather, the appeals against his verdict dragged on until his death in 1993. Chun Doo-hwan was sentenced to death, but on appeal the sentence was reduced to life imprisonment and a fine of 220.5 billion Korean won (almost 207 million USD). He then spent about two years behind bars before being pardoned in late December 1997 by the then-outgoing President Kim Young-sam on the advice of President-elect Kim Dae-jung.²⁰ He is still alive, and has paid only about a quarter of his fine, with 167.2 billion won (156 million USD) remaining to be paid.²¹ Roh Tae-woo was fined 262.9 billion Korean won (about 246 million USD) and sentenced to 22 years and six months in prison, reduced on appeal to 17 years. He was released at the same time as Chun and cleared the remaining 23 billion won of his fine in September 2013.²² Joseph Estrada was sentenced to life imprisonment, but was pardoned by Gloria Arroyo. He was elected mayor of Manila in 2013. Enkhbayar was sentenced to seven years' imprisonment and fined a substantial sum, but the sentence was reduced to four years and then two and a half years. He spent one month in jail before being transferred to hospital for treatment. He was pardoned in 2013. Thaksin has been in self-imposed exile since 2008. Although he cannot return home, he claimed to have access to 100 million USD of his own funds.²³ Yingluck, too, went into exile rather than face the risk of jail. The only convicted leader not to receive relatively generous treatment is Chen Shui-bian. Although his life sentence was reduced to 20 years, he remained in jail for six years,

reportedly suffering from a serious decline in physical and mental health until he was released on medical parole in January 2015.²⁴ The meagre penalties actually incurred by the convicted leaders (with the exception of Chen in Taiwan) suggest that the trials were not driven by a desire to deter future leaders from similar actions. Certainly the sentences carried out could not have been expected to reform the convicted defendants. Nor did they take revenge on the former leaders (except in the case of Chen). Rather, the verdicts and sentences were declarative; that is, they were intended to establish guilt for public consumption.

It is difficult, however, to identify consistent long-term consequences of any of the trial processes. Park's impeachment set up victory for the left-leaning candidate Moon Jae-in of the opposition Democratic Party of Korea (DPK) in the presidential election of June 2017. The convictions of Chun and Roh may have contributed to the discrediting of Park Chung-hee-era authoritarianism and thereby to the election of the left-wing Kim Dae-jung as president of South Korea in December 1997. The nemesis of Mongolia's Enkhbayar, Tsakhiagiin Elbegdorj, remains in office at the time of writing, having won a second term in the 2013 presidential election. On the other hand, news of the harsh treatment of Chen Shui-bian by the ruling Kuomintang may have contributed to the subsequent election as president of Tsai Ing-wen in May 2016, also a member of his Democratic Progressive Party. In all these cases, however, the connection between trial verdicts and subsequent election results must be considered tenuous in the absence of significant evidence to the contrary. In Japan and the Philippines, moreover, it is hard to discern any long-term effects of the trials. Tanaka's political position weakened after his first trial and the size of his faction within the ruling Liberal Democratic Party shrank somewhat, but the main cause of the decline in his power was his incapacitation by a stroke in 1985. Joseph Estrada had a second political life in the important post of mayor of Metro Manila. Gloria Arroyo, who before her trial had been elected to the Philippine Congress in 2010 in a landslide victory, is believed to be too ill to contemplate a return to politics. Thaksin and Yingluck remain excluded from Thai politics by the force majeure of military rule, and their respective trials played only a subsidiary role in that impasse.

Rule by Law or Elite Rivalry?

In recent decades, legal-political scholarship has come to distinguish the term 'rule by law' unfavourably from the term 'rule of law'.²⁵ Whereas 'rule of law' refers to the benevolent regulation of human life by laws which are intended to reflect social values and which are applied equitably, 'rule by law' has come to refer to oppressive government that operates through harsh laws that have nevertheless been instituted through legitimate procedures, rather than simply relying on arbitrary authority.²⁶ Widely drawn subversion laws that criminalize what might otherwise be regarded as normal political behaviour are an example of such rule by law. A telling current example is Thailand's *lèse majesté* law, under which expressions of diminished respect for the royal family have led dozens of ordinary people to face harsh criminal sanctions. In this respect, rule by law is a manifestation of authoritarianism, that is, of the minute regulation of life by government in the interests of social and political order. The cases we examine in this article, however, do not imply a totalitarian or authoritarian impulse. Rather they reflect legal regimes which permit authorities a high degree of discretion in deciding which infractions to pursue. In these circumstances, the law offers a versatile toolbox of measures that can be deployed selectively against chosen enemies rather than consistently against all political opposition.

The trial of a former national leader is *prima facie* a dramatic affirmation of the rule of law, of the accountability of national leaders to their people, whether those leaders were elected or not. Such a trial establishes in a most dramatic way that no one is above the law and that even those who have enjoyed the power of privilege of high office can be brought to book for misdemeanours carried out during their time in power. Yet the ten cases in the five countries that we discuss here give little reason to believe that enforcing accountability was the principal motive of those who oversaw the prosecutions. Rather, in each case the trial was a weapon in the working out of intra-elite rivalries. The immediate purpose of each trial varied according to local political circumstances, but three general purposes are clear. First and most important, they were intended to discredit, disgrace or disqualify a key figure in one faction in order to reduce or remove the possibility of a

political comeback and to weaken the claims of that faction to legitimacy. Second, in several cases, they were intended to cast doubt on the capacity of the electorate to choose wisely by showing that the electorate's choice was unsuited to hold high office. And third, the trial, in some cases, was intended to provide a retrospective legal justification for the irregular removal of a leader from office by elite forces. The trials rather were consistently used as elements in a short-term political fix to consolidate political changes that had already taken place and that were unlikely to be reversed.

Notes

¹ Chalmers Johnson, "Tanaka Kakuei, Structural Corruption, and the Advent of Machine Politics in Japan," *Journal of Japanese Studies* 12, no. 1 (1986): 1-28.

² David M. Waters, "Korean Constitutionalism and the Special Act to Prosecute Former Presidents Chun Doo-Hwan and Roh Tae-Woo," *Columbia Journal of Asian Law* 10, no. 2 (1996): 461-90.

³ Peter Kien-hong Yu, *International Governance and Regimes: A Chinese Perspective* (London: Routledge, 2012): 130.

⁴ Theodore H. Moran, "Avoiding the 'Resource Curse' in Mongolia," Peterson Institute for International Economics Policy Brief PB13-18, July 2013, accessed December 4, 2017, <https://piie.com/publications/pb/pb13-18.pdf>.

⁵ Emile Van der Does de Willebois, Emily Halter, Robert Harrison, Ji Won Park, and J.C. Sharman, *Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It* (Washington DC: World Bank Publications, 2011), 202-05.

⁶ Floyd Whaley, "Philippines Clears Gloria Macapagal Arroyo, Ex-President, of Graft Charges," *New York Times*, July 19, 2016, accessed December 4, 2017, <https://www.nytimes.com/2016/07/20/world/asia/philippines-gloria-arroyo-corruption-dismissed.html>.

⁷ Björn Dressel, "Judicialization of Politics or Politicization of the Judiciary? Considerations from Recent Events in Thailand," *Pacific Review* 23, no. 5 (2010): 671-91.

⁸ Lindsay Murdoch, "Yingluck Shinawatra, Former Thai PM, Found Guilty, Sentenced to Prison," *Sydney Morning Herald*, September 27, 2017, accessed December 24, 2017, <http://www.smh.com.au/world/yingluck-shinawatra-former-thai-pm-found-guilty-sentenced-to-prison-20170927-gypqd9.html>.

⁹ Sun-young Lee, "KH Explains: Park Geun-hye's Trial," *Korea Herald*, November 27, 2017, accessed December 28, 2017, <http://www.koreaherald.com/view.php?ud=20171127000790>.

¹⁰ The former Italian Prime Minister Giulio Andreotti was tried for several offences, including murder, but was eventually acquitted of all charges. In 2009, former Israeli Prime

Minister Ehud Olmert was charged with fraud and tax evasion. He was subsequently convicted and served 16 months in prison. In 2012, the former Prime Minister of Iceland, Geir Haarde, was charged over his role in the 2008 financial crisis and was convicted only on a minor charge. In 2013, former Italian Prime Minister Silvio Berlusconi was tried on charges of having sex with an under-age prostitute and with using his office to cover up the incident, but was acquitted on appeal. In addition, a handful of prime ministers serving in presidential political systems have been prosecuted, including Serik Akhmetov in Kazakhstan and Ivo Sanader in Croatia, among other national leaders.

¹¹ See Richard H. Minear, *Victors' Justice: The Tokyo War Crimes Trial* (Princeton, NJ: Princeton University Press, 1971). Minear coined this term to refer to the purposes of the post-war trial of Japan's political and military leaders in Tokyo in 1946-48.

¹² Harold D Lasswell, *Politics: Who Gets What, When, How* (New York: McGraw-Hill, 1936).

¹³ "Arroyo 'Most Corrupt' Philippine Leader: Poll," *Reuters*, December 12, 2007, accessed December 30, 2017, <http://www.reuters.com/article/us-philippines-arroyo-idUSSP30281220071212>.

¹⁴ Johnson, "Tanaka Kakuei."

¹⁵ "Profile: Thailand's PAD," *Al Jazeera English*, April 17, 2009, accessed December 1, 2017, <http://www.aljazeera.com/news/asia-pacific/2008/09/2008935491945127.html>.

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