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Law and Development: Lessons from South Korea

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Abstract: South Korea has achieved unprecedented economic and social development in history. This country, which had been among the poorest in the world until the early 1960s, became one of the world's leading economies by the mid-1990s as demonstrated by high per-capita income and world-class industries. In the early 1960s, Korea had much of the characteristics shared by many developing countries today, such as prevalent poverty, low economic productivity, low levels of technology and entrepreneurship in society, insufficient capital, poor endowment of natural resources, over-population in a relatively small territory, and internal political instability and external threats to its security. Korea has successfully overcome these obstacles and achieved economic development within a single generation. Korea's success in economic development was also accompanied by the advancement of the rule of law and elective democracy by the 1990s. What are the causes of this unprecedented success? This article, applying a recently developed theory of law and development, explores the legal and institutional dimensions of Korea's development and draws lessons from its successful development.

Keywords: Korea (Rep. of), economic development, law and development, general theory of law and development, LFIs (law, legal frameworks, and institutions)

1 Introduction

This article explores the legal and institutional dimensions of one of the most successful cases of economic and social development in history; the development of South Korea ("Korea") from the early 1960s to the mid-1990s (Korea's "development period").¹ The economic policies that led to successful

¹ Korea initiated its five-year economic development plans in 1962 and completed its seventh five-year plan in 1996. In this period, Korea increased its GDP by an average of 8.75% per annum, while the world's average annual GDP increase for the corresponding period was 3.85%. (The GDP growth figures are calculated with real GDP figures at constant 2005 national

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development in Korea have been studied extensively,² but fewer studies have analyzed its legal and institutional dimensions.³ Developed from the author's previous work,⁴ this article attempts to fill this gap by drawing some insights and lessons from the successful development case in Korea.

Korea's success in development has indeed been unprecedented. Korea, a mid-sized country located in Northeast Asia between China and Japan,⁵ has a long history as an independent country of over 5,000 years or so.⁶ The country has gone through treacherous modern times, demonstrated by a period of brutal colonization by Japan (1910–1945), the contentious division of the country into North and South Korea (1945), and a devastating war (the Korean War, 1950–1953) that nearly destroyed the country.⁷ When Korea was

prices.) See Robert C. Feenstra, Robert Inklaar and Marcel P. Timmer, *Penn World Table Version 8.1* (13 April 2015), available at: <<http://www.rug.nl/ggdc/productivity/pwt/pwt-releases/pwt8.1>>, accessed 23 March 2018. See also World Bank, *GDP growth (annual %)*, available at: <<http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG>>, accessed 23 March 2018.

2 See, e.g. Alice H. Amsden, *Asia's Next Giant: Korea and Late Industrialization* (New York: Oxford University Press, 1992); Larry E. Westphal, *Industrial Policy in an Export Propelled Economy: Lessons from South Korea's Experience* (in *Symposia: The State and Economic Development*), 4 *Journal of Economic Perspectives*, no. 3 (1990), 41–59; Kwang-suk Kim and Joon-kyung Park, *Sources of Economic Growth in Korea: 1963–1981* (Seoul: Korea Development Institute, 1985); John Brohman, *Postwar Development in the Asian NICs: Does the Neoliberal Model Fit Reality?*, 72 *Economic Geography*, no. 2 (1996), 107–130; A.O. Krueger, “Trade Policies in Developing Countries”, in R.W. Jones and P.B. Kenen (eds.), *Handbook of International Economics*, vol. 1 (New York: North-Holland, 1984), pp. 519–569; T.N. Srinivasan, *Trade, Development, and Growth*, Princeton Essays in International Economics No. 225 (December 2001); G.K. Helleiner (ed.), *Trade Policy, Industrialization, and Development* (Oxford: Oxford University Press, 1992); and World Bank, *The East Asian Miracle* (New York: Oxford University Press, 1993).

3 Yong-Shik Lee, *General Theory of Law and Development*, 50 *Cornell International Law Journal*, no. 3 (2017), part IV, at 456–468; Katharina Pistor and Philip A. Wellons, *The Role of Law and Legal Institutions in Asian Economic Development, 1960–1995* (New York: Oxford University Press, 1999); and John Ohnesorge, *Developing Development Theory: Law and Development Orthodoxies and the Northeast Asian Experience*, 28 *University of Pennsylvania Journal of International Economic Law*, no. 2 (2006), 219–308.

4 Lee (2017), *supra* note 3, pp. 456–478.

5 In 1960, the Korean population was 25 million in a territory of 98,480 square kilometers (38,023 square miles). See *Encyclopedia of the Nations, Korea, South*, available at: <www.nationsencyclopedia.com/economies/Asia-and-the-Pacific/Korea-South.html>, accessed 23 March 2018.

6 For a history of Korea, see Kyung Moon Hwang, *A History of Korea* (New York, Palgrave Macmillan, 2016); Michael J. Seth, *A History of Korea: From Antiquity to the Present* (Lanham, MD: Rowman & Littlefield Publishers, 2010); and Carter J. Eckert and Ki-Baik Lee, *Korea Old and New: A History* (Seoul: Ilchokak Publishers, 1991).

7 *Ibid.*

liberated from the Japanese rule in 1945, established a sovereign government in 1948, and emerged from the destructive war in 1953, it was among the poorest countries in the world with a very low per-capita income and primitive industries with low productivity.⁸

Korea's economic status has radically changed since it embarked on a state-led, trade-based industrialization process in the early 1960s.⁹ Korea had much of the characteristics shared by many developing countries today, such as low per-capita income causing prevalent poverty, an economy relying heavily on primary, non-manufacturing industries, low levels of technology and entrepreneurship in society, insufficient capital, poor endowment of natural resources, over-population in a relatively small territory, and internal political instability and external threats to its security.¹⁰ Successfully overcoming these unfavorable conditions, Korea's economy progressed from once relying on low-productive primary industries and characterized by absolute poverty in the 1960s to an advanced economy based on large industrial capacity generating high per-capita income by the mid-1990s.¹¹ The Korean development process is unique, because it exhibits all major stages of economic development in a time period of three decades (which is substantially shorter than the periods of development for most other developed countries today) and has also shown successful social and political development from authoritarian rule to elective democracy based on the rule of law by the 1990s.

This article explores the legal and institutional dimensions of this successful development by way of adopting a theory that I have recently developed, "general theory of law and development" (hereinafter "general theory"), which explains the mechanisms by which law affects development. The next section applies the first part of the general theory and identifies the applicable law and Korea's economic and social development objectives. From there, Section 3

⁸ In 1962, Korea's GNI per capita was a mere US\$ 120, lower than most other developing countries in Asia, Africa, and Latin America at the time. See World Bank, *GNI per capita (current US\$)*, available at: <http://data.worldbank.org/indicator/NY.GNP.PCAP.CD?end=2014&start=1962&year_low_desc=false>, accessed 23 March 2018.

⁹ See *supra* note 1 (for an account of Korea's successful economic development).

¹⁰ Yong-Shik Lee, *Reclaiming Development in the World Trading System* (2nd ed., Cambridge: Cambridge University Press, 2016), p. 18.

¹¹ As a result of successful economic development, Korea's GNI increased to US\$ 13,254 in 1996, which was a high-income country category as defined by the World Bank at that time, with income distribution better than some of the most advanced developed countries, including the United States. See World Bank, *supra* note 8. As to the latter point, Korea's Gini co-efficient, which shows income distribution, was 0.28–0.29 in the 90s, based on the disposable income, which was lower (i. e. better income distribution) than most other countries such as the United States (0.34).

applies the second part of the general theory, “the regulatory impact mechanisms,” to the development process of Korea. Lastly, Section 4 draws lessons from its successful development.

2 Applicable Law, Economic and Social Development Objectives

2.1 Law and Development

The area of study that would be most relevant to the legal and institutional dimensions of economic development is law and development, which explores the interrelationship between law and development. Its disciplinary boundaries and substance have long been indeterminate and heterogeneous, lacking “a particular normative armature or notable thematic consistency or much of a unifying logic or set of organizing principles.”¹² As a result, law and development has not been very successful in explaining specifically how law, legal frameworks, and institutions (LFIs) affect development or inform what kind of law reform would be effective to stimulate development in different stages of development, in the presence of conflicting cases.¹³

A large number of law reform projects have been undertaken by international and national development agencies, including the World Bank and USAID. These law reform projects have largely promoted neoliberal policy prescriptions in the economic area,¹⁴ and the development effect of these projects has been

¹² Scott Kennedy, “The Dialectics of Law and Development”, in David Trubek and Alvaro Santos (eds.), *New Law and Economic Development* (New York: Cambridge University Press, 2006), p. 177.

¹³ Law reform projects since the 1980s have emphasized the role of the private sector and attempted to facilitate private market transactions and constrain the role of state in the economy. However, the most successful development cases, such as Korea, Taiwan, Singapore, and more recently China, exhibited active state management and control over the economy and laws and institutions that supported state-led development policies. Lee (2017), *supra* note 3, part I, Section A, at 420–423.

¹⁴ The neoliberal policy prescriptions, based on the Washington Consensus, discourage positive government interventions in the economy and promote free market approaches, including privatization and trade liberalization.

questionable, and as Santos accounted, without notable “success stories.”¹⁵ The legal and institutional developments in successful developing countries¹⁶ show apparent differences from the law reform prescriptions, as will be further discussed in the subsequent sections. The underlying policy directions that facilitate development, the specific ways in which legal discretion and constraints on government authorities should be lodged, and the factors that induce compliance and enable the effective implementation of laws and institutions, have been far from clear and uninformed by law and development studies. Lack of the disciplinary parameters and of solid theories that explain the impact of law on development is a cause of this failure.

Efforts have recently been made to change the indeterminate course of law and development, including one of my own that attempts to set the disciplinary parameters and develop a general theory that explains the mechanisms by which law impacts development.¹⁷ This effort is directed to increasing the strength of law and development as an academic discipline, to identify and inform what would be necessary to develop and implement more effective law reform projects that will make real contribution to development. All theories require testing; thus, it will be a useful academic exercise to apply the general theory to explain the contribution of law and institutions in the development case of Korea.¹⁸

2.2 Applicable Law

The first part of the general theory sets the disciplinary parameters of law and development. In the context of law and development, “law” includes both formal state law, such as statutes, and non-state law that is complied with by the general public, sometimes referred to as customary law.¹⁹ In the case of Korea, formal state law, particularly development-facilitating statutes, will be a focus of analysis. There are two major reasons for this focus. First, Korea, being

¹⁵ Alvaro Santos, “The World Bank’s Uses of the ‘Rule of Law’ Promise”, in Trubek and Santos, *supra* note 12, p. 295.

¹⁶ *Supra* note 13 (for an example of successful development countries).

¹⁷ Lee (2017), *supra* note 3.

¹⁸ The original article that sets forth the general theory has a part that applies the theory to the case of Korea. Lee (2017), *supra* note 3, pp. 456–478. This article expands on this part and focuses on its application.

¹⁹ Lee (2017), *supra* note 3, pp. 423–424.

a civil law country,²⁰ codified legal rules into major “codes”²¹ and statutes meticulously, leaving a relatively smaller room for the role of customary law.²² Secondly, the Korean government assumed the role of a developmental state²³ during the period of its development that plays the key role for economic development, creating economic development plans, relocating surplus, combatting resistance, making investments, managing key sectors, and controlling foreign capital.²⁴ As further discussed in the subsequent section, the Korean government used formal state law, particularly statutes, as a device to empower the government to implement state-led development policies.

Despite the focus on formal state law, a question may arise as to the role of customary law in the development of Korea. An example would be “administrative guidance,” a guidance issued by the governments of Korea and Japan that were directed to businesses for the purpose of protecting public interest, such as limiting price hikes on consumer goods considered necessities for the general public.²⁵ Administrative guidance is not a formal state law, and there is no legal requirement for its compliance, but it was consistently followed, to the extent that one may consider it to be de-facto law or customary law. On the point of distinction between customary law and other non-legal orders, the general theory requires the existence of “*opinio juris*,”²⁶ and there is a question as to whether this exists with respect to the administrative guidance where the general public may not have necessarily considered administrative guidance creating binding legal obligations. An alternative explanation for compliance could be that the general public recognized and respected the role of state (and the

²⁰ “Civil law” is the legal system that originated in Roman law that is now prevalent in Continental Europe, Latin America, and East and Southeast Asia, and is based on formally legislated “codes.” “Common law” refers to the legal system that originated in England based on binding judicial precedents that is adopted in former British colonies and territories, such as the United States, Canada, India, Australia, and New Zealand.

²¹ In Korea there are six major codes in the areas including constitutional, civil affairs, criminal affairs, civil procedure, criminal procedure, and public administration.

²² For a study of customary law in Korea, see Marie Seong-Hak Kim, *In the Name of Custom, Culture, and the Constitution: Korean Customary Law in Flux*, 48 *Texas International Law Journal*, no. 3 (2013), 357–391.

²³ For a concept of developmental state, see Chalmers Johnson, “The Developmental State: Odyssey of a Concept”, in Meredith Woo-Cumings (ed.), *The Developmental State* (Cornell University Press, 1999), pp. 32–60.

²⁴ Trubek and Santos, *supra* note 12, p. 8.

²⁵ Lee (2017), *supra* note 3, p. 424.

²⁶ *Ibid.*

practical power that the authoritarian government had on their businesses) during the period of Korea's economic development, as will be further explained in Section 3.3.

The strength of public compliance and participation in the process and the development policies mandated by the government,²⁷ and the resulting development success are noteworthy and justifies further analysis, whether or not the norms and practices created by this public compliance and participation amount to customary law. However, these norms and practices have also shown changes as the Korean economy and society have undergone rapid development. For example, the number of administrative guidance has been reduced since the 1990s, and the number of lawsuits against government measures ("administrative lawsuits") has rapidly increased since then,²⁸ implying that these norms and practices may have been voluntary responses, rather than binding and lasting customary law, that were shown by the general public to support the role of state in economic development, when they felt it was needed to meet the development objectives at the time. This explains why public compliance has been weakened over time, as demonstrated by the increasing number of legal challenges against government measures, when the role of state was also reduced as Korea achieved its development objectives in the 90s.

2.3 Economic and Social Development Objectives

The concept of "development" has been debated for decades in the absence of a universally accepted definition. The general theory suggests that "development" may be defined as "a progressive transformation of the economy and society,"²⁹ although the precise nature of this economic and social progress is also subject to debate. For developing countries suffering from the conditions of underdevelopment, "development" meant mostly economic growth and increase in income for the majority of their populations to overcome prevalent poverty.³⁰ However,

²⁷ See Section 3.2 *infra*.

²⁸ Korea National Statistical Office, E-National Statistical Index, *The Number of Administrative Lawsuits* (in Korean), available at: <www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=1724>, accessed 23 March 2018. The number of administrative lawsuits increased from 17,063 in 1997 to 36,799 in 2016.

²⁹ Lee (2017), *supra* note 3, p. 428.

³⁰ *Ibid.*

the concept of development has been expanded to include a range of non-economic values (i. e. social development objectives), such as political freedom, democratic governance, gender equality, protection of environment, access to education, and the rule of law, as endorsed by the World Bank's comprehensive development framework and the subsequent sustainable development goals promoted by the United Nations.³¹

The general theory accommodates both economic and social development objectives,³² although it emphasizes the importance of the former as a necessary condition to promote the latter, as many of the social development objectives require economic foundation for their effective implementation.³³ Also, the identification of social progress is not an always straightforward question, which is determined by a range of cultural, religious, and socioeconomic factors in a particular society.³⁴ This means that what is identified as social progress may not be so by another, and the general theory applies to social development issues as identified by a given society.³⁵

In the case of Korea, development objectives have been clear since the beginning of its development era in the early 1960s. The focus was economic development to overcome the poverty issue affecting the vast majority of the population. This was to be achieved by industrial development as the means to generate employment and income. Exports were considered essential for industrial development to overcome the constraints of the small domestic market; the total value of exports as well as the share of exports in the country's gross domestic product (GDP) increased substantially.

³¹ *Ibid.*, pp. 428–429.

³² The term, “social development”, includes progressive change of a political nature (“political development”) throughout this article.

³³ Lee (2017), *supra* note 3, part II, Section B, at 430–432.

³⁴ *Ibid.*

³⁵ *Ibid.* Thus, what is advocated as social progress in one place may not be consistent with what is considered a universal human right, as determined by relevant, international conventions, such as the *Universal Declaration of Human Rights*, G.A. Res. 217 (III) A (Dec. 10, 1948), the *International Covenant on Civil and Political Rights*, G.A. Res. 2220A (XXI) (Dec. 19, 1966), and the *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2220A (XXI) (Dec. 16, 1966). However, the existence of these human rights does not automatically inform what should be considered “social progress” everywhere. The determination of social progress is essentially a value judgment, which is not a majority rule.

Export expansion and exports/GDP of Korea³⁶

| Year | Real GDP growth rate (%) | Goods export values (USD billion) | Exports of goods and services/GDP (%) |
|-----------|--------------------------|-----------------------------------|---------------------------------------|
| 1962–1966 | 8.0 | 1 | 7.7 |
| 1967–1971 | 9.7 | 3 | 13.7 |
| 1972–1976 | 8.0 | 22 | 27.8 |
| 1977–1981 | 6.2 | 77 | 31.5 |
| 1982–1986 | 8.7 | 141 | 34.4 |
| 1987–1991 | 9.4 | 307 | 32.3 |
| 1992–1996 | 7.3 | 510 | 28.7 |

The following five-year plans developed and implemented by the Korean government from the early 1960s to the mid-90s also illustrate specific development targets at the time.

Five-year economic development plans (1962–1996)³⁷

| | | |
|--|---|---|
| 1st (1962–1966) – Promote import-substitute industries – Build petroleum and fertilizer plants – Transition to export-oriented policy (1964) | 2nd (1967–1971) – Expand export bases – Strengthen international competitiveness of light industries – Produce industrial raw materials – Introduce and adopt new technologies | 3rd (1972–1976) – Promote heavy and chemical industries – Promote science and technology – Increase exports |
| 4th (1977–1981) – Attain the status of world's major (advanced) economy – Rationalize industrial structure – Build key plants | 5th (1982–1986) – Promote best quality and precision in products – Export plant facilities – Support private enterprises to develop production technologies | 6th (1987–1991) – Promote world-class industries – Promote aviation industry – Expand overseas industrial investments |

(continued)

³⁶ Lee (2016), *supra* note 10, p. 304, Table 10.2a.

³⁷ Yong-Shik Lee, Young-Ok Kim and Hye Seong Mun, “Economic Development of North Korea: Call for International Trade Based Development Policy and Legal Reform”, in Yong-Shik Lee *et al.* (eds.), *Law and Development Perspective on International Trade Law* (New York: Cambridge University Press, 2011), chapter 15, at 356–375.

(continued)

7th (1992–1996)

- Enhance the competitiveness of corporations
 - Promote social equity and balanced development
 - Support internationalization and develop foundations for the unification of two Koreas
-

More complex were social development objectives. Except for a brief period between April of 1960 and May of 1961, when there was a democratic regime born after the Civil Revolution of 1960 (“the April Revolution”),³⁸ Korea went through a long period of authoritarian regimes until the 80s. It meant that the resources at the disposal of the state were to be devoted to the priorities of these regimes, and their priorities were economic development. The majority of population, suffering from crushing poverty at the time, supported the government drive for economic development, but the other non-economic development objectives, such as political democratization, were not completely set aside.

For much of Korea’s developmental era (1962–1996), the primary social development objective was political democratization, as evidenced by the April Revolution, a series of public demonstrations throughout the 70s and the 80s, and the major public strife in June of 1987 that led to the constitutional amendment and free presidential election later that year.³⁹ The authoritarian regimes throughout the 60s and into the 80s did not defy the notion of political democracy, at least in form (i. e. there were public elections, although they were heavily influenced and to some extent controlled by the administration), but they put severe limits on civil liberty, including freedom of speech, to maintain control over populations. This oppressive control created a continuous tension between the administrations and civil societies and resulted in public resistance seeking the restoration of civil liberty and political democratization.

³⁸ Hwang (2016), *supra* note 6; Seth (2010), *supra* note 6; Eckert and Lee (1991), *supra* note 6.

³⁹ *Ibid.*

Thus it would be fair to say that the most important social development objective for Korea, political democratization, was promoted by non-state civil groups, such as students and liberals, until the 80s, often under violent suppression by the authoritarian regimes. The 1987 constitutional amendment, which provided for free presidential election, paved a way for political democratization. Following the 1987 constitutional amendment, the process of political democratization progressed by the initiatives of the elected civil administrations in the 90s. The rule of law was strengthened, and the judiciary became independent of the administration by the 90s. As political democratization progressed, a number of other social development objectives, such as gender equality, protection of the environment, and reduction of the gaps in economic opportunities between haves and have-nots, have also been identified and promoted, with legislative and institutional measures in place.⁴⁰

3 The Regulatory Impact Mechanisms

The second part of the general theory explains the mechanisms by which law impacts development (“the Regulatory Impact Mechanisms”),⁴¹ comprised of three conceptually distinct, but interconnected categorical elements, “regulatory design,” “regulatory compliance,” and “quality of implementation.”⁴² Each of these elements includes additional sub-elements. This section briefly explains these elements and sub-elements, applies them in sequence to the development case of Korea, and assesses the impact that law had on Korea’s development.⁴³

40 For example, Korea enacted the Basic Law for the Progress of Women in 1995 to promote gender equality and set up the Special Committee on Women under the president in 1998.

41 This section is adopted from the author’s previous work, Lee (2017), *supra* note 3, pp. 456–478.

42 It should be noted that these three elements collectively determine the development impact of law and also show the mechanisms by which law impacts development. Each of these elements is conceptually distinct but also interrelated (e. g. regulatory design influences compliance, and state capacity, a sub-element determining the implementation of law, also influences regulatory design and regulatory compliance). Lee (2017), *supra* note 3, p. 418.

43 The following passages offer a summary of the general theory. As with any summary of a theory, it does not provide a full account of the theory, inevitably leaving gaps in explanation and raising questions. Readers are recommended to refer to the full account of the theory. Lee (2017), *supra* note 3.

3.1 Regulatory Design

The first element of the regulatory impact mechanisms is “regulatory design.” Regulatory design analyzes how law is designed to achieve a development objective. There are three sub-elements, including anticipated policy outcome; organization of law, “LFIs”; and law’s adaptation to socioeconomic conditions. The first sub-element, anticipated policy outcome, refers to the outcome of the policy that law is anticipated to deliver. The examination of the anticipated policy outcome is aided by methods and analytics of relevant social sciences.⁴⁴ The second sub-element, the organization of LFIs, examines the dynamics and interrelations among law, applicable legal frameworks, and relevant institutions. Regulatory design is enhanced by positive synergies among the constituent elements of LFIs. The third sub-element, adaptation to socioeconomic conditions, examines whether law conforms to a range of social, political, economic, and cultural conditions (“socioeconomic conditions”), such as financial and technical conditions, and this adaptation is essential to the successful operation of law. These three sub-elements collectively determine the effectiveness of regulatory design as further discussed below.

3.1.1 Anticipated Policy Outcome

Applying these analytics to the case of Korea, the primary objective of Korea’s development policies was the relief of extreme poverty for the majority of its population.⁴⁵ To meet this objective, sustainable income sources for the majority of population had to be created, and the government strategy was to develop industries that would generate employment and income. The conditions of poverty resulted in insufficient purchasing power in the domestic market. To overcome these constraints, the government adopted export-led development policies⁴⁶ and prioritized developing manufacturing industries using inexpensive and efficient labor that Korea had in abundance.

⁴⁴ These social sciences include (but are not limited to) economics, political science, anthropology, and sociology.

⁴⁵ See Section 2 *supra*.

⁴⁶ Empirical studies concluded that exports lead to economic growth under certain conditions and that export promotion policies are effective in increasing exports. See M. Michaely, *Exports and Growth*, 4 *Journal of Development Economics* (1977), 49–53; Woosik Jung and K. Lee, *The Effectiveness of Export Promotion Policies: The Case of Korea*, 122 *Weltwirtschaftliches Archiv* (1986), 340–357; and Ran Koh and Jai Sheen Mah, *The Effect of Export Composition on Economic Growth: The Case of Korea*, 47 *Journal of Developing Areas*, no. 1 (2013), 171–179.

The legal device to implement these policies was the enactment of statutes mandating state support for exports, such as the Act on Temporary Measures for the Grant of Export Subsidies (1961), the Export Promotion Act (1962) (which was replaced by the Trade Transactions Act of 1967), and the Tax Exemption and Reduction Control Act (1965). These statutes authorized the government to grant tax reductions for the profits generated by exports, ensure timely payment of subsidies contingent upon exports (“export subsidies”), make priority allocation of scarce foreign reserves for the purchase of raw material to produce export products, and permit only those traders with export performance to engage in lucrative import business.

The government also enacted several statutes mandating direct support for specific manufacturing industries, such as the Act on Temporary Measures for Textile Industrial Facilities (1967); the Acts on Promotion of Mechanical Industries (1967), Shipbuilding Industries (1967), Electronic Industries (1969), Petrochemical Industries (1970), and Steel Industries (1970); the Act on Refining Service of Non-Ferrous Metals (1971); and the Act on the Promotion of the Modernization of Textile Industries (1979).⁴⁷ These statutes authorized the government to adopt measures of support for the designated industries, including tax incentives, loans whose terms, such as interest rates, were more favorable than the prevailing commercial terms (policy loans), subsidy grants, tariff rebates and import control, and overseas loan guarantees. Support was provided to businesses on a conditional basis; in return for support, businesses were required to show market performance.⁴⁸

Korea’s state-led development policies would have found support from development economics at the time; development economists, such as Rosenstein-Rodan, Mandelbaum, Lewis, Rostow, Kuznets, Gerschenkron, Hirschman, and Kindleberger, advocated the state-led development strategy as the key to development.⁴⁹ However, Korea implemented development policies

⁴⁷ See Duol Kim (ed.), *History of Economic Laws in Korea from Liberation to Present* (Seoul: Haenam, 2011), vol. 1, pp. 216–227.

⁴⁸ Sung-Hee Jwa, *A General Theory of Economic Development Towards a Capitalist Manifesto* (Cheltenham: Edward Elgar, 2017), p. 83.

⁴⁹ However, they did not exactly agree on how the state should lead economic growth. For example, Rosenstein-Rodan supported the “big push,” which is a coordinated, investment program across the board (“balanced growth theory”). By contrast, Hirschman advocated a policy of promoting a few key sectors with strong linkages to other sectors (“unbalanced growth theory”). See Paul Krugman, *The Rise and Fall of Development Economics*, at 3 (1994), available at: <<http://web.mit.edu/krugman/www/dishpan.html>>, accessed 23 March 2018. See also Pranab Bardhan, *Economics of Development and the Development of Economics*, 7 *The Journal of Economic Perspectives*, no. 2 (1993), 129–142.

without a strong prospect of success; the government did not have sufficient financial and industrial resources to implement these policies. The United States, the primary aid provider for Korea at the time, was also initially pessimistic about Korea's development policies for being too "socialistic."⁵⁰ The government played a key role in the economic development initiatives, and it is well demonstrated by the aforementioned Five-Year Economic Development Plans that the government developed and implemented from 1962 to 1996. As seen above, the plans stipulated specific economic development and industrial promotion goals, including target economic growth and export promotion for each of the five-year periods. The government also coordinated private sector activities and supported those that were consistent with its development goals. The government achieved this through its control of bank loans and grant of subsidies.⁵¹ These policy loans and subsidies had distributive effects in favor of producers complying with the government policies, and the government allocated resources to those industries considered at the time that would have the strongest growth effect for the economy, resulting in the high economic growth in the 60s and the 70s. The government also used other measures of support, including tax incentives, favorable exchange rates (to promote exports), and a flexible import tariff regime (supporting exporters and suppressing imports that compete with rising domestic industries). The government also engaged extensively in public campaigns and education to induce social support for economic development.⁵²

Korean development policies are also marked with substantial flexibility and adaptability. The government set its export promotion and industrial development goals in accordance with the available resources, technology, and industrial experiences at the time. In the 1960s when Korea lacked capital and technology resources, the government focused on labor-intensive industries, such as textile and clothing, as they did not require large capital or technological resources, and endeavored to export these products to generate income. The industrial experience, the accumulation of capital, and the development of technology during the initial period of successful economic development enabled Korea to transition into more advanced and potentially more profitable

⁵⁰ Lee, Jong Suk, "The Launching of Economic Development Plan" (The Half Century of Korean Economy) (in Korean), E Daily, 5 May 2005.

⁵¹ Lee (2016), *supra* note 10, pp. 305–309.

⁵² *Ibid.*, pp. 305–313. In addition to this policy, other factors, such as prewar industrial experience, land reform, the rise of national firms, administrative quality, and precision in policy targeting, are known to have contributed to this success. Amsden (1992), *supra* note 2.

industries, such as heavy and chemical industries in the 1970s and electronics in the 1980s.⁵³

The market performance of the supported industries, particularly in export markets, was a benchmark of success that was required to receive continuing support from the government.⁵⁴ Strong performers were rewarded with government support and weak performers were let go. It was essentially this partnership between the private sector and the government that resulted in the unprecedented success in economic development for Korea.⁵⁵ The innovation and industrial efforts of the private sector, as well as government support, created the world-class Korean industrial brand names, such as Hyundai and Samsung. This market focus is apparently different from a socialist planned economy favored by dependency theorists.⁵⁶ This approach is similar to those adopted by the other NICs (Newly Industrialized Countries), including Taiwan and Singapore. China subsequently adopted this controlled market approach (the use of market under the government incentive structure) when it initiated market-oriented reforms in 1978 in the name of “the socialist market economy.”⁵⁷

A policy shift began in the 1980s; after two decades of successful economic development, Korea became a middle-income country with a robust private sector, and its economy matured into a technology-based one. There were legislative changes to meet this change, reducing government control of the economy and supporting the private sector with increased capacity, rather than specific industries. This policy shift was demonstrated by the replacement of the aforementioned statutes providing industry-specific support with the Manufacturing Industry Development Act in 1986,⁵⁸ granting more selective assistance to industries based on a need to improve their efficiency by restructuring or reorganization.⁵⁹

⁵³ Lee (2016), *supra* note 10, pp. 303–305.

⁵⁴ Jwa (2017), *supra* note 48, p. 83.

⁵⁵ However, this partnership has been weakened in Korea since the late 1990s; large corporations (“Chaebols”) have continued to grow, but their growth has not been translated into the growth of national economy, employment, and household income, as was seen from the 60s to the 80s.

⁵⁶ Charles K. Wilber and Kenneth P. Jameson (eds.), *Socialist Models of Development* (Oxford: Pergamon, 1982).

⁵⁷ For a further discussion of the socialist market economy, see Osman Suliman (ed.), *China’s Transition to a Socialist Market Economy* (West Port, CT: Quorum Books, 1998).

⁵⁸ The statute was replaced by the Industrial Development Act in 1999. Kim (2011), *supra* note 47, p. 225.

⁵⁹ *Ibid.*, pp. 222–227.

After the three-and-half decades of successful economic development, the anticipated policy outcomes – economic growth, industrial development, and relief of poverty – became a reality for Korea. The magnitude of success was evident in economic indicators; when the Korean government implemented the first Five-Year Economic Plan in 1962, its per capita GNI was US\$ 120,⁶⁰ among the lowest in the world with the majority of its population suffering from poverty. Korea's unemployment rate also reduced from the estimated 35% in 1961 down to 5.2% in 1980 (and 2.4% in 1990).⁶¹ When Korea's seventh and final Five-Year Economic Development Plan was completed in 1996, the country was among the advanced, developed countries with affluent economies and world-class industries.⁶² Korea became a high-income country as classified by the World Bank, with its GNI per capita reaching US\$ 13,040,⁶³ a major industrial power, and a leading trader.⁶⁴

There was an abrupt change of economic circumstance in Korea after 1996, and the analysis of the anticipated policy outcome also explains this change. After a long period of unprecedented economic growth and economic prosperity, Korea faced a critical shortage of foreign exchanges, following the collapses of major companies and the loss of confidence of the foreign lenders, leading to the 1997 financial crisis. The government was unable to resolve this crisis, and it requested a bailout from the international monetary fund (IMF). In return for the requested bailout, the IMF demanded neoliberal changes in policies and law, which would reduce the role of the state in the economy, more rapidly than the government had been implementing since the 1980s. Korea was left with no other choice and accepted this demand to avoid national default. The problem was that the policy outcome that the demanded changes attempted to deliver, such as balancing the financial market through increases in interest rates, was not consistent with the decades of economic management and practices in Korea; a large number of firms had operated with short-term loans on a rolling basis. Thus, the IMF “prescriptions” caused over 3,000 companies to fail and

⁶⁰ World Bank, *GNI per capita (current US\$)*, *supra* note 8. According to the Bank of Korea, Korea' GNI per capita in 1962 (nominal US\$) was even lower, at US\$ 91.0. Bank of Korea, *Economic Statistics System*, available at: <<http://ecos.bok.or.kr/>>, accessed 23 March 2018.

⁶¹ Korea National Statistical Office, *Statistical Assessment of Changes in Korea's Economy and Society for the Past 60 Years* (Aug. 2008) (in Korean), available at: <http://kostat.go.kr/portal/korea/kor_nw/2/1/index.board?bmode=read&aSeq=60300>, accessed 23 March 2018.

⁶² As a result of successful economic development, the Korean economy grew at the remarkable rate of 8.75% on average per annum from 1991 to 1996.

⁶³ World Bank, *GNI per capita (current US\$)*, *supra* note 8.

⁶⁴ In 1996, Korea joined the ranks of the other advanced countries in Europe and North America at the Organisation for Economic Co-operation and Development (OECD).

millions to lose jobs. The demanded policy changes also reduced investments and lowered economic growth, which never recovered to the pre-crisis level.⁶⁵

3.1.2 Organization of LFIs

The effectiveness of regulatory design is also determined by the organization of LFIs. In Korea, the flexibility of legal frameworks enabled the timely enactment of the development-facilitating statutes cited above. The major codes in Korea's civil law system,⁶⁶ with elaborate legal structures and embedded legal principles, were not easily amenable to revision, so the government set up a separate legal apparatus outside its codes by enacting a number of separate statutes that were not directly controlled by its major codes. This approach enabled expedient legislation and timely amendments to implement specific development policies, without having to undertake a potentially time-consuming process of revising its codes. The provisions of these statutes took precedence over an inconsistent provision in any other earlier statute, including the codes, except the constitution.

Effective institutional support was another key feature during Korea's development process; effective institutions supported the implementation of the development-facilitating laws legislated under the flexible legal frameworks. The government set up a number of development-supporting institutions, both within the government and on the outside. The most important one was the Economic Planning Board (EPB), which was established within the central government in 1961 to be the control tower for the development and implementation of development policies.⁶⁷ The EPB, until its merger with the Ministry of Finance in 1994, coordinated and instructed other government departments on policy measures on economic development for over three decades with authorities in personnel appointment and budget allocation.⁶⁸ The government also set up financial institutions to support economic development, such as the

⁶⁵ For further discussion of the financial crisis in Korea and in other Asian countries in the 1990s, see Hider A. Khan, *Global Markets and Financial Crises in Asia* (New York: Palgrave Macmillan, 2004).

⁶⁶ *Supra* note 21 (for a list of these "codes").

⁶⁷ Lee (2016), *supra* note 10, p. 313. Taiwan's IDB (Industrial Development Bureau) and Japan's MITI (Ministry of International Trade and Industry) undertook similar roles within the government.

⁶⁸ *Ibid.*

Korea Development Bank, providing loans for select industries, and the Korea Export-Import Bank, providing export credit.⁶⁹ Korea also established trade-support organizations, such as the Korea Trade Promotion Corporation (KOTRA) and the Korea International Trade Association (KITA). KOTRA provided support for export companies, including access to overseas market information and business networks, and KITA promoted the interests of Korean traders and provided trade information to its members.⁷⁰

3.1.3 Adaptation to Socioeconomic Conditions

The third sub-element determining the effectiveness of regulatory design is the adaptation of law to changing socioeconomic conditions. As economic development progressed in Korea, its socioeconomic conditions, such as available economic and technological resources and the capacity of the private sector, have also been changed. To meet these changes, the government repealed the statutes mandating support for specific industries as discussed earlier. The government endeavored to ensure that the development-facilitating statutes are up-to-date and remain effective by monitoring their implementation and operation and made amendments to increase their adaptability to the changing socioeconomic conditions. For example, the government reviewed 2,790 statutes and made 288 adjustments from 1977 to 1979,⁷¹ and in addition, the government made 604 statutory adjustments in the 90s.⁷² There was a separate government ministry devoted to this work (the Ministry of Government Legislation), and the government increased the adaptability of Korea's laws to its changing socioeconomic conditions and, ultimately, increased their effectiveness for development by consistent legislative monitoring and adjustment.⁷³ The ruling party supporting the government maintained the majority in the Korean legislature until 1988, and this legislative control enabled the government to make timely legislative adjustments and new enactments.

Despite such government efforts to increase the adaptability of laws to socioeconomic conditions, Korean laws that aimed to protect certain social interests, such as protecting the integrity of the government from corruption,

⁶⁹ *Ibid.*, pp. 307–308.

⁷⁰ *Ibid.*, p. 312.

⁷¹ Kim (2011), *supra* note 47, p. 15.

⁷² *Ibid.*, pp. 15–16.

⁷³ *Ibid.*, pp. 16–17.

had not been very effective until the late stages of Korea's development.⁷⁴ It was because certain socioeconomic conditions on the ground did not support the laws; in the case of corruption, such adverse socioeconomic conditions included the cultural tradition that allowed and to some extent encouraged gift offering as a courtesy to authorities, such as government officials and school teachers, as well as economic and political factors; e. g. low government salary and absence of regional government elections that can work as a check against corruptive practices of the regional or local government. The laws became more effective, and corruption was better controlled only after the change of these socioeconomic conditions, which was a gradual process over decades, including growing public awareness of the social cost of corruptive behavior, an improvement of government salary, and the introduction of regional government elections in the 90s.⁷⁵ The successful implementation of a tougher anti-corruption law that imposes stringent guidelines for acceptable gifts to individuals in certain categories of positions (e. g. no gift over 50,000 won [approximately US\$ 45] to government officials and teachers)⁷⁶ demonstrates the changed socioeconomic conditions in the Korean society.⁷⁷

As discussed above, a disparity between laws that aim to achieve a development objective and relevant socioeconomic conditions may exist, particularly when the law attempts to change current practices prevailing on the ground, which form a constituent part of the existing socioeconomic conditions, such as cultural practices. For example, in 1969, the Korean government enacted a law that regulates costly practices on “family rites” such as weddings and funerals, in an attempt to simplify them, prevent economic waste, and reduce economic family burden when a majority of populations was still in poverty.⁷⁸ The law did not conform to the socioeconomic conditions at that time, including the traditional cultural practice emphasizing the importance of family rites and popular

⁷⁴ In 1995, Korea ranked 27 out of 41 countries (bottom 35%) in terms of the Corruption Perception Index (CPI) measured by the Transparency International. Transparency International, *1995 TI Corruption Index*, available at: <https://www.transparency.org/files/content/tool/1995_CPI_EN.pdf>, accessed 23 March 2018.

⁷⁵ As a result, Korea's CPI rank improved to 51 out of 180 in 2017 (top 28%). Transparency International, *Corruption Perception Index 2017*, available at: <https://www.transparency.org/news/feature/corruption_perceptions_index_2017#table>, accessed 11 March 2018.

⁷⁶ Improper Solicitation and Graft Act of 2016.

⁷⁷ The change reflects the consensus among the Korean public on the necessity of such regulatory reform to control corruption and to create a more just and fair society. Park Soo Jin and Shin Ji Min, “One Year after the Implementation of Improper Solicitation and Graft Act”, *The Hankyoreh*, 25 September 2017 (in Korean), available at: <www.hani.co.kr/arti/society/society_general/812409.html>, accessed 23 March 2018.

⁷⁸ The Act on Family Rite of 1969 (amended in 1972).

preference for big and costly ceremonies.⁷⁹ This conflict between the law and the socioeconomic conditions led to the low rate of compliance with the law and necessitated reinforcing the strength of the law, including its punishment terms for violations.⁸⁰ The prospect of success for such laws that do not conform to socioeconomic conditions, but are nevertheless necessary to achieve a development objective, hinges on the existence of consensus on the necessity of regulatory reform on the part of the public and the political will on the part of the government, which is further discussed below.

3.2 Regulatory Compliance

The second element of the regulatory impact mechanisms, “regulatory compliance,” examines compliance with law by the general public. Law would not have any impact on development without due compliance by the general public. Further, regulatory compliance features two sub-elements: general regulatory compliance and specific regulatory compliance. General regulatory compliance examines the overall level of compliance with law in a given jurisdiction, and social and political factors, such as legal culture in society and the public confidence in the state implementing law, influence general regulatory compliance.⁸¹ Specific regulatory compliance pertains to the strength of compliance with a particular law.⁸² Regulatory compliance is also categorized into “active” and “passive” compliance, according to its strength, as further discussed below.⁸³

3.2.1 General Regulatory Compliance

In 1996, toward the end of the successful development period, Korea marked the percentile rank of 71.4 (0–100) for the rule of law assessment by the World Bank.⁸⁴ Assuming its validity, this rating indicates a relatively high level of general regulatory compliance, without which the rule of law would not be

⁷⁹ Nam Ae Ri, The Regulation on Family Rite, National Archives of Korea (in Korean), available at: <<http://theme.archives.go.kr/next/koreaOfRecord/homeRule.do>>, accessed 23 March 2018.

⁸⁰ *Ibid.*

⁸¹ Lee (2017), *supra* note 3, pp. 446–448.

⁸² *Ibid.*, p. 446.

⁸³ *Ibid.*, pp. 448–450.

⁸⁴ World Bank, *Worldwide Governance Indicators*, available at: <<http://info.worldbank.org/governance/wgi/index.aspx#reports>>, accessed 23 March 2018.

feasible.⁸⁵ An explanation for the strength of regulatory compliance could be found in Korea's political and cultural tradition; according to the Confucian tradition shared by Korean population, due compliance with state's policies and laws was considered one's duty, because the state is responsible for the well-being of its subjects, and the citizens' compliance would be necessary for the state to meet this obligation. The citizens' duty to comply was reinforced by the colonial government of Japan (1910–1945) and the subsequent authoritarian regimes that imposed strict rules of law on the Korean population with severe penalties for any violations. This compelled regulatory compliance, even if it may have been passive compliance to avoid a penalty.

The remarkable achievement of the Korean government was that it was able to turn this passive compliance into active compliance for economic development, by successfully aligning the interests of citizens with those of the state. Aided by the successful outcome of the initial development policies, the government was able to instill confidence in Koreans that they could escape from poverty by trusting the government and complying with its laws and policies. Koreans actively complied with development-facilitating laws and policies, such as those encouraging savings by offering high interest rates and promoting strong work ethics which was subsequently compensated by rising wages and increased employment opportunities.⁸⁶ Koreans' active compliance has been evidenced by their longest working hours⁸⁷ and highest savings rate in the world.⁸⁸ The illiteracy rate was also very low,⁸⁹ despite the prevalent poverty

85 See World Justice Project, *Rule of Law Index 2015* (2015), available at: <http://worldjusticeproject.org/sites/default/files/roli_2015_0.pdf>, accessed 23 March 2018. The Index adopts eight evaluative criteria, including Constraints on Government Powers, Order and Security, Absence of Corruption, Open Government, Fundamental Rights, Regulatory Enforcement, Civil Justice, and Criminal Justice. See *ibid.*

86 Lee (2017), *supra* note 3, pp. 465–466.

87 In 1993, Korea's average annual working hours were as high as 2,656 hours. OECD, *Hours Worked*, OECD Data, available at: <<https://data.oecd.org/emp/hours-worked.htm>>, accessed 23 March 2018. There is criticism that the long working hours are a result of the excessively competitive working environment for Korean laborers, but jobs were abundant due to rapid economic growth, as demonstrated by the low unemployment rate (*supra* note 61), and Koreans worked for extra hours for additional pay and career opportunities.

88 Korea's savings rate was as high as 34.0% in 1993. Park Daekeun and Changyong Rhee, *A Study on the Savings Rates in Korea: Synthetic Cohort Analysis*, Korea Institute of Public Finance Research Report (May 1997).

89 The illiteracy rate in Korea was 4.1% in 1958. National Archives of Korea, *The Path that Hangeul (Korean Alphabet) Waked on* (in Korean), available at: <<http://theme.archives.go.kr/next/hangeulPolicy/business.do>>, accessed 23 March 2018.

in the 1960s,⁹⁰ and this enabled Koreans to understand and comply with government policies and the requirements of the law. Korea also achieved inclusive growth⁹¹ providing additional motivation for Koreans to comply with the development policies and laws promoted by the government, as they believed that the economic opportunity was opened to every hard-working individual.

3.2.2 Specific Regulatory Compliance

The development-facilitative nature of the cited statutes suggests that it would have been in the interest of the potential beneficiaries to comply with the terms of these statutes and receive the support mandated by them. As discussed above, the terms of the cited statutes grant direct support for exports and specific industries, such as tax benefits and grants, and stipulated the conditions to receive such support. The Korean government offered regulatory incentives and support, rather than penalties and compulsion, to motivate individuals and companies to comply with its development-facilitating laws and policies. Korea's major codes⁹² also made an essential contribution to development, even if they did not provide for direct support for industries, by protecting fundamental economic rights, such as the freedom to contract and right to property.⁹³ This legal protection encouraged Koreans to participate in economic activities pursuant to government policies and laws, by offering legal guarantees for their rights to the economic returns from these activities.

Koreans have shown regulatory compliance with development-facilitating laws, but the laws that the administration had enacted in the 70s and the 80s to reinforce its political control over citizens by limiting their civil liberties were met with substantial resistance. These laws included a series of constitutional amendments in 1972 (called the "October Restoration"), which concentrated political powers in the hands of the president and restricted fundamental civil rights, such as freedom of speech.⁹⁴ The subsequent "Emergency Measures" ("Kin-Keup-Jo-Chi"), applied under the amended constitution, further restrained

⁹⁰ The low illiteracy rate was influenced by the cultural emphasis on education and a solid public education system.

⁹¹ See *supra* note 11 (for Korea's low Gini co-efficient).

⁹² *Supra* note 21 (for a list of the codes).

⁹³ These rights are guaranteed under the constitution and the civil code.

⁹⁴ See Martin Hart-Landsberg, *The Rush to Development: Economic Change and Political Struggle in Korea* (Monthly Review Press, 1993).

citizens' political rights. The administration explained that the uncertain and unstable international environment of the 70s, such as the withdrawal of the United States from Vietnam in 1973 and the subsequent communist victory of North Vietnam, necessitated these measures to protect the nation and promote economic development without setbacks,⁹⁵ but many Koreans did not approve of them and instead offered resistance under severe and often violent oppression by the administration.

The political discontent instigated a series of civil unrests and public demonstrations, climaxing by the eruption of “Gwangju Movement for Democracy” in 1980 (or the “Gwangju Massacre” for the hundreds of casualties caused by the military action) shortly after the death of President Park and during the rising of the new military regime. Political strife and resistance against the authoritarian regime continued through the 1980s, and they led to the major civil resistance in June of 1987 (“the June Resistance”) and the eventual concession by the administration for another constitutional amendment completed in the same year.⁹⁶ The 1987 constitutional amendment (“the 1987 system”) included liberal reforms, democratic presidential election granting direct voting for presidents and constitutional review by an independent constitutional court. These constitutional amendments and subsequent liberal regulatory reforms in the 1990s, to be further discussed in the next section, originated in civil resistance to the authoritarian regulatory system in the 70s and the 80s (such as “Kin-Keup-Jo-Chi” and the constitution that did not allow direct voting for presidents) and represented the achievement of important social development objectives in Korea, such as political democratization and the rule of law.

3.3 Quality of Implementation: State Capacity and Political Will

“Quality of implementation,” which refers to the degree to which a state⁹⁷ meets the requirements of law and undertakes its mandates to fulfill regulatory objectives, is the third and final element of the regulatory impact mechanisms to assess the impact of law on development. Law that is otherwise well-designed and commanding strong compliance by the public would not have much impact on development if the state fails to properly implement them. For example, laws

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ A state refers to an organized political community directed by a sovereign government with control over a defined territory.

that attempt to secure former private property rights (FPPRs) would not be effective unless the state implements them effectively by enforcing these laws and setting up an effective registration system for FPPRs with adequate capacity. State capacity, including its financial, technological, and administrative capabilities for the implementation of law, is a key determinant of the quality of implementation. The implementation of law also requires a degree of political will, particularly when the implementation poses political challenges for reasons including a conflict of interests within a society and among different classes of population. These two factors, state capacity and political will, determine the quality of implementation.

In the Korean context, the role of state has been essential to stimulate development as discussed above, but some of the key resources constituting state capacity, such as financial resources, were not initially sufficient.⁹⁸ Korea had to manage and promote economic development with significant resource constraints, as illustrated by historical anecdotes and episodes about saving scarce resources, even at the top level; e. g. President Park Jung Hee refused to use the air conditioner in his office to save electricity during the summer, except for occasions to meet foreign guests, and kept a brick inside his toilet tank to conserve water.⁹⁹ Various austerity measures were widely adopted in the public and private sectors to save resources, and extensive public campaigns continued throughout the period of Korea's development.

Despite resource constraints, Korea secured state capacity from its manpower, government organization, and administrative implementation. For example, Korea had over 237,400 government officials in its population of 25 million in 1960.¹⁰⁰ Korea's traditional Confucian value upholding one's service to the government and the state, as well as the lack of employment opportunities in the private sector, enabled the government to recruit educated and talented individuals to its key posts, some of whom had academic training in North

⁹⁸ In 1962, the national budget was 74 billion won, equivalent to US\$ 290 million at the time, which was less than 20% of the net income of General Motors in the same year. See EPB, *Government Budget Allocation in 1962* (in Korean), BA0084326 (National Archives of Korea document call number) (1962).

⁹⁹ Austerity measures were prevalent in the government, even in the 1990s when Korea had achieved economic development and joined the OECD. When I traveled to Geneva in the late 1990s to attend World Trade Organization (WTO) meetings as a member of the Korean delegation, the entire delegation had to use an inexpensive accommodation outside the City of Geneva to save money in the government travel budget in the aftermath of the 1997 financial crisis.

¹⁰⁰ The number increased to over 315,000 in 1965. See National Index System, *Annual Public Official Status*, available at: <www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=1016>, accessed 23 March 2018.

America and Europe.¹⁰¹ They were able to develop economic development strategies and necessary LFIs, such as the development-facilitating statutes and institutions including the EPB.

Korea's central and local administration, which had ancient origins, was efficient and well-organized. Korea had long established a strong central administration with regional territorial reach since its first unification in the seventh century. In the early twentieth century, the Japanese colonial government in Korea also reinforced central and local administration *albeit* for the purpose of exploitation. The administrative capacity of the Korean government further developed after its independence, and President Park Jung Hee, who rose to power by a military coup in 1961, strengthened the administration by instilling military disciplines and organizational strength in the government. By the time Korea embarked on the path for development in the early 1960s, it had a well-trained army of central and local administrators, who effectively implemented and enforced development policies and laws.¹⁰²

The leadership's political will to achieve economic development also reinforced Korea's state capacity and made up for its weaker elements, such as insufficient financial and natural resources. The extent of this political will is well demonstrated by the "Extended Meetings for Export Promotion," in which President Park and a large number of government officials and private sector players discussed a range of issues about export promotion and sought solutions.¹⁰³ President Park held these meetings on a monthly basis for 14 years from 1965 to 1979 until his death. These meetings, beyond their practical purposes of seeking solutions to problems associated with export promotion, consistently sent a political message to the nation that its top priority is the achievement of economic development through the implementation of export-led growth strategies.¹⁰⁴ This extraordinary political will enabled sustained focus on the national

101 Dr Nam Duk Woo, a former Minister of EPB from 1974 to 1978, is a good example of Korea's elite bureaucrat. Dr Woo, initially an academic with doctorate training in the United States, led Korea's economic success after joining the administration under Park.

102 Korea was not free of corruption of its government officials, similar to many other developing countries. (See *supra* note 74 for Korea's low CPI percentile in 1995.) The difference lied in the extent of corruption, rather than its existence, which was not extensive enough to overturn the successful process of development. The situation of corruption improved in Korea when the government was able to offer public officials improved salaries as a result of economic development and the improved government budget. The process of democratization, which took place in the 90s, also made public officials more accountable to the public and deterred corruption.

103 Lee (2016), *supra* note 10, p. 313.

104 *Ibid.*

development agenda for the entire period of Korea's development, and this sustained focus was the key reason for success.

There is a political explanation for the strength of the leadership's will for economic development. The legitimacy of the new administration was in question, as it had risen to power through a military coup, and the administration needed to win public approval and support by seeking to resolve the biggest problem then facing the Korean society; prevalent poverty.¹⁰⁵ The leadership's drive for economic development was also justified by Korea's national security situation. Communist North Korea, whose economic and military powers were superior to those of its southern counterpart until the early 1970s, was hostile to Korea, proclaiming to "liberate" the entire Korea. The aid from the United States had been decreasing, and there was a suggestion to withdraw U.S. military forces from Korea after its failure in Vietnam in the 70s. In the presence of these security issues, the administration felt a strong need to develop modern industries and a sustainable economy to build military forces to protect its own security.¹⁰⁶ The majority of Koreans shared this need to promote economic development to escape from crushing poverty and to secure economic and industrial resources necessary to protect their nation (a pressing need for the Koreans who had experienced the tragic Korean War waged by North Korea); thus, they supported the government development policies and laws for over three decades.¹⁰⁷

The administration's political will focused on economic development until the 1980s, but the focus was shifted to social development since the 1990s, while economic development continued. The 1992 election of the "civilian" president, Kim Young Sam, a long-time opposition leader, set a new direction and momentum. He initiated several law reforms and institutional changes to promote a democratic and transparent society; e. g. to promote transparency in finance and banking, his reform required all financial transactions to be undertaken only under authentic legal names on the confirmation of personal identity. He also sought to reduce the government control of the economy and ordered the merger of the EPB, which had long been the government's control tower of economic development, with the Ministry of Finance.¹⁰⁸ These reforms represented the

105 Hwang (2016), *supra* note 6 and Seth (2010), *supra* note 6.

106 *Ibid.*

107 Based on this support, Park Jung Hee won presidential election three times since 1963 until he suspended the constitution in 1972.

108 The EPB was the control tower of Korea's economic development since the 1960s. However, its authority in budget allocation and control over the adoption and the implementation of economic development policies created tension and rivalry with other government departments such as the Ministry of Finance. Its 1994 merger with the Ministry of Finance was to resolve this

political will to promote social development by building civil democracy and the rule of law in Korea, which was renewed by the subsequent elections of liberal presidents, such as Kim Dae Joong (1998–2003), a Nobel Peace Prize winner and a legendary freedom fighter in the 1970s and 1980s,¹⁰⁹ and Roh Moo Hyun (2003–2008), a civil rights lawyer who continued with liberal reforms. During this period, economic growth also continued, *albeit* at lower rates than those for the preceding periods.¹¹⁰

4 Conclusion: Lessons from Korea

This article applies the general theory of law and development to explain the development case of Korea. There are lessons to be drawn from the successful development of Korea. This country was in the state of absolute poverty, facing substantial security threats and trauma from tragic incidents in its history, such as the Korean War, when it embarked on state-led development in the early 1960s. The economic and social conditions prevailing in this divided country as of the early 1960s were worse than those observed in many of the developing countries seen today, including the least developed countries. Despite the obstacles, Korea achieved unprecedented development in history from the 1960s to the mid-1990s while only a few other countries achieved successful economic development and transformed to advanced economies during the same period, so what set Korea apart from the most of the developing world during this period?

The preceding discussion provides some answers from the law and development perspectives. First, the laws adopted in the beginning of Korea's development period (i. e. the early 1960s) enabled the government to provide effective support, in the form of subsidies and trade measures, to industrial development

issue and also represented the change of economic paradigm in Korea to one that emphasizes the role of the private sector. However, an expert cited that the reduced government oversight in the economy resulted from the dissolution of the EPB was a cause of the 1997 financial crisis. Lee Tae Hee, "Issues and Solutions at the Time of the IMF" (in Korean), The Hankyoreh, 17 December 1997, p. 3.

109 President Kim Dae Joong continued with economic reforms that reduced government control in the economy and strengthened the private sector autonomy, including neoliberal labor reform that relaxed the legal preconditions to dismissal. The IMF required these reforms as a condition for its bailout package for Korea. The package was imperative for Korea to recover from the 1997 financial crisis, but after the reforms, Korea's economic growth slowed down to approximately 4% per annum and never returned to its pre-crisis level.

110 See *ibid.*

and trade expansion. This may be at odds with the neoliberal policy prescriptions that attempt to restrain government involvement in the economy, but in Korea, the state-led development policy was effective in the early states of economic development where the private sector had been underdeveloped. Korea was different from the other socialist and non-socialist developing countries at the time in that even with the substantial state involvement in the economy, its laws focused on providing support to private enterprises, based on their market performance, particularly in export markets. It adopted trade protection measures (e. g. high tariffs) for much of its development period to protect infant domestic industries, but at the same time, provided focused support to export activities.¹¹¹

Second, there was a degree of flexibility and adoptability in Korean laws and development policies. Changes were made to the laws to provide support to changing key industries as Korea's economic and industrial development progressed and attained different industrial and technological capacities (e. g. "light" industries in the 60s, heavy and chemical industries in the 70s, electronics and other high-tech industries in the 80s and the 90s). The industry-specific support legislation was subsequently repealed and replaced with laws that provided industrial support on a select basis, granting more autonomy to the private sector and reducing government control in the economy as the private sector, with increasing capacities, assumes dominant roles in the economy. The flexible legal frameworks and the political control of the legislature during the development period enabled timely changes in laws to meet the changing development needs.

Third, Korea developed a "web of institutions" for the promotion of economic development at every level of the government, such as the EPB at the top, planning and executing development policies; in the center and in regions; in the form of government and non-government entities; and within the country and abroad, such as numerous KOTRA offices around the world assisting Korean companies engaged in trade and investment. As discussed above, the Korean legal frameworks, which allowed expedient on point legislation and adjustments, increased the efficiency of the system. The law, legal frameworks, and institutions formed an inseparable amalgam that created highly productive synergies for the country's success.

Fourth, there was strong motivation on the part of the general public, industries, and businesses to work with the government and comply with its laws and development policies to escape from poverty through successful

¹¹¹ These state-led, export-based development policies have been adopted by other successful developing countries, such as Taiwan, Singapore, and more recently, China.

economic development. There was also strongly motivated political leadership, despite its authoritarian nature, which was committed to achieving economic development, lifting the country out of poverty and setting its course on economic development. The strong compliance and political leadership devoted to economic development were sustained for over three decades, until the country became an advanced economy with world-class industries and high per-capita income in the 1990s, and this sustainability and consistency was a key reason for the success.

The successful economic development also spurred democratization and the rule of law in Korea. The political struggles and demonstrations in the 60s and the 70s, primarily by liberal activists and students, were largely unsuccessful in changing the authoritarian rule. However, beginning in the 1980s, the general public, who then possessed significant economic resources as a result of economic development, strongly demanded constitutional reform mandating the direct public election of the president and called for regional government elections. The rule of law was also reinforced, with the development of fully independent judiciary, and a separate constitutional court was set up to conduct constitutional review of laws. By the mid-1990s, Korea adopted elective democracy based on the rule of law. This contrasts with the failure of social development in the countries that did not achieve economic development.

Lastly, the preceding discussions of the Korea case also enable us to address a key question that has been raised and debated for decades: “Does law matter for development?”¹¹² While classical thinkers such as Weber and Hayek advocated for the relevance and importance of formal, rational law that affords predictability in economic transactions¹¹³ and protects civil liberty for economic prosperity,¹¹⁴ the cases of successful development in Korea (and the other East Asian countries) seem to indicate otherwise and suggest that it is not the case.¹¹⁵

112 This question is whether or not law affects development, and it should be distinguished from one that inquires whether or not law should be considered to be an end itself or an objective of development.

113 Max Weber, *Law in Economy and Society* (translated by Max Rheinstein) (New York: Simon and Schuster, 1954).

114 Friedrich Hayek, *The Constitution of Liberty* (University of Chicago Press, 1960).

115 Hayek considered that under the rule of law, individual decisions, rather than the government authority, guide the productive activity. See Friedrich Hayek, *The Road to Serfdom* (1944), pp. 80–96. The successful state-led development in East Asia was not consistent with this position. Kanishka Jayasuriya, “Introduction: A Framework for the Analysis of Legal Institutions in East Asia”, in Kanishka Jayasuriya (ed.), *Law, Capitalism, and Power in Asia* (London: Routledge, 1999), p. 7; Tom Ginsburg, *Does Law Matter for Economic Development? Evidence from East Asia*, 34 *Law and Society Review*, no. 3 (2000), 829–856; and Amanda Perry, *The*

For much of the development period, Korean laws did not guarantee full civil liberty but allowed authoritarian rule and substantial government control of the economy. The role of law or the importance of the rule of law for economic development may remain controversial and seems to depend on other contingencies such as institutional frameworks, relevant capacities, and cultural orientations (e.g. legal cultures), but there is less controversy on the point that development is not feasible without a degree of internal stability that provides for economic predictability.¹¹⁶ Measures to secure and sustain such stability may include non-legal forms, particularly in the early stages of economic development, but they tend to be formalized into legal forms over time to secure consistency and transparency. Thus, law is important to the extent that it secures and sustains such stability and guides policies to be implemented throughout the process of development, and it is subject to local variances. The successful development history of Korea validates this point.

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116 Lee (2017), *supra* note 3, citing an empirical study; based on a survey of 113 countries for a period from 1950 to 1983, the study concluded that economic growth is negatively correlated with political instability. Alberto Alesina *et al.*, *Political Instability and Economic Growth*, National Bureau of Economic Research Working Paper, no. 4173 (September 1992).

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