Abstract

Many democracies start with aspirations to rectify past wrongs under the precedent authoritarian regime. Indeed, they have adopted various measures to deal with past political repression. To what extent can a new democracy rectify past political violence while key actors from the past remain politically powerful, and what determines the outcomes of those efforts? We construct and analyze a novel dataset consisting of 142 retrial cases of allegedly fabricated espionage verdicts in South Korea to explain the political conditions under which a democratic judiciary reverses past errors. We find that both the immediate post-transition time period and a leader’s policy drive to achieve transitional justice affect the acquittal rate during retrials. The personal traits of judges do not affect their judgment, except for their birth in a conservative stronghold. Furthermore, using national survey data, we find that acquittals following past fabricated verdicts significantly enhance citizens’ trust in the judiciary.

Keywords: Democratization, Transitional Justice, Retrial, Espionage Charge, South Korea
I. Introduction

In the winter of 1982 in Gunsan, a city in southwestern South Korea, nine high school teachers were arrested and tried for espionage. During the trial, the defendants credibly argued that they had been severely tortured for weeks to confess to the false charges, but the judiciary convicted them as charged. Less than three years later, the country became a democracy. Nevertheless, it took another twenty-two years for the former teachers to be vindicated through a retrial. This so-called “Osonghwi case” is one of many false espionage cases from South Korea’s recent past, in which citizens were charged under false pretenses by the former authoritarian regime and later retried after democratization.

When a democratic government forms after either a collapse of or concessions from the previous authoritarian regime, citizens often aspire to achieve political and social justice that rectifies political manipulation and repression under the dictatorship. However, as the case mentioned above suggests, the political process to obtain transitional justice is not always as smooth as the normative rhetoric suggests it should be, for many reasons. Often times, authoritarian actors maintain significant political power in a strong political party; a substantial number of constituents may prioritize social stability over the potential unrest that transitional justice may bring; and institutional rigidity can add difficulties in rectifying political wrongs of the past.

In this paper, we examine the circumstances under which a new democracy can achieve transitional justice despite the various political and institutional challenges that arise. To explore this question, we use the retrials of fabricated espionage convictions in South Korea, a country having democratized after decades of authoritarian rule, because such cases provide clarity in terms of the injustice committed by the dictatorship and the political nature of the original convictions. The original cases were based on fabricated evidence and forced
confessions directed by the authoritarian law enforcement, leading to espionage charges meant to divert attention from disadvantageous domestic politics or to gain electoral advantages by politicizing the country’s hostile military confrontation with North Korea. Furthermore, the authoritarian rulers employed the legal system to legitimize this political repression. It is indeed common that the judiciary in authoritarian regimes will issue unjust verdicts on politically manipulated cases lacking legitimate legal evidence (Ginsburg and Moustafa 2008; Graver 2015). Yet, despite the theoretical and normative importance of studying political repression that occurs through legal processes, and tracing retrials that follow after democratization, academic research on retrials of past political verdicts are surprisingly rare. By analyzing retrials of allegedly fabricated espionage verdicts in South Korea, this paper attempts to understand the political causes and effects of judicial remedies of past wrongs.

Over the last three decades, new democracies have increasingly tried to address human rights violations conducted by former authoritarian regimes. According to HJ Kim (2012; 309), 33 out of 71 transitional countries have conducted human rights trials related to repression committed by the past regimes. Recognizing a so-called ‘justice cascade’ (Lutz and Sikkink 2001), scholars have discussed the causes and effects of various formats of transitional justice including human rights violation prosecution, truth and reconciliation commissions, material compensation for victims, and amnesty for perpetrators (Shaw and Waldorf 2010; Teitel 2000). However, legal restoration of victims’ status through retrials of wrongly convicted cases has rarely been discussed in the previous literature.

The study of retrials can be fruitful for a number of reasons. First, they require revocation of past legal convictions, so they tend to be hard-won and relatively rare. In most legal systems including South Korea’s, a request for retrial has an exceptionally high threshold because new legal ground is required simply to open a retrial process. Moreover, the opening of a retrial
process does not automatically mean that the past verdict is nullified; an acquittal requires a new appeals process in court. In addition, unlike other measures of transitional justice that are implemented by the new government and that typically depend on a political resolution from the president, retrials are implemented at the individual level. For this reason, various retrial cases may span years or even decades after the end of an authoritarian regime. This structure allows us an opportunity to examine various national- and individual-level conditions that facilitate or deter the realization of transitional justice.

Taking advantage of this structure, we present several hypotheses addressing the conditions under which individual efforts to restore justice through retrial are likely to succeed in court. First, we discuss contradictory predictions from transition theory (Huntington 1991, O’Donnell & Schmitter 1991) and from democratic consolidation theory (Rangelov and Teitel 2014). While the former predicts that retrials are more likely to end in acquittal in the brief time span just after transition, when anti-authoritarian fervor is high, the latter predicts that retrials will be more likely to end in acquittal as the new democracy survives for a longer period. Second, we evaluate who, other than the judiciary, might influence the retrial. While the judicial independence theory asserts that acquittal in a retrial would be independent from any government partisanship, the partisan theory argues that an acquittal would be influenced either by the incumbent leader’s policy drive for transitional justice or by the appointee. Third, we test whether the individual background of judges has an effect on retrials. Democratization results in the replacement of the head of government, ministers of administration, and members of the legislature, but it rarely alters the legal system or members of the judiciary. Considering that individual judges who worked for the authoritarian regime continue to work, we ask whether judges who began their service under the authoritarian regime behave differently than their counterparts appointed under democracy, with respect to revisiting and reversing past
verdicts related to political repression under the dictatorship.

To empirically test those hypotheses, we use data on 142 retrial verdicts from 1988 to 2016 related to espionage cases allegedly fabricated by the authoritarian regimes in South Korea. We collect detailed data on the political conditions surrounding each of these retrial verdicts. We also incorporate personal background information from 433 sitting judges in these verdicts, to test whether their individual predispositions influence the retrial decisions.

First, we find evidence that the immediate transition effect matters most in retrial acquittals of past unjust verdicts. This finding is consistent with Huntington’s (1991) prediction that justice comes quickly. It is also in line with Kim HJ’s (2012) finding that the power struggle between old and new elites results in the use of human rights prosecutions shortly after the democratic transition. Second, our analyses show that a political leader’s policy interest in transitional justice affects the legal restoration of victims’s status following fabricated espionage cases: the probability of retrial acquittal is higher under the liberal president who initiated a strong policy drive to promote transitional justice. Third, we find little support for an effect based on the personal characteristics of judges: factors such as their age, alma mater, and status as an authoritarian appointee all prove to be insignificant predictors of their decisions regarding retrial applications. The only statistically significant personal trait is whether the judge’s hometown lies in the Southeastern provinces (Youngnam region) in Korea, known as a core support base for the former authoritarian conservative party.

Finally, to answer why righting authoritarian wrongs matters, we examine the effects of retrials on the public perception of the judiciary. We are particularly interested in the effect on trust in the judiciary. Upon observing retrial acquittals that follow past fabricated verdicts, how do citizens evaluate the performance of the judiciary? Do they appreciate the judiciary’s efforts to correct their past wrongs, or do retrials adversely affect trust by highlighting how
untrustworthy the judiciary was, at least in the past?

Using the cumulative Korean General Social Survey data, we find a positive correlation between the acquittal rate and public trust in the judiciary. In years when the retrial acquittal rate increases, citizens reveal higher levels of trust in the Supreme Court.

Our study contributes to the existing literature in several ways. First, this research broadens our understanding of the democratization process by showing how new democracies cope with the political legacy left by the past dictatorship. Our study reveals that institutional democratization does not automatically entail the rectification of past wrongs, and that political efforts at the national and individual levels are necessary. Specifically, we show that the timing of such efforts and the political will of the national leader play a critical role. Second, our study adds to the transitional justice literature by extending the discourse to judicial retrials and the legal restoration of victims’ status, which most previous studies have not discussed as part of transitional justice. Furthermore, our study provides systematic empirical evidence on the dynamic process toward transitional justice. Previous studies of transitional justice typically rely on either in-depth qualitative case studies\(^1\) or Large-n studies (Dancy and Michel, 2016; Kim HJ 2012; Olsen, Payne & Reiter, 2010; Roper & Barria, 2009). While both research designs have their own merits and theoretical implications, a systematic examination of longstanding political and judicial endeavors to achieve transitional justice is worthy of broader academic attention.

This paper proceeds as follows: the second section discusses the key hypotheses regarding retrials of fabricated espionage cases. The third section provides historical background on political repression and transitional justice in South Korea. The fourth section

\(^1\) County case studies include Spain (Aguilar et al. 2011, Kovras 2012), India (Kilara 2007), Portugal (Pinto 2006), Rwanda (Magnarella 1997), South Africa (Wilson 2000), and Taiwan (Wu 2005).
describes the data and measurements, presents empirical evidence, and discusses the public response to retrial acquittals. The last section concludes.

II. Conditions for the Rectification of Past Wrongs

Democratization does not automatically fix the wrongs that former authoritarian leaders undertook to prolong their regime. What enables the new democracy to effectively correct the unjust affairs of the past? First, the timing should matter. From a theoretical standpoint, two arguments compete in this regard. One perspective emphasizes the transition effect. Erroneous convictions under the past authoritarian regime are more likely to be reprocessed right after democratization when the public’s enthusiasm for democratic reform is at its peak. In this context, victims of fabricated espionage might anticipate a strong chance of clearing their names and may thus be more likely to file for a retrial. With collective support for the victims, and strong demand for punishing the authoritarian rulers and their collaborators, the judiciary may be more likely to admit their errors from the past and to declare an acquittal. This first hypothesis is consistent with the balance of power argument in the literature on transitional justice. As Kim HJ (2012) summarizes, early studies on the topic consider transitional justice a collateral gain of democratization, claiming that the power balance between the old and the new elites right after democratization constitutes a key determinant. For example, Huntington concludes that transitional justice either comes immediately following the transition or never (Huntington 1991: 228).

A competing hypothesis suggests that democratization does not necessarily guarantee the rectification of past political repression. The authoritarian legacy may limit attempts to restore judicial justice, especially if the country has achieved democracy through a negotiation between the authoritarian incumbent group and new emerging pro-democracy elites. In general,
scholars of transitional justice agree that negotiated democratization processes tend to leave an unfavorable environment for transitional justice. For example, Olsen et al (2010) show that governments achieving democratization through a clean break with the authoritarian regime are more likely than negotiated democracies to conduct trials on state agents as opposed to other types of transitional justice such as truth commissions or amnesty, because trials on state agents are more expensive and more difficult to achieve (Olsen et al 2010: 69). Adopting their argument, retrials should be more costly and politically difficult, because appealing past erroneous verdicts not only uncovers injustices committed by the former authoritarian government but also brings attention to shortcomings in the judiciary’s handling of those cases in the past.

Another obstacle is the so-called justice dilemma between restoring human rights and justice and securing political and judicial stability. Citizens in post-authoritarian settings may harbor concern that revealing and correcting past wrongs could cause a political conflict that undermines political and social stability. This conservative approach can deter drastic political reform or legal proceedings against the former political leaders. Furthermore, in fragile new democracies, many believe that a social compromise to forgive and forget in the name of political stability represents a more crucial goal (Huntington, 1991:231). In other words, “timing and sequencing” play a key role in overcoming the justice dilemma (Rangelov and Teitel 2014:344), because reforms and settlement of democratic principles following democratization require time (Fletcher et al. 2009). Similarly, Dancy and Michel (2016) find that prosecutorial momentum for transitional justice does not come immediately after democratization but rather after a sufficient period of time has passed.

In sum, we have the following two competing hypotheses regarding the political conditions under which retrials are more likely to result in acquittal:
**Hypothesis 1-1 (Transition Effect):** Retrials of past verdicts regarding allegedly fabricated espionage cases are more likely to end in acquittal immediately after democratic transition.

**Hypothesis 1-2 (Consolidation Effect):** Retrials of past verdicts regarding allegedly fabricated espionage cases are more likely to end in acquittal as democracy consolidates with sufficient time.

The second question regarding judicial retrials is who promotes or hinders them. We first focus on the effects of the incumbent national leader’s political preference. When the new democratic leader has a firm political preference for or against transitional justice, does he or she affect the pace of retrials on past unjust verdicts? While some studies on judicial politics suggest that the incumbent and ruling parties do influence judicial decisions despite institutional designs intended to promote judicial independence (Basabe-Serrano and Polga-Hecimovich 2013; Pérez-Liñán and Castagnola 2009; Ríos-Figueroa 2007; Sharma and Glennon 2013), no research to this point explores whether and how the incumbent leader can influence retrials.

In theory, political leaders possess numerous means to demonstrate commitment to transitional justice, including constitutional or legal reform, judicial turnover, and non-institutional methods. The leader may push the legislature to make or amend necessary laws through the party, create special committees, or issue presidential decrees for judicial justice. He or she can facilitate or slow down the process of retrials as part of transitional justice, using his or her nomination power to replace the Supreme Court judges. The leader can also commence a political campaign for the restoration of judicial justice to elicit the public’s support.
Among them, one of the most effective political tools that national leaders can authorize is the creation of a special committee designated for transitional justice, in order to investigate the truth about contentious affairs in the past. This process is critical for retrial processes, in particular, because recognition of previously unrevealed legal evidence is a prerequisite for opening a retrial. A special committee supported by the government can serve as a channel for unearthing that evidence that law enforcement under the authoritarian regime failed to provide. In Korea, the Truth and Reconciliation Commission was established in 2005 and collected evidence on political and legal injustices under the former authoritarian governments, including false espionage cases. As we elaborate in greater detail in the next section, the Commission was launched with the strong backing of President Roh Moo-hyun and his party.

It is worth noting that this hypothesis differs from “Hypothesis 1-1 (Transition Effect)”, because democratization does not always ensure a newly elected national leader whose preference is in favour of transitional justice. In fact, the first democratic election as an outcome of democratization does not necessarily guarantee the winning of a democratic leader. When democratization is achieved through concession or compromise between the incumbent authoritarian power and the pro-democratic opposition rather than through a landslide of democratizing forces (Acemoglu et al. 2000; Ziblatt 2006), a successor of the former authoritarian party can successfully maintain political power by winning a democratic election, and can thus thrive even after democratization (Loxton 2016; Slater and Wong 2013). Authoritarian holdovers will have little incentive to allow retrials of past unjust verdicts that may taint their fellow politicians and agents.

Even if a leader of a democratization movement is elected in the first democratic election, he or she may not prioritize transitional justice. Among many policy issues that a new democracy faces, uncovering and correcting old injustices may be viewed as less urgent or
even harmful to peaceful consolidation. That is, unlike “Hypothesis 1-1 (Transition Effect)” which focuses on the regime transition only, this new hypothesis, denoted as Hypothesis 2-1 (The Incumbent’s Partisan Effect), highlights importance of a power shift to a truly pro-democratic type of leader for transitional justice to occur.

Another hypothesis on the political influence of non-judicial actors involves whether judges’ decisions are affected by their appointer. In theory, individual judges must be insulated against any source of political bias under the principle of judicial independence. In reality, however, judges may have a partisan bias toward the leader who appointed them. The possibility of a partisan relationship between appointees and appointers implies that the judges appointed under a former authoritarian regime may be more reluctant to admit past wrongs committed under that regime. Two mechanisms are potentially at work. One is the selection mechanism: authoritarian leaders may select pro-authoritarian judges, expecting that those judges will help increase the probability of political survival. Such precise “selection” may sound extreme, but authoritarian leaders are at least capable of deterring pro-democratic judges from serving. Under the Korean authoritarian regimes, it is often said that lawyers with a record of participation in pro-democracy protests could not be appointed as judges even if their objective qualities, such as the bar exam scores, merited such appointments.

The other mechanism is a continuation mechanism. While the adoption of free and competitive elections often results in an alternation in executive and legislative power, the vast

---

2 The famous 1990 Christmas message by then Deputy President of the ANC Nelson Mandela would be a good example. In the message, he wrote, “we must strive to be moved by a generosity of spirit that will enable us to outgrow the hatred and conflicts of the past.” (Source: http://www.sahistory.org.za/topic/christmas-message-deputy-president-anc-nelson-mandela)

3 The incumbent President Moon Jae-in is a good example. He was turned down for appointment as a judge due to his protest history against the dictator even though he passed the bar exam and graduated second at the Judicial Research and Training Institute (Hankyoreh, April 4, 2017. http://english.hani.co.kr/arti/english_edition/e_national/789246.html).
majority of government employees and members of the judiciary remain in their office regardless of how radical the democratization process may have been (Martinez-Bravo 2014, Francois et al. 2014, Martinez-Bravo et al. 2017). While top-tier judges such as the Chief Justice could be replaced as a result of the change in political leadership (Basabe-Serrano and Polga-Hecimovich 2013; Pérez-Liñán and Castagnola 2009), the rank-and-file judges typically maintain their positions. These judicial holdovers may be less likely to admit errors in past convictions as they were also part of the judiciary at the time. Most judges who have directly or indirectly contributed to authoritarian rule by “closing their eyes to that which occurs outside of the legal institutions, by refusing to hear charges against the government or to provide habeas corpus, and by reinterpreting the law to accommodate the demands of the authoritarian rulers” (Graver 2015:8) may be likely to maintain that stance despite the regime change. Therefore, whether a judge was appointed by the former authoritarian regime may affect the progress of individual retrial cases.

In sum, we present two hypotheses regarding political leaders’ influence on retrials:

*Hypothesis 2-1 (The Incumbent’s Partisan Effect):* When the incumbent leader has a strong partisan interest in transitional justice, retrials are more likely to end in acquittal.

*Hypothesis 2-2 (Appointee Effect):* A retrial of past verdicts on fabricated espionage cases is less likely to end in acquittal when the judge reviewing the retrial was appointed by the former authoritarian leaders.

The third issue is the effect of judges’ personal features and affiliations. Despite the theoretical principle of objectivity in judicial decisions that precludes room for judges’ personal political preferences or social networks to affect their decisions, the literature on judicial

Despite that evidence, a challenge to empirically evaluating retrial cases lies in the systematic identification of judges’ political preferences. Unlike in the US, where prosecutors often run for election under party tickets and judges’ ideological orientations are vetted in public via media or hearings, most new democracies—including Korea—maintain the institutional principle of legal objectivity and work ethic, which prevents members of the judiciary from publicly expressing their political views. This fundamental measurement challenge necessitates that we rely on a proxy measure for political preferences: the personal upbringing environment of justices. Many voting behaviour theories explain that partisan identity and political ideology are formed through personal upbringing and early socialization processes in youth, such as regional political orientation, family members’ political ideology, and ethnic group identities (Campbell et al 1960; Lewis-Beck et al 2008; Niemi and Weisberg 1993). In Korean politics, hometown is a strong political indicator. Without a conspicuous racial, linguistic, or religious social cleavage, the regional cleavage between the southeastern (“Youngnam” in Korean) and southwestern (“Honam” in Korean) provinces has been the centerpiece of political and ideological confrontation in South Korea’s contemporary political history (Cho 1998; Hong and Park 2016; Horiuchi and Lee 2008; Kang 2016; Kwon 2005, 2010; Moon 2005). Youngnam has been the political base for authoritarian presidents Park Jung-hee and Chun Doo-hwan, and for the successor conservative party. Honam, conversely, has long represented the political base for anti-authoritarian movements symbolized by the Gwangju Uprising in May 1980; it is a strong support base for the liberal party, which
originated from the opposition party under authoritarianism. Under these political circumstances, the chance that a judge who grew up in Youngnam is conservative is quite high, as is the chance that judges from Honam maintain more liberal ideologies.

Another factor that might affect judicial judgment over retrials is the educational background of judges. South Korea has a hierarchical university system in which most of the top high school students aim to attend Seoul National University (SNU, hereafter). Established by the Japanese colonial government in 1924, SNU has functioned as the largest institute fostering elites in South Korea. In particular, in law, SNU has been unrivalled, as the majority of bar exam passers earned their bachelor’s degree from the SNU Law School. As lawyers from SNU represented the largest network in Korean legal circles under the authoritarian regime, their social group interests could collectively affect the legal process after democratization, including for retrials of erroneous verdicts.

In sum, we hypothesize the effects of judges’ individual features as follows:

*Hypothesis 3-1 (Political Upbringing Effect):* Retrials are less likely to end in acquittal when judges from Youngnam area participate in retrial reviews.

*Hypothesis 3-2 (Power Network Effect):* Retrials are less likely to end in acquittal when judges from SNU participate in retrial reviews.

In the following empirical section, we test these hypotheses using detailed data from 142 retrials since South Korea’s democratization. Before moving to the data description, we discuss

---

4 According to the news article in the *Law Times* analyzing the 2013 Korean Law Directory, 1,550 out of a total of 2,394 incumbent judges (65%) graduated from SNU (https://www.lawtimes.co.kr/Legal-News/Legal-News-View?Serial=71018).
the background of false espionage cases and retrials in the context of South Korean politics, which moved from decades-long authoritarian rule to a democracy in 1987.

III. False Espionage Cases and Retrials in South Korea

A common feature of the three authoritarian regimes in South Korea—ruled by Syngman Rhee (1948-1960), Park Chung Hee (1961-1979), and Chun Doo Hwan (1979-1987)—is that they relied on heavy-handed anti-communist campaigns in the name of protecting the country from the North Korean military threat. Often, the anti-communist propaganda was used to repress the political demands of the opposition and of social movements for labor rights and democracy. Particularly when regime legitimacy or stability appeared to be at risk, the authoritarian leadership often fabricated threats from North Korea by creating fake North Korean spies. These false espionage cases involved torturing political enemies, democracy activists, or university students to extract confessions on false charges, as well as forging evidence to frame them as collaborators to the North Korean regime.

Part of the reason for going through the trouble of torturing suspects and forging evidence was to fulfill legal procedural requirements. Most of the fabricated espionage cases went through the official judicial system at the time; the judiciary was thus faced with accepting and approving illegally obtained confessions and forged evidence. The legal basis for that judicial procedure was the National Security Act (NSA). The NSA has been in force since 1948 with the avowed purpose “of securing the security of the state and the subsistence and freedom of nationals, by regulating any anticipated activities compromising the safety of the state” (Article 1 (1), National Security Act). The act thus made any activities supporting communism or North Korean, or even showing sympathy toward North Korea, illegal. Practically speaking, the law
banned a variety of activities, with no clear guidelines; they included recognizing North Korea as a political entity; advocating the overthrow of the South Korean government; printing, distributing, or owning anti-government material; and failing to report such violations by others. The NSA gained strength over the course of the authoritarian period, particularly when it was merged with the Anti-Communism Act in 1980.

Since democratization in 1987, the NSA, which had served as a legal basis for political suppression and social control, has been weakened through several amendments but has never been abolished. For example, in 1991, the 8th amendment declared the importance of human rights protection in the application and interpretation of the NSA. In 1992, the constitutional court ruled the detention extension clause to be unconstitutional and annulled the clause. Nevertheless, despite human rights controversies around the NSA, the act remains valid because of the country’s continued hostile political and military tension with North Korea.

Meanwhile, many defendants in past NSA cases, especially those convicted through forced confessions and forged evidence, began to look for strategies to appeal. The first retrial case in our dataset was made in the year following democratization, 1988; the Supreme Court overturned the original verdict based on the Anti-Communism Act and returned the case to the local court. Since then, a large number of past verdicts issued under the authoritarian regimes using the Anti-Communism Act or the NSA have been appealed to the higher courts or subject to requests for retrial.

Initially, an advance in transitional justice after democratization was made by President Kim Young-sam. During his administration (1993-1998), the transitional justice process focused on the coup by former President Chun Doo-whan and his colleague, Roh Tae-woo, in 1979. Both Chun and Roh Tae-Woo were imprisoned for treason and embezzlement of funds. In addition, the Special Act Concerning the May 18 Democratization Movement was enacted
in 1995, and a right for special retrial was given to the May 18 Uprising victims to restore individual legal status and reputations (Cho 2007). Despite this contribution, Kim Young-sam’s will to address past injustices was limited to this one-time event, rather than establishing an institutional basis for transitional justice.

A watershed moment came in 2004 when the legislature enacted the basic law of transitional justice for truth and reconciliation under the left-wing government of Roh Moo-Hyun. The Truth and Reconciliation Commission (the Commission, hereafter) was established on December 1, 2005 and investigated thousands of cases of past atrocities, government repression, and suspicious deaths committed during Japan’s occupation of Korea, the Korean War, and the authoritarian governments that ruled thereafter. Out of 11,172 cases (including 10,860 applications, 274 case separations, and 38 ex officio investigations), 8,468 were investigated and included confirmatory information regarding the event, victims, and perpetrators; 510 included information that was unclear or could not be confirmed; and 1,725 cases were dismissed. Depending on the decision, the Commission recommended a government apology, statutory reforms, an acknowledgement as a public history record, or education of human rights and peace (Baik 2012-2013, Han 2010, Kim D. 2012, Lee 2015, Yi 2015).

The cases investigated through the Commission serve as legal grounds for victims’ applications for judicial retrials. As we display later, retrial applications over past wrongs increased significantly after the Commission’s report. A retrial is a judicial appeal that allows an original judicial decision to be nullified when grounds for new trial are found; it is only warranted for an emergency appeal on the grounds of judicial misconduct during the original trial, such as a serious fault in the legal procedures or a deficiency in the litigation materials on which the judgment was based. In 1996, the Constitutional Court determined that the right to appeal is not necessarily included in the right to be tried under Article 27 of the Constitution
and that it is a matter of legislative policy that the legislator must decide in light of the legal stability of the verdict or reconciliation, the speed and suitability of the trial, and the burden of the court. This means that applicants for retrial have to demonstrate the deficiency and the fault in the original litigation and the court, which made the original judgment, decides whether the application is adequate for a retrial based on submitted evidence and the relevant laws at the time.

Official retrial process takes place as follows. The applicant applies for a retrial to the very court that originally issued the verdict. The court then decides whether to open a retrial or not solely based on the rationale provided by the applicant. Once the court decides to open a retrial application, it reviews the case again under the new grounds and decides whether to nullify the original conviction (that is, to issue a judgement of acquittal) or to dismiss the retrial application (that is, to confirm the original conviction). If an acquittal is issued, the original conviction is reversed and the original charge(s) are dismissed. If the retrial is dismissed, the original conviction continues to be valid. If the applicant disagrees with the dismissal of the application or the prosecutor disagrees with an acquittal, either side may appeal to a higher court.

One important procedural feature regarding this paper’s identification strategy is that a retrial application should be submitted only to the district court which the original verdict was issued. This procedural rule prohibits a potential selection effect which may influence the success of a retrial. For example, without this rule, the applicant could choose a retrial court that is thought to be more favorable to him or her. If such selection were to influence the success

---

5 The full verdict is available in Korean at http://search.ccourt.go.kr/ths/pr/ths_pr0101_P1.do?seq=0&cname=&eventNum=5839&eventNo=93%ED%97%8C%EB%B0%9427&pubFlag=0&cId=010200&selectFont=
of a retrial, our empirical analysis would not be free from selection bias.

Among many types of cases subject to the retrial process, we focus on the retrials of fabricated spy cases for several reasons. First, over the past decade, numerous espionage cases were retried, particularly after the Commission found that many of the past sentences were built on forged evidence and forced confessions. Most of these espionage cases are relatively recent compared to other cases investigated by the Commission, such as those arising during Japan’s occupation or the Korean War. Therefore, many of the aggrieved parties are still alive and endeavor to recover their reputations with greater urgency.

Second, we choose the retried spy cases to examine the effect of democratization apart from other factors that might change with democratization, such as changes in the ruling party, political culture, electoral system, bureaucratic reform, and so on. Amid ongoing military tensions with North Korea, the bureaucratic system related to defense and security intelligence against North Korea continues to operate with few organizational or personnel changes from the authoritarian period, despite democratization and decades of democratic consolidation. For example, the NSA is still valid and the National Intelligence Service (NIS, formerly the Korean Central Intelligence Agency) works actively on anti-communist operations. Given the fact that the relevant laws and institutions continue to exist regardless of political institutional change, the retrial of wrongly convicted espionage cases only reflects the effect of democratization and the associated pressure for corrections, rather than changes in directly relevant law or anticommunist intelligence and security organizations.

---

6 The famous example would be the dissolution of the Unified Progressive Party, an ultra-leftist party with five parliamentary members in 2016, by the constitutional court for plotting rebellion, through a long investigation by the NIS. Similarly, in 2015, a North Korean defector was arrested and prosecuted for espionage by the NIS, but the case was dismissed by the Supreme Court for the lack of evidence.
IV. Data and Empirical Analysis

1. Data and Variables

To examine the political and individual factors affecting the retrial of erroneous espionage convictions under past authoritarian regimes, we collect detailed information on all retrial cases after democratization in South Korea, from 1988 to 2016. The data include the contents of rulings, the list of judges in each retrial case, and other facts related to all falsely convicted espionage cases. Our main source of data is the public website of the Supreme Court of Korea, where trials and rulings are publicly announced. First, we employed a keyword search method to find retrial cases on allegedly fabricated espionage charges. Additionally, to include any cases that the keyword search failed to identify, we crosschecked our case list with two other sources: the official final report by the Commission, and newspaper articles. We considered all false espionage cases in the official final report of the Commission, as well as all newspaper articles on fabricated espionage cases and their retrial results. By crosschecking all individual retrial cases from these two additional sources with the Supreme Court’s website, we confirm that our dataset contains all retried espionage cases, at least those available from the public sources.

Through this process, we collected 142 retrial cases on past espionage cases. For 99 cases,
the verdicts are fully published online through the Supreme Court website, meaning that detailed information such as the final judgment of an acquittal or a conviction, the reason for the ruling, and the list of judges who reviewed the case can be collected from the court webpage. For the other 43 cases for which detailed information is not publicly available, we have information only on the final judgement of an acquittal or a conviction, obtained from either the report by the Commission or newspaper articles.

It is again worth noting that our research design circumvents the endogeneity issue whereby the retrial applicant or the national attorney might choose a court or a judge more advantageous for their case. This is impossible in our sample because the retrial applicant has to go back to the court that originally issued the conviction. This means that the court was predetermined before the applicant filed the retrial petition, and indeed before the democratic transition, at which time neither the applicant nor the attorney would have had knowledge regarding a potential retrial in the future.

Out of the 142 retrial cases that we analyze, 64 appeals for retrial (45%) were dismissed, so the convictions stood. 78 out of 142 retrial cases (55%) resulted in acquittals, that is, a nullification of the original judgement made under the authoritarian regimes. The acquittal rate of 55 percent implies that the nullification of original sentences remained uncertain, despite various activities taken by supporting groups including the Commission, human rights lawyers, and civil activist groups, along with social and political pressure for transitional justice.
Figure 1 The Number of All Retrials and Acquittals.

Figure 1 illustrates the yearly trend in the number of retrial cases (displayed in dark gray) and acquittals (displayed in light gray). An increase of retrial cases after 2008 is notable. We infer that this increase is due to the Commission’s activity. As noted above, the investigation of the Commission from 2005 to 2010 has provided legal grounds to apply for a retrial related to false espionage convictions from before democratization. Considering the practical process of preparing the retrial application after the Commission’s report, it is reasonable to interpret the increasing number of retrial cases after 2008 as closely related to the Commission’s report.

For an empirical test of the hypotheses, we construct variables as follows: to test Hypothesis 1-1 (Transition Effect) and 1-2 (Consolidation Effect), we include a time variable, called Years after Democratization, which is calculated as the number of years from the year of democratization, 1987, to the retrial. To test Hypothesis 2-2 (The Incumbent’s Partisan Effect), we use two measures, a dummy variable for each of six presidents and a time-varying variable to indicating the share of legislative seats held by the government’s party, called Seats.
of the Government Party. The former is to directly measure the idiosyncratic feature of presidents, while the latter is to measure presidents’ political power in the legislature. Considering the fact that the official process to achieve transitional justice—like the Commission’s work in Korea—occurs via legislation, the leader’s political power in the legislature is critical. We use the number of seats held by the president’s party as a measure of this power.

To examine whether judges’ individual characteristics affect retrial results as Hypothesis 3-1 argues, we collected biographical information for all judges who reviewed the retrial cases. From the Law Directory, we identify judges’ biographical information including age, hometown, educational background, and year of appointment. Hometown is coded using two dummy variables: Honam Hometown and Youngnam Hometown. The former is coded 1 if a judge was born in Honam area, which has been the electoral support base for the liberal party, while the latter is coded 1 for judges whose hometown is in the Youngnam area, which has been the core political base for the conservative parties. To gauge the power of networks via educational background (Hypothesis 3-2), we include an indicator variable SNU that is coded 1 if a judge graduated from Seoul National University and 0 otherwise.

Several control variables are included in the empirical models. We include the share of legislative seats for the biggest conservative party, Seats of the Conservative Party, which measures political power against transitional justice. The Korean conservative party, as a

---

10 The website of the Law Directory is http://www.lawnb.com/

11 Given the fact that almost all judges have university and graduate degrees from top-ranking universities, a variable coding for college graduation would be meaningless.

12 The biggest conservative party in Korea has changed its title from the Democratic Justice Party (minju jungueui dang), the Democratic Liberal Party (minju jayu dang), the New Korea Party (sinhanguk dang), the Grand National Party (hannara dang), the Saenuri Party (saenuri dang), and finally to the Liberty Korea Party (jayu hanguk dang) in 2017. Despite the title change, they all represent the same successive conservative party.
successor of the authoritarian ruling parties, often emphasizes the stability of the existing legal system and expresses concerns and negative opinions on the Commission’s activity\textsuperscript{13}. Given this context, we believe that the share of legislative seats occupied by the biggest conservative party represents a good proxy for its political influence, which is likely to work against the airing of the former authoritarian regimes’ wrongs. Finally, we consider the possibility that the head of the judiciary, the Chief Justice of the Supreme Court, may have some unobservable effect on retrial decisions. In Korea, the Chief Justice is appointed by the president and approved by the National Assembly; he or she serves one term of six years, which is longer than the President’s 5-year term. As the Chief Justice is responsible for the day-to-day operations of the judicial branch, it is possible that individual characteristics including the political inclination of the Chief Justice might affect the direction of retrial decisions on average. To address this possibility, we include Chief Justice dummy variables as fixed effects. All variables are summarized in Table 1.

\textbf{Table 1 Summary Statistics}

<table>
<thead>
<tr>
<th>Variables Used in Tables 2 to 3</th>
<th>Number of Observation</th>
<th>Mean</th>
<th>Standard Deviation</th>
<th>Min</th>
<th>Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retrial Outcome</td>
<td>142</td>
<td>0.5492958</td>
<td>0.4993253</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>President Dummies</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{13} In the 2009 National Assembly Inspection of State Administration, a constitutional authority that the Korean National Assembly has in order to inspect and investigate all governmental activities, several congressmen in the Grand National Party, then the conservative opposition party, bashed the Commission. For example, Won Yu-cheul said that the Commission is a waste of tax money. Ahn Kyong-rul and Lee Myung-su bashed the members’ capability and neutrality (Munhwa Ilbo, Oct 16, 2009. http://www.munhwa.com/news/view.html?no=2009101601030423237008).
Roh Tae-woo  142  0.056338  0.2313895  0  1
Kim Young-sam  142  0.0915493  0.2894095  0  1
Kim Dae-jung  142  0.0422535  0.2018791  0  1
Roh Moo-hyun  142  0.1267606  0.3338823  0  1
Lee Myung-bak  142  0.4647887  0.5005241  0  1
Park Geun-hye  142  0.2112676  0.4096528  0  1
Years after Democratization (=retrial year - 1987)  142  20.40141  6.828247  1  29
Seats of the Government Party  142  0.5224453  0.0675777  0.2791519  0.7569444
Seats of Conservative Parties  142  0.5213643  0.0629293  0.4275618  0.7569444
Judge's Biographical Information
Age of Judges  433  62.97229  11.8198  33  90
Education (SNU=1)  433  0.8036952  0.3976612  0  1
Honam Hometown  433  0.2309469  0.421926  0  1
Youngnam Hometown  433  0.3648961  0.4819579  0  1
Time after Judge's Appointment (=retrial year - appointment year)  433  29.34411  9.368946  3  44
Dummies for Sitting Chief Justice
Lee Il-gyu  142  0.0352113  0.1849659  0  1
Kim Duk-joo  142  0.0211268  0.1443159  0  1
Yun Guan  142  0.1126761  0.3173157  0  1
Choi Jong-young  142  0.0915493  0.2894095  0  1
Lee Yong-hun  142  0.4084507  0.4932873  0  1
Yang Sung-tae  142  0.3309859  0.4722337  0  1

<table>
<thead>
<tr>
<th>Variables Used in Tables 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trust on the Supreme Court Judges 15578  1.918732  0.6326744  1  3</td>
</tr>
<tr>
<td>Rate of Retrial Acceptance 16183  4.921399  2.719604  1  10</td>
</tr>
<tr>
<td>Trust on the Government 15394  1.574055  0.5928436  1  3</td>
</tr>
<tr>
<td>Income (Subjective Perception) 14688  3.256264  1.0417  1  5</td>
</tr>
<tr>
<td>Education 15871  3.531788  1.470691  1  7</td>
</tr>
<tr>
<td>Gender (Female=1) 16183  0.5388988  0.4985  0  1</td>
</tr>
<tr>
<td>Age 16163  44.71651  16.38936  18  95</td>
</tr>
</tbody>
</table>

2. Empirical Analysis

Under what conditions does the judiciary reverse past espionage convictions based on
fabricated evidence and forced confessions? Table 2 presents the results of a logit analysis in which the dependent variable indicates whether a retrial case ends in acquittal or not. An acquittal is coded as 1. Model 1 does not include dummy variables for the six presidents elected after democratization, while Models 2 and Model 3 do, using different presidents as the baseline for estimation: Model 2 uses the regime of Roh Tae-woo, the first democratically elected president in 1987, while Model 3 uses the regime of Roh Moo-hyun, a left-wing president under whom the Truth and Reconciliation Commission began its investigation.

In all three models, the continuous variable *Years after Democratization* is not significant. This indicates that the time span since democratization does not explain the pattern of retrial acquittals by the judiciary; democratic consolidation thus does not increase the likelihood of acquittals, leading us to reject Hypothesis 1-2 (*Consolidation Effect*). However, the indicator variables for six democratically elected presidents in Models 2 and 3 provide a more nuanced picture of the timing and sequencing of transitional justice. In Model 2, where the dummy variable for President Roh Tae-woo is the baseline, all five president dummy variables show a statistically significant and negative correlation, meaning that fabricated espionage cases are most likely to have been nullified under Roh Tae-woo, the first democratically elected president, compared to all other post-democratization presidents. This finding lends support to Hypothesis 1-1 (*Transition Effect*): a restoration of judicial justice by admitting errors in past verdicts is more likely to have occurred right after democratization.

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roh Tae-woo</td>
<td></td>
<td>6.442**</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(3.262)</td>
<td></td>
</tr>
<tr>
<td>Kim Young-sam</td>
<td>-35.28***</td>
<td>-11.14***</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(5.631)</td>
<td>(2.105)</td>
<td></td>
</tr>
</tbody>
</table>
Meanwhile, the results for Model 3, in which the dummy variable for President Roh Moo-hyun serves as the baseline, indicate that the presidential dummy variables for Kim Young-sam and Kim Dae-jung are negative and significant. This finding suggests that, compared to President Roh Moo-hyun, retrial cases were less likely to end in acquittal under the two precedent presidents’ regimes. These results support Hypothesis 2-1 (The Incumbent President’ Ideology Effect) in a sense that retrial cases are more likely to end in acquittal under a left-wing president who shows a strong political will for transitional justice. Additionally, it is worth noting that the dummy for President Roh Moo-hyun is negative in Model 2, implying that retrials under President Roh Moo-hyun are still less likely to end in acquittal than they are under President Roh Tae-woo. For the same reason, in Model 3, the dummy variable for
President Roh Tae-woo is estimated positive and significant. Put together, our empirical analyses suggest that while retrial appeals are most likely to end in acquittal right after the democratic transition, the president’s political drive, along with support from the public and the party, affects the long-term process of transitional justice after democratization.

In terms of the control variables, the political influence of the ruling party and that of the conservative party, both measured by the share of seats in the legislature, do not affect the rate of acquittals. The coefficient for the conservative party’s share of legislative members is negative, which is consistent with the expected direction but insignificant in all models.

Do judges’ individual features affect the judiciary’s decisions over retrial appeals? To answer this question empirically, we switch the unit of analysis to individual judges, rather than the cases. Each case is reviewed by three judges, one chief judge and at least two side judges. Therefore, the number of observations increases as we take each judge as an individual observation. Table 3 presents the results from a logit analysis examining whether a judge’s personal background affects his or her decision regarding retrial acquittals. We include the time after a judges’ appointment for Hypothesis 2-2 (Appointee Effects); the judge’s hometown for Hypothesis 3-1 (Political Upbringing Effects); and the judge’s educational background for Hypothesis 3-2 (Power Network Effects).

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Age of Judges</strong></td>
<td>0.0327</td>
<td>-0.00665</td>
<td>-0.00665</td>
</tr>
<tr>
<td></td>
<td>(0.0618)</td>
<td>(0.0630)</td>
<td>(0.0630)</td>
</tr>
<tr>
<td><strong>Education (SNU=1)</strong></td>
<td>0.0889</td>
<td>0.147</td>
<td>0.147</td>
</tr>
<tr>
<td></td>
<td>(0.325 )</td>
<td>(0.333 )</td>
<td>(0.333 )</td>
</tr>
<tr>
<td><strong>Honam Hometown</strong></td>
<td>0.168</td>
<td>0.197</td>
<td>0.197</td>
</tr>
<tr>
<td></td>
<td>(0.295 )</td>
<td>(0.307 )</td>
<td>(0.307 )</td>
</tr>
<tr>
<td><strong>Youngnam Hometown</strong></td>
<td>-0.512*</td>
<td>-0.499*</td>
<td>-0.499*</td>
</tr>
<tr>
<td>Time after Judges' Appointment</td>
<td>(0.263)</td>
<td>(0.271)</td>
<td>(0.271)</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>Roh Tae-woo</td>
<td>-0.0679</td>
<td>-0.0449</td>
<td>-0.0449</td>
</tr>
<tr>
<td></td>
<td>(0.0574)</td>
<td>(0.0596)</td>
<td>(0.0596)</td>
</tr>
<tr>
<td>Kim Young-sam</td>
<td>-37.02***</td>
<td>-12.04***</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(4.562)</td>
<td>(1.412)</td>
<td></td>
</tr>
<tr>
<td>Kim Dae-jung</td>
<td>-14.92***</td>
<td>10.06*</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(3.488)</td>
<td>(5.182)</td>
<td></td>
</tr>
<tr>
<td>Roh Moo-hyun</td>
<td>-24.98***</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(4.635)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lee Myung-bak</td>
<td>-16.93***</td>
<td>8.046***</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(3.818)</td>
<td>(2.188)</td>
<td></td>
</tr>
<tr>
<td>Park Geun-hye</td>
<td>-17.72***</td>
<td>7.259***</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(4.020)</td>
<td>(2.331)</td>
<td></td>
</tr>
<tr>
<td>Years after Democratization</td>
<td>0.538***</td>
<td>0.644***</td>
<td>0.644***</td>
</tr>
<tr>
<td>(=retrial year - 1987)</td>
<td>(0.126)</td>
<td>(0.160)</td>
<td>(0.160)</td>
</tr>
<tr>
<td>Seats of the Ruling Party</td>
<td>12.21***</td>
<td>130.6***</td>
<td>130.6***</td>
</tr>
<tr>
<td></td>
<td>(3.433)</td>
<td>(30.80)</td>
<td>(30.80)</td>
</tr>
<tr>
<td>Seats of the Conservative</td>
<td>-21.55***</td>
<td>-141.5***</td>
<td>-141.5***</td>
</tr>
<tr>
<td>Constant</td>
<td>4.213</td>
<td>7.400*</td>
<td>-17.58***</td>
</tr>
<tr>
<td></td>
<td>(3.781)</td>
<td>(3.965)</td>
<td>(5.129)</td>
</tr>
</tbody>
</table>

| Fixed Effect of Chief Justice | Yes | Yes | Yes |
| Observations                 | 406 | 406 | 406 |
| Log-Likelihood               | -235.2 | -223.3 | -223.3 |

Robust standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

The results show that the only statistically significant individual-level variable is **Youngnam hometown**, whose negative coefficient indicates that a judge born in Youngnam region is less likely to oversee retrials that end in acquittal. As discussed in the previous section on Hypothesis 3-1, we infer that the negative finding for the Youngnam hometown variable reflects political upbringing based on Korean regionalism, a longstanding empirical feature of
Korean politics in which Youngnam is viewed as a conservative stronghold of the former authoritarian regimes. The Honam hometown variable is positively signed by statistically insignificant.

Excepting Youngnam hometown, other individual characteristics of judges do not affect decisions regarding retrial acquittals. The time gap between appointment year and retrial year has no effect on retrials, suggesting that judges appointed by the former authoritarian rulers are neither more nor less likely to rule against acquittal. Further, social network power as measured by education at the SNU law school has no influence on retrial decisions. Thus, we can reject Hypothesis 2-2 (Appointee effect) and Hypothesis 3-2 (Power Network Effect).

3. Social Impact of Retrials: Trust in the Judiciary

We take a further step to investigate the social and political implications of the retrials. Accurately speaking, retrials are civil suits, which, by definition, are meant to settle interpersonal disputes. Thus, an immediate effect of successful retrials is that the individual defendants, in many cases tortured by state forces and imprisoned for years to decades, some even executed, are able to restore their tarnished reputations. Their families can stop suffering from the social stigma of being related to a North Korean spy or collaborator. Numerous successful retrials led to compensation lawsuits against the state, many of which resulted in monetary compensation for the victims and their families. The implications of individual retrial cases, however, are not limited to the defendants and their family members. Especially in a legal system in which the precedent sets a ground for future rulings, each retrial case constitutes a critical step forward on the path to broader transitional justice.

Nevertheless, one might be skeptical about any impact beyond the restoration and
compensation that go to individual victims. As noted above, those who are more concerned with political and legal stability often consider the process of transitional justice to be a source of political conflict with little social benefit.

In the extant literature on human rights trials, empirical evidence on whether transitional justice brings a reconciliation effect is mixed at best. Some cast doubt on the positive effect of human rights trials on social reconciliation, for example, believing that the fear of criminal prosecution after a peace agreement makes conflict resolution more difficult (Goldsmith and Krasner 2003; Snyder and Vinjamuri 2004). On the contrary, Kim and Sikkink (2010) find evidence of an accountability mechanism whereby countries that prosecute human rights violators are more likely to face less repression in the future.

To understand the social effect of correcting past unjust sentences, we conduct an additional analysis on the public response to the judiciary’s retrial decisions. Specifically, we investigate how citizens’ level of trust in the judiciary changes when retrials on past fabricated espionage charges end in acquittal. Two competing hypotheses exist. On one hand, citizens may have greater confidence in the judiciary upon observing a high acquittal rate in retrial cases, as they appreciate the judiciary’s effort to recognize past wrongs, admit legal errors, and correct them. On the other hand, the retrial process may affect trust in the judiciary negatively by reminding citizens how politically biased the judiciary was under authoritarian rule, when the principles of political neutrality and check and balances were neglected. In this case, public trust in the judiciary may decrease as more retrial cases end in acquittal.

Table 4 tests these competing hypotheses, presenting regression analysis of citizens’ trust in the judiciary using the cumulative Korean General Social Survey (KGSS, hereafter) data
from 2003 to 2016\textsuperscript{14}. We measure citizens’ trust in the judiciary using the survey respondent’s level of trust in Supreme Court judges, ordinally coded as 1 if the respondent does not trust the judges, 2 for a neutral attitude, and 3 if the respondent trusts the judges. Our independent variable, \textit{Acquittal Rate} is the acquittal rate of retrial cases in a given year, where the denominator is the number of all retrial cases reviewed in a given year and the numerator is the number of acquitted cases among all retrial cases. Model 1 relies on the 99 cases for which we have full information on the details of the verdict, while Model 2 uses all 142 cases that we are able to trace using alternative sources.

To address potentially confounding political factors, a dummy variable for President Roh Moo-hyun’s government, \textit{Roh Moo-hyun}, is included. This is the only left-wing regime during the period covered by the cumulative KGSS data, which lasted from 2003 to 2007. From 2007, the conservative party Presidents, Lee Myung-bak and Park Geun-hye, consecutively remained in office. Hence, this variable captures whether the partisan drive of an administration explains the public’s trust toward the judiciary. The respondent’s trust in the central government, \textit{Trust in the Government}, is also controlled because trust in the judiciary may be highly correlated with general political trust. It is coded as 1 if the respondent reports not to trust the government, 2 to a neutral attitude, and 3 to trust the governments. Individual demographic characteristics, such as income, educational background, gender, and age, are also included. Income is survey respondents’ subjective rating of their household income, ranging from 1 lowest to 5 highest. Education background spans seven categories from no education to the completion of graduate schools.

\textsuperscript{14} The Korean General Social Survey is a Korean version of the General Social Survey made by NORC at the University of Chicago, as KGSS mostly follows and replicates the survey questionnaires and survey techniques for the purpose of comparative research. Note that the data do not constitute a panel but are pooled cross-sectional data from 2003 to 2016.
Table 4 Acquittal Rate and Trust in the Judiciary

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th>Model 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquittal Rate</td>
<td>0.0826***</td>
<td>0.0544**</td>
</tr>
<tr>
<td></td>
<td>(0.0237)</td>
<td>(0.0224)</td>
</tr>
<tr>
<td>Roh Moo-hyun</td>
<td>0.0794***</td>
<td>0.0920***</td>
</tr>
<tr>
<td></td>
<td>(0.00964)</td>
<td>(0.0116)</td>
</tr>
<tr>
<td>Trust on Govt</td>
<td>0.436***</td>
<td>0.437***</td>
</tr>
<tr>
<td></td>
<td>(0.00799)</td>
<td>(0.00799)</td>
</tr>
<tr>
<td>Income Status</td>
<td>-0.0218***</td>
<td>-0.0204***</td>
</tr>
<tr>
<td></td>
<td>(0.00486)</td>
<td>(0.00484)</td>
</tr>
<tr>
<td>Education</td>
<td>0.0269***</td>
<td>0.0268***</td>
</tr>
<tr>
<td></td>
<td>(0.00381)</td>
<td>(0.00381)</td>
</tr>
<tr>
<td>Female</td>
<td>-0.0607***</td>
<td>-0.0608***</td>
</tr>
<tr>
<td></td>
<td>(0.00957)</td>
<td>(0.00957)</td>
</tr>
<tr>
<td>Age</td>
<td>0.000569</td>
<td>0.000574</td>
</tr>
<tr>
<td></td>
<td>(0.000360)</td>
<td>(0.000360)</td>
</tr>
<tr>
<td>Constant</td>
<td>1.151***</td>
<td>1.141***</td>
</tr>
<tr>
<td></td>
<td>(0.0354)</td>
<td>(0.0363)</td>
</tr>
</tbody>
</table>

| Observations         | 15,116        | 15,116        |
| R-squared            | 0.175         | 0.175         |

Standard errors in parentheses.

*** p<0.01, ** p<0.05, * p<0.1

In both Models 1 and 2, we find that a higher acquittal rate is positively associated with public trust in the Supreme Court judges. The results support the claim that the judiciary’s effort to establish transitional justice through admitting its erroneous convictions in the past and reversing those verdicts has a positive effect on citizens’ trust in the judiciary. While other political factors such as the presence of a left-wing government and the individual’s trust in the government are positively correlated with trust of judges, those correlations do not affect the significant findings on the acquittal rate.

The increase in public trust following acquittals is not negligible given the political context in which trust in the judiciary is generally low. According to Yoo (2010), approximately half of survey respondents in Korea show distrust toward the judiciary. In the KGSS, the total
The number of respondents reporting trust in the judiciary from 2003 to 2016 is 2,805 out of 17,956, or 15.87%. Although this rate is higher than public trust in other government branches including the administration and the legislature, it is lower than other social elites or expert groups such as the army, the medical community, academia, financial institutions, and NGOs. More fundamentally, our finding implies that retrials of past affairs bear importantly on the political impact of new democratic regimes. With aspirations for political rectification after democratization, major retrial cases receive much attention from the news media and the public. For example, Figure 2 illustrates a yearly trend of news articles covering retrials on fabricated espionage cases since 1988 in 8 major newspapers and 4 TV news channels in South Korea. Newspaper coverage on retrials started to increase in 2005 and reached its peak in 2009, the year before the end of the Commission’s operation. The progressive news media in particular have typically reported all retrial cases related to the authoritarian past, often outlining the past repression and manipulation in question, which tends to invigorate the public’s desire for transitional justice.

---

15 On average from 2003 to 2016, the rate of respondents showing trust in these groups is 20.92% for the army, 18.85% for the medical community, 16.14% for academia, 16.59% for financial institutions, and 17.79% for NGOs.

16 A proceeding study found that the role of media is essential in determining the public’s trust in the Korean judiciary system, as media are often the only channel through which citizens receive information about the judiciary (Yoo 2010).

17 The eight newspapers are Kyunghyang-shinmun, Kukmim-ilbo, Nael-shinum, Munwah-ilbo, Seoul-shinmun, Segye-ilbo, Hankyre, and Hankok-ilbo. The four TV news stations are MBC, OBS, SBS and YTN. We use BigKinds, a search engine specifically designed for news articles that covers the longest time period. The keyword for the article search is “fabricated espionage retrials”.
 Scholars of comparative politics frequently devote attention and analysis to the systematic causes of political repression by authoritarian rulers. Ample research also addresses the process of transitional justice after democratization, particularly regarding whether criminal persecutions are conducted against the authoritarian leaders or the regime’s collaborators. Relatively little attention has been given, however, to how the victims of repression survive through authoritarian regimes and how they endeavor to regain their reputations after democratization. Our study contributes to the literature by shifting the perspective to the coping process of victims rather than the persecution of perpetrators.

Using the retrial cases of false espionage verdicts, our study shows that post-democratization political conditions affect the pace of retrial acquittals, which represent the rectification of past wrongs by the judiciary. We find that retrials are more likely to result in acquittal right after the democratic transition and when the president has a strong political will for transitional justice. We also find that judges’ individual features generally do not affect their acquittal decisions, except that judges from Youngnam region tend to be less likely to acquit
on appeal. Finally, we find a social benefit from judicial acquittals of past wrongs, as citizens show higher levels of trust toward the judiciary when more retrial cases end in acquittal.

Our study offers several implications and suggestions for future research. To build a comparable sample set, we limited our analysis to falsely accused espionage cases. Although those cases represent an important window into transitional justice and remain among the most actively debated among all cases of past state repression in Korea, future research needs to address whether the empirical patterns we find explain other types of transitional justice cases. This study also sheds light on the broader discussion of how new democracies deal with authoritarian legacies. Our empirical findings suggest that despite clear evidence pointing to violations in the rule of law by past authoritarian governments, the outcome of unjust repression is not automatically nullified after a democratic transition. Numerous political and social pressures might work against the immediate rectification of authoritarian repression, and victims often must take extra initiative to reclaim their reputations and social status, sometimes for periods long after the transition.
References


Yi, Young-Jae. (2015), An Experiment in Comprehensive Settlement and Reconciliation of the Multilayered Transitional Justice - Focus on the Truth and Reconciliation Commission, Republic of Korea (TRCK), *Korean Studies Quarterly* 38(4): 121-152. [In Korean]
