

**A PUNITIVE BUT NON-PUNITIVE SOCIETY:
AN EXPLANATION OF THE SPECIFICITY OF PENAL POPULISM
IN SOUTH KOREA**

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Abstract

It is argued in existing Korean criminological literature that penal populism has strongly influenced the criminal justice system over the last two decades in South Korea ('SK', hereafter). Their contention is based on the evidence of punitive penal policies formulated around sex offences against children since the 2000s. These policies include increased minimum sentencing for sex offenders, increased maximum terms of imprisonment, sex offender registration and community notification, electronic monitoring, and chemical castration.

However, imprisonment rates in SK, one of the main indicators of punitiveness in other countries, rapidly decreased in the 2000s and have since then been stable. Moreover, the imprisonment rates in this country are significantly lower than those of other societies where penal populism has occurred, including the US, England, and New Zealand. Why, then, do criminologists in SK argue that penal populism has flourished in SK at a time when imprisonment rates are not sufficiently high to invoke punitiveness, let alone the downward (and stabilising) trend of imprisonment rates?

The purpose of this thesis is to explain the punitive penal developments in SK since the 2000s, by drawing upon Pratt's (2007) penal populism theory. Firstly, the contention in Korean criminology that penal populism has strongly operated and impacted the penal landscape in SK is empirically demonstrated. This demonstration is based on analyses of newspaper articles, social media, legislative bills, and minutes of the National Assembly with regard to sexual violence against children.

This is followed by an explanation of the specific form of penal populism in SK, which is focused exclusively around sexual violence against *children*. The explanation draws on a social analysis of why and how the sensibilities of South Koreans toward children and the safety of children have changed over recent decades. The main argument here is that the socio-cultural value of children created under the tradition of Confucian familialism in SK has significantly increased through immense social, economic, and structural changes. These changes were brought about by a compressed process of industrialisation, which began as early as the 1960s, and the transition to late-modern society from the 1990s onwards.

Lastly, this thesis seeks to explain the apparent contradiction between penal populism and the

rapid decrease of the imprisonment rate in the 2000s in SK. I argue here that the rapid decrease of the imprisonment rate at that time was primarily caused by the changed patterns of pardon, parole, and remand within the context of the criminal justice reforms driven by the two progressive governments between 1998 and 2007. In addition, during the CJS reforms, ‘independence of the judiciary’ was upheld as the most important value, which regulated institutional arrangements in regard to sentencing in particular. Within these arrangements, the judiciary has been able to resist the impact of penal populism, which also contributed to the decrease of the imprisonment rate in the 2000s in this country.

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Introduction

The argument that late modern society is characterised by insecurity, anxiety, and risk (Beck, 1992; Giddens, 1990) has almost become a truism. This social insecurity is also interpreted as a by-product of neoliberalism (Bauman, 2000). The economic rationality of neoliberalism has reduced the roles and responsibilities of the public sector through market-oriented policies such as the de-regulation of corporate activities and the privatisation of public organisations in pursuit of profits rather than common good. The criminal justice system is not an exception to the neoliberal programmes, and it appears to have been unable to resist the government's strategy of 'responsibilization' (Garland, 2001: 124). That is, risks are individualised, transforming individuals into managers of their own risks and fears. It is not reasonably expected that individuals striving to survive in an era of insecurity and anxiety are tolerant of potential sources of risk and danger to their life such as crime, disorder, and even incivility. In these respects, the intolerance or punitive atmosphere of society does not merely exist at a discursive level, but it has become institutionalised and normalised. There is ample evidence showing that modern society has increasingly become punitive through penal policies based on 'tough on crime' or 'zero tolerance' slogans such as increased levels of mandatory minimum sentencing, chemical castration, etc., as well as high imprisonment rates. One of the pillars which supports the punitive social mood and penal practices argument is penal populism.

What does the term 'penal populism' mean? According to Pratt (2007), penal populism is neither simply a specific penal policy targeting a particular type of crime, nor punitiveness driven by an authoritarian government for political oppression or social control. It is a mechanism that generates a broadly punitive mood of society, including punitive penal policies, practices, and the punitive sensibilities of the public towards crime, by the interplay amongst the media, politics, and non-professional actors. Penal populism also reflects the growing power of those who claim to represent 'public opinion', usually law and order lobbyists *outside* government, regarding the direction of penal policy at the expense of the power of 'establishment experts.'

Penal populism has flourished not only in Western countries such as the US, the UK, and New Zealand (Pratt, 2007: 36) but it has also operated in Asian countries, including China, Japan, and South Korea (hereafter 'SK') (Fenwick, 2013; Hamai & Ellis, 2006 and 2008; Lee KJ,

2010; Li, 2015; Miao, 2013; Miyazawa, 2008).¹ There are a number of indicators that show a high level of punitiveness in societies where penal populism has existed. One of the main indicators to measure the punitive level of a society is a rising imprisonment rate (Pratt, 2008).

According to the International Centre for Prison Studies, the imprisonment rate of the US in 2015 was approximately 700 (per 100,000 population), and that of New Zealand was 190. Penal populism has also occurred in England, where the imprisonment rate was around 150 in 2015. It is important to note that the imprisonment rates in all of these societies have significantly increased from the 1980s onwards. In comparison, the imprisonment rate of SK is significantly lower – around 100 in 2015.²

Table 1 shows that while the US, England, and NZ showed increasing prison populations between 1980 and 2010, the imprisonment rate of SK had plateaued between 1980 and 2000 and then dramatically declined from 136 per 100,000 to 97 between 2000 and 2010.

	United States	New Zealand	England	South Korea
1980	220	83	87	130
1990	457	116	90	124
2000	683	148	124	136
2010	731	198	153	97

Table 1. Imprisonment rates in the U.S., New Zealand, England, and SK between 1980 and 2010

The contrasting trend of imprisonment in SK since 2000 is detailed in Table 2 and Figure I below. It is clear that the prison population and imprisonment rates in SK had gradually decreased during the 2000s. The total number of prisoners had reduced from approximately 63,000 in 2000 to 45,500 in 2012, and the imprisonment rate decreased significantly during the same period.

¹ There are variations of the forms and effects of penal populism in different societies, depending on the social conditions of a society, which will be discussed in detail in Chapter Two.

² At the time of writing this thesis, the latest (2018/2019) trends of imprisonment rates of these countries were not consistently reported by different sources – presumably because different methods were applied to measure the rates. Thus, the most recently available and consistent data only were presented here.

Year	Prison Population	Imprisonment Rate
2000	62,959	136
2002	61,084	131
2004	57,184	121
2006	46,721	98
2008	46,684	96
2010	47,471	97
2012	45,488	92

Table 2. The number of prisoners and imprisonment rates in SK between 2000 and 2012

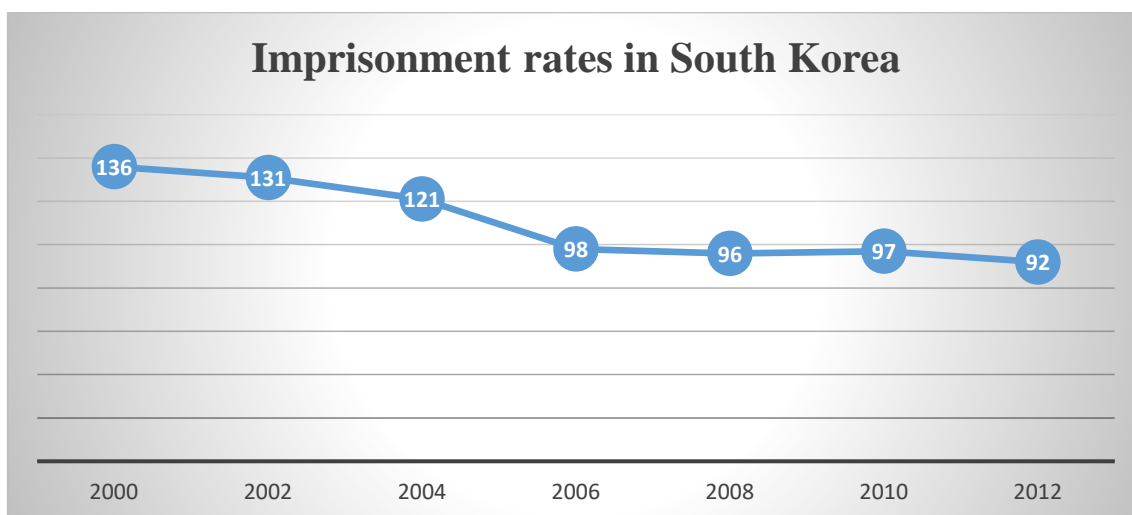


Figure I. Imprisonment rates in SK between 2000 and 2012³

Despite this decline in the imprisonment rate, there are a substantial number of studies conducted by Korean criminologists, arguing that penal populism has strongly influenced the criminal justice system in SK (Kim HJ, 2010; Kim TM, 2011; Koh BH, 2012; Lee KJ, 2010; Lee DI, 2011; Lee JS, 2011; Son DK, 2009; Song KS, 2010). The contention of these criminologists is based on the evidence of punitive penal policies such as increased minimum sentencing for sexual offenders, increased maximum terms of imprisonment, sexual offender registration and community notification, electronic monitoring, chemical castration, and other similar policies.

³ Data compiled from International Centre for Prison Studies website (www.prisonstudies.org).

According to Pratt (2007: 3), ‘penal populism emerges out of the cumulative and coalescent effect of crucial social changes that have been taking place in modern society from the 1970s’ and ‘its origins lie in deep seated social structural change across late modern society as a whole rather than mere local political opportunism’. The specific forms, characteristics, and impacts of penal populism in different societies are contingent on its social and cultural arrangements, which is supported in, for example, Chinese contexts (Miao, 2013; Li, 2015).

To summarise the Chinese argument, China has the conditions necessary to foster penal populism; referring to the social anxiety arising from the marketisation of China, increased rates of crime and incivility, public distrust in the criminal justice system, lack of trust in government officials, etc. However, populist influences are weakened by the political structure of China – a one party system – as well as the government’s censorship of the media, seen elsewhere as having a vital role to play in determining the impact of penal populism (Miao, 2013; Li, 2015).

What is it, then, about SK? Why do criminologists in SK argue that penal populism has begun to flourish in SK at a time when imprisonment rates are not sufficiently high to invoke punitiveness, let alone the downward (and stabilising) trend of imprisonment rates there? This apparent contradiction in SK should thus be understood within its specific socio-historical and cultural contexts.

The purpose of this research is to explain the punitive penal developments since the 2000s in SK, by drawing upon Pratt’s (2007) theory of penal populism. As the point of departure of my inquiry is the seemingly paradoxical assumption amongst South Korean criminologists that penal populism has had a strong impact in the penal realm despite the decreasing prison rates from the 2000s onwards in SK, I will first demonstrate empirically whether or not penal populism has in actuality operated in SK. Following the demonstration, the specificity of penal populism in this country – the different form, characteristics, and effects; and the conditions which produce these differences – will be explained.

As represented by the title of this thesis, SK can be viewed as “a punitive but non-punitive society”. On the one hand, SK is a punitive society: because of the explicitly punitive media, public, and political discourses, which have led to the legislation of punitive penal measures around sex offenders against children since the 2000s. On the other hand, SK is not so punitive: since the imprisonment rates are relatively low during the same period. The thesis title means to emphasise these contradictory features, which will be substantiated in the remaining chapters.

Methods

Archival research and photography

The archival data used in this thesis, Chapter One and Chapter Five in particular, are historical documents in regard to the modern/contemporary society of South Korea. Along with historical documents, which are ‘textual’ and descriptive in nature, photos are also used as ‘contextual’ and visual research materials – all of which date from the 1950s to the present. This is because photos not only illustrate certain historical events vividly but also richly and symbolically represent the socio-historical contexts in which the historical figures, objects, and events are captured (Davies & Francis, 2018). In addition, as Ferrell (2006) said, - and will be shown throughout this thesis - photos can also play an important role in the critical analysis of the criminal justice system as well as penal control mechanisms in a society. The historical documents and photos presented in this thesis are provided, mainly, by the National Archives of Korea and the Academy of Korean Studies.⁴ The specific references of the documents and photos will be provided in each section where those are presented.

Analysis of content

For the purpose of demonstrating the mechanism of penal populism in SK, newspaper articles and Twitter messages are analysed in Chapter Three, and legislative bills and minutes of discussions and debates at the National Assembly are analysed in Chapter Four. Although the ‘content’ – text – of the media and political/legal documents are analysed in this thesis, it is not the ‘content analysis’ referred to as a research method.

The content analysis, predominantly applied in the discipline of linguistics, typically requires strict procedures of computerisation, including quantification and codification of, for example, words, phrases, or sentences (Gadd & Karstedt & Messner, 2011). Different to this, the analyses I conducted do not involve any computational procedures and skills. Although the data were collected in a systematic way - as described below -, my analyses are, rather, subjective, as those are discourse-analytical and discourse-interpretive in nature.

The term ‘discourse’ I use here follows the definition of it given by Stuart Hall (1992).

⁴ National Archives of Korea - www.archives.go.kr

Academy of Korean Studies - www.aks.ac.kr

Discourse is, for Hall (1992), about the production of knowledge through language, which serves the interests and power of certain groups of people, and also regulates the ways in which meanings of a particular subject are created. In this respect, I have taken a discourse-analytical/interpretive approach, to effectively reveal how the penal power is shaped and operates (by discursive practice), specifically around sexual violence against children (SVC, hereinafter) in SK. That is, the relationships and interplays amongst the media, the public, and politicians in SK have become visible by analysing their language/discourse.

To analyse the data, I have read the voluminous amount of texts again and again, attempting to reduce those to several identifiable themes or categories until saturated.

Firstly, I read twice all the titles and contents of the newspaper articles chosen for analysis, to get a general understanding of the whole that was written in the articles. Then, I excluded all the ‘objective’ descriptions of how the SVC cases were committed and how the investigations were conducted; for example, “the offender went to the toilet and then hit the victim there on the 15th of May 2007”, or; “the police are now investigating five suspects”. I did not try to find any, possibly, hidden messages from the articles, either.

Instead, I focused on the literal meanings of every single word used in the articles and constructed relevant categories. For example, in the cases where SVC offenders were referred to as 괴물 (*goemul*, ‘monster’ in English) or 짐승 (*jimseung*, ‘beast’ in English), I put these words under the category of ‘offender representation’ that I constructed. In the same way, when, for example, 지나치게 관대한 (*jinachige gwandaehan*, ‘too lenient’ in English) was used to describe the existing levels of punishment for SVC, I moved these words under the category of ‘perception of punishment’. As mentioned above, I did not use any particular software programme for codification/categorisation, but used a pencil, pieces of paper, and re-worked this on Microsoft Word.

As a reflective process, I read the articles and my own analysis a few more times. Finally, I identified three categories with two sub-categories: The representations of SVC offenders - (a) Otherisation, and (b) Pathologisation; The representations of criminal justice actors, and; Perceptions of punishment. I, then, interpreted each category, with reference to the original texts analysed, which will be provided in Chapter Three. The legislative bills and minutes of the National Assembly were analysed in the same way, presented in Chapter Four.

Data sampling

(a) Newspaper articles

The primary purpose of the analysis of newspaper articles is to show the representations of SVC in the media, which will provide the basis for a reading of public discourses around SVC, including perceptions of the criminal justice system and punishment in SK. In addition, the sensationalisation of crime reporting in the Korean media will also be shown at the end of the analysis.

Two of the major Korean daily newspapers have been chosen for analysis; The Chosunilbo and The Hankyoreh. All the newspaper articles subject to analysis were collected from the websites of each newspaper.⁵ Newspapers in SK are printed in a variety of sizes such as Berliner and Tabloid but the vast majority of the newspapers including these two chosen papers are Broadsheet.⁶ According to the Korea Audit Bureau of Circulations⁷ (2015), there are 24 national daily newspapers in SK and the circulations of all the dailies in 2014 were 5,165,810. The circulation of The Chosunilbo was 1,673,049 and that of The Hankyoreh was 244,830 in 2014. In spite of the substantial gap between the two newspapers in terms of circulation, they are selected in consideration of the fact that The Chosunilbo is the most conservative press and The Hankyoreh is on the opposite side of the political spectrum. This minimises the influence of possibly biased reporting of different newspapers with different political orientations, on matters of crime and security in particular.

The four most publicised cases of SVC since 2000 in SK were searched through the database of each newspaper, using the keywords of the names of the offenders, the victims, and the locations of the crimes committed. The result showed that 975 articles were found from The Chosunilbo and 389 articles from The Hankyoreh, amounting to 1,364 in total. However, not all of these articles are directly relevant to the actual cases in that a significant number of them simply mentioned the names of any of the four cases but reported on other cases or subjects than the four cases. In addition, many of the articles reported more than one of the cases at

⁵ The website of The Chosunilbo - <http://www.chosun.com/>

The website of The Hankyoreh - <http://www.hani.co.kr/>

⁶ Korean Association of Newspaper - <http://www.presskorea.or.kr/>

⁷ Korea Audit Bureau of Circulations - <http://www.kabc.or.kr/>

once, which means that the same articles were found from different searches with different keywords. Hence, every single article found from the initial search was reviewed in order to exclude those articles which are not specifically relevant to the four cases. The final number of articles analysed is 257, as presented in Table 3.

	Hye Jin	Na-yeongi	Kim	Go	Total	
Chosunilbo	23	21	37	33	114	257
Hankyoreh	48	54	30	11	143	

Table 3. The number of newspaper articles chosen for analysis

(b) Twitter messages

‘아동성범죄’ (*adongseongbeomjoe*, ‘SVC’ in English) - was used as the keyword in the initial search on the website of Twitter in August 2018. It is impracticable to count the total number of SVC-related messages that Korean people posted, since the size is too large - and Twitter itself does not count it. Because of the myriad number of messages, only those posted since the beginning of 2018 were gathered for analysis to grasp the present perceptions of SVC. Then, in consideration of both the purpose of this analysis – to read the ‘collective’ perceptions of SVC rather than individual – and the main characteristics of Twitter - spreadability and sharedness –, only those messages with at least 1,000 Retweets⁸ were selected from those initially collected.

(c) Legislative bills

‘Bill’ is referred to as a written document proposed to amend or repeal existing laws or introduce new laws. Under Article 52 of the Constitution of the Republic of Korea, the government - the executive⁹ - is also granted a right to propose bills, as well as politicians –

⁸ Social media researchers often analyse Twitter messages with a high frequency of Retweet. This is because retweeted messages are regarded as signifying the importance of the chosen messages. Simply speaking, Twitter users tend to be exposed more to messages with retweets than those without, and they are likely to take retweeted messages more importantly, regardless of whether they agree with the messages (Lee MN & Park CI, 2013: 244).

⁹ Different to the legislature, the members of the executive branch of the government in SK, including Ministers,

the legislature. In the event that politicians propose a bill, at least 10 politicians are required to formally agree on the bill. Once a bill is proposed, it must pass at the National Assembly to be legislated - Article 79 of the National Assembly Law.¹⁰ While politicians¹¹ prepare bills in an attempt to represent the rights and interests of different groups of people, the government tends to propose bills in consideration of the overall benefits or effects of the legislation for the entire country rather than a particular group (Eum SP, 2012: 135).

However, the number of bills proposed by politicians is overwhelmingly larger than that by the government. For example, during the 18th National Assembly - between 2008 and 2012 -, the total number of bills proposed was 13,913, eighty eight percent of which was proposed by politicians (Eum SP, 2012). In addition, during the 19th National assembly from 2012 to 2016, only six percent of the total number of bills was proposed by the government and the rest – 94 percent - by politicians (Korean Institute of Criminology¹², 2016). Certainly, legislation in SK is led by political parties and individual politicians rather than the executive since most of the bills are proposed by politicians.

Legislative bills proposed by politicians and minutes of the National Assembly in regard to SVC were analysed. In the case of bills, the focus of the analysis was on ‘Purpose of Proposal’, rather than specific provisions for the enactment or amendment of particular Acts. In SK, politicians who propose a bill are required to state its purpose, which mainly consists of the reason and rationale of why the proposed legislation is necessary or beneficial for society. Hence, the purpose of the proposal spelt in each bill is a fruitful resource for analysis.

All the bills proposed between 2000 and 2018 were searched in the database of Bill Information¹³, provided by the National Assembly of the Republic of Korea, using the keywords of ‘아동’ (*adong*, ‘children’ in English), ‘성폭력’ (*seongpongnyeok*, ‘sexual violence’ in English), and ‘성보호’ (*seongboho*, ‘sex protection’ in English). The results of the initial

are appointed other than elected.

¹⁰ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=48572&lang=KOR

¹¹ The term ‘politician’ here is used to refer to any member of the National Assembly, not restricted to those who belong to the opposition parties, but exclusive of the executive.

¹² The Korean Institute of Criminology will be abbreviated as KIC hereafter.

¹³ The website of the National Assembly of the Republic of Korea: Bill Information - <http://likms.assembly.go.kr/bill/main.do>.

search showed those bills that are not directly relevant to crime such as child education, child welfare, etc., which were thus excluded from the analysis. Those bills proposed to regulate the category of sexual offences broadly – rather than specifically targeting sexual violence against children – were also excluded.¹⁴ The final number of bills analysed was 212, which belongs to the four categories in Table 4.

Name of Bills	# of Bills analysed
Act on Protection of Children and Juveniles against Sex Offences	171
Act on Probation and Electronic Monitoring of Specific Criminal Offenders	26
Act on Pharmacological Treatment of Sexual Impulses of Sex Offenders	10
Others	5
Total	212

Table 4. Name and number of bills analysed

(d) Minutes of the National Assembly

Complementary to the bill analysis, minutes of the National Assembly were also analysed – which is the South Korean equivalent of the British Hansard Report. The minutes are written documents that record literally the entire discussions and debates of politicians from different parties on certain issues. The analysis can thus show political perceptions around SVC, detailing the development of discussions on SVC, the points where speakers put emphases in their arguments, and the atmosphere surrounding the SVC discussions.

Minutes recorded between 2000 and 2018 were searched in the database of the National Assembly¹⁵, using the keyword of ‘아동’ (*adong*, ‘children’ in English). Around 500 documents were found from the search results. Amongst the documents, only those pertaining to the categories of ‘Plenary Session’¹⁶ and ‘Special Committee’¹⁷ were selected. Again, SVC-related

¹⁴ SVC can be regulated by some of those provisions for sexual violence, of which victims are defined as a person(s), rather than children. However, considering the focus of the thesis – punishment for SVC -, bills proposed to regulate exclusively those offenders against child victims other than adult victims were chosen for the analysis here.

¹⁵ The website of National Assembly Minutes - <http://likms.assembly.go.kr/record/>

¹⁶ ‘Plenary Session’ consists of official meetings at the National Assembly, where the members make final decisions on important issues by the majority vote.

¹⁷ ‘Special Committee’ is a temporary form of committee organised by the National Assembly, only in case that there is a special need for it. This committee exclusively focuses on one specific issue – for example, sexual violence.

minutes were sorted out from the two categories. Finally, four minutes of the Plenary Session of the National Assembly and three minutes of the Special Committee for Sexual Violence against Children and Women were analysed.

Chapter outline

The thesis consists of six chapters.

Chapter One seeks to provide a brief social and political history of South Korea as a nation state, from the founding in 1948 to the consolidation of democracy in the late 2000s. Developments of punishment and the criminal justice system during this period will also be described within the socio-political contexts. As will be shown, the political/penal history of SK has a formative effect on the specific form and impacts of penal populism in this country.

In Chapter Two, theoretical discussions of penal populism and various forms of penal governance in different societies are introduced. This chapter draws upon the existing literature to discuss the definition of the political term ‘populism’ and its characteristics, as well as the origins, definition, and main features of ‘*penal* populism’ are discussed in the first part. Chapter Two then goes on to examine specific forms of penal governance and the ways they are shaped by different structures, arrangements, and contexts in different societies, with reference to penal populism.

Penal populism in SK is empirically demonstrated in Chapter Three and Four. As the media and populist politicians are two of the most crucial components in the mechanism of penal populism, these two chapters analyse the media and political discourses of crime in SK. In Chapter Three, recent penal developments in SK are discussed first, based on extant Korean criminology research, followed by the provision of the newly introduced punitive penal policies and measures from the 2000s onwards. Since these punitive policies have all been legislated around SVC, several incidents of SVC that prompted the punitive legislation are described here. In order, then, to read the discourses of the media/public regarding the SVC cases, both the traditional media – newspaper articles – and social media – twitter messages – are analysed.

In Chapter Four, legislative bills proposed by politicians and minutes of discussions and debates at the National assembly regarding SVC are analysed. The purpose of these analyses is to show what specifically the political discourses of SVC are, and whether or not these

discourses are punitive, consistent with those of the media, and how these discourses are formed, based on what. Also, the fact that the punitive legislation in SK has directly been influenced by (what politicians claim to be) public emotions, perceptions, and opinions – in other words, populist legislation – is empirically shown in this chapter.

Chapter Five provides an explanation of the specific form of penal populism in SK, focusing on the phenomenon that penal populism has operated exclusively around sexual violence against ‘*children*’ in this country. The explanation draws on a social analysis of why and how the sensibilities of South Koreans toward children and their safety have changed over recent decades. The most important argument in this chapter, which is expounded with empirical detail, is that the traditionally high socio-cultural value of children granted under Confucian familism in SK has rapidly, further increased through immense social, economic, and structural changes. The chapter explains that these changes were brought about by a compressed process of industrialisation since the 1970s and, then, the transition to late-modern society from the late 1990s onwards.

In Chapter Six, I return to the point of departure of my inquiry - the apparent contradiction between ‘penal populism and the rapid decrease of the imprisonment rate’ in the 2000s in SK. This contradictory phenomenon can be partially explained for now. That is, however punitive the discourses of crime and penal policies are, the impact of penal populism on the overall imprisonment rates has been limited, inasmuch as it operates specifically around SVC in SK. Nonetheless, this explanation only is neither definitive nor comprehensive. Hence, Chapter Six will explain why, how, and in what contexts the imprisonment rate significantly dropped during that particular period. My explanation will focus on the criminal justice reforms driven by the progressive governments from 1998 to 2007 - during which the prison population in SK markedly reduced. In addition, I will argue here that (independence of) the judiciary acted as an institutional barrier to public and political pressures, which also contributed to the decrease of the imprisonment rate in the 2000s. Finally, a summary of the entire mechanism of penal populism in SK is provided, followed by a brief reflection on this thesis.

Chapter One

The Emergence of South Korea as a Nation State

This chapter provides an overview of the social and political development of South Korea as a nation state and the implications this has then had for subsequent penal development in this country. There are four distinctive periods during that time, which are as follows:

- The First Republic of Korea: 1948-1960,
- Nation rebuilding under authoritarianism: 1961-1979,
- Transition from authoritarianism towards democracy: 1979-1992, and
- Democratic consolidation: 1993-2007.

The First Republic of Korea: 1948-1960

Before the split between South and North Korea in 1945, there had only been Korea. Until around the beginning of the 20th century this had been a pre-modern society based on the cultural values of Confucianism¹⁸ and subsistence agriculture. It was then invaded by Japan in 1910. Japan's colonisation of Korea lasted for 35 years, until Japan was defeated at the Second World War in 1945.¹⁹

Despite the liberation from Japan, the Korean peninsula was divided along the 38th parallel by the US and Russia, within the international context of the Cold War. The northern part of Korea was then occupied by Russia, and the southern part by the US military government for three years, from 1945 to 1948.²⁰

After the three years' rule of the US military government, the southern part of Korea established their own government on the 15th of August in 1948.²¹ This was the first official

¹⁸ Confucianism, Confucian familialism, and how these have affected the shaping of the specificity of penal populism in SK are explained in Chapter Five.

¹⁹ Academy of Korean Studies - <https://encykorea.aks.ac.kr/Contents/Item/E0047318>

²⁰ Academy of Korean Studies - <https://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=%ED%9C%B4%EC%A0%84%EC%84%A0&ridx=0&tot=16>

²¹ Academy of Korean Studies - <https://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=%EB%8C%80%ED%95%9C%EB%AF%BC%EA>

government of the Republic of Korea – the official name of South Korea. The birth of South Korea as a nation state also meant the formalisation of the separation of two Koreas - South Korea and North Korea.

The first president (1948-1960) of SK was Syngman Rhee, who was a staunch adherent of anti-communism.²² The Korean War (1950-1953) broke out during his presidency. It was not only a civil war between SK and NK, but also a war between capitalism and communism, and between the US/UN and Russia/China. After three years of killing across the Koreas, they managed to reach the Truce Agreement in July 1953, although, even today, no formal termination of the war has been confirmed.²³

The consequences of the war were devastating to both Koreas. The total number of casualties reached around 5.2 million, and the number of dispersed families, who could never see each other since they were left in the ‘enemy’ state, was estimated to be 10 million (Kim DC, 1997). Along with the casualties, extreme material losses were sustained at the national level. Factories, schools, hospitals, roads, and bridges were destroyed, which meant that the socio-economic foundations were thoroughly ruined during the war. No wonder that the living conditions of South Koreans in the aftermath of the war in the 1950s were intolerably poor. South Korea had to be comprehensively re-built.

The war also had a significant impact on the ideological landscapes in SK. Foremost, anti-communism sentiments were further reinforced in SK. The binary identification of ‘we or enemy’ created during the war - where ‘enemy’ must be annihilated - became applicable to political ideologies in SK. ‘We’ referred to the right, conservative thinking, and ‘enemy’ was translated as any form of non-right ideology, including centre and moderate left ideologies such as democratic socialism (Park ML et al., 1999). In this context, Rhee could maintain his power, based firmly on the conservative ideology as the only legitimate political ideology in

%B5%AD&ridx=0&tot=397

²² Academy of Korean Studies - <https://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=%EC%9D%B4%EC%8A%B9%EB%A7%8C&ridx=0&tot=81>

²³ Academy of Korean Studies - <https://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=%ED%9C%B4%EC%A0%84%EC%84%A0&ridx=0&tot=16>

SK. Using the military and the police, he eliminated – incarcerated or even killed - his political enemies in the name of national security (Moon SS, 2010: 102).

Indeed, the SK military grew exponentially through the war, both quantitatively and qualitatively. For example, the approximate number of SK soldiers increased from 28,000 in 1950 to 666,500 in 1953 (Moon SS, 2010: 104). At the same time, soldiers – especially army officers - were turned into the most well educated, privileged group in SK through advanced military education and training provided by the US army (Park ML et al, 1999; Noe YG, 2001). These educated army officers, later, held the political power for more than three decades, which significantly delayed the democratisation of SK.

Despite all the consequences of the war, President Rhee was intoxicated with political power. Rather than improving the poor living conditions of South Koreans, he went to pursue despotic power, manipulating the public by media oppression, propaganda, bribery, and electoral fraud – vote rigging. In the end, Rhee was removed from the office by serial mass demonstrations of South Koreans, initiated by university students and professors, in April 1960.²⁴

Nation rebuilding under authoritarianism: 1961-1979

After the collapse of the government of Syngman Rhee in 1960, Yun Bo Sun was elected as the next president (1960-1961) of SK. Although the new government proclaimed it wanted to develop the economy of SK, they merely relied on loans and assistance from the US.²⁵ This government was comprised of the Democratic Party, which represented the interests of the wealthy and powerful. The government and the Democratic Party were thus opposed to political groups representing the masses, and public trust in the leadership of the government was low. They also had serious conflicts with the strengthened SK military (Yang GH, 2003). In the end, Yun's government was subverted by the coup d'état of Park Chung Hee on the

²⁴ Academy of Korean Studies - <https://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=419%ED%98%81%EB%AA%85&ridx=6&tot=281>

²⁵ Academy of Korean Studies - <http://encykorea.aks.ac.kr/>

16th of May 1961.²⁶ The military regime of President Park continued for almost two decades until his assassination in 1979.

The economy of SK was transformed under the leadership of President Park. He led the industrialisation and modernisation of SK, facilitating remarkable economic success. However, he has been severely criticised for political oppression, violation of human rights, oppression of labour, and the corrupt relationships between the government and major South Korean corporates. The merits and demerits of his government are briefly described below, which will provide detail around the social context of SK between 1961 and 1979.

The economic and military power of SK grew rapidly during this period. An under-developed, agricultural, and weak country was turned successfully into a new industrial society for the 18 years of the military governments.²⁷ Under the National Reconstruction project, the government endeavoured to re-build the infrastructure of industry, constructing railways, expressways, other roads, and dams. In addition, several major cities were urbanised during this period (Han SJ, 1999; Lee JC, 2009).

As for the growth of the military power of SK, Park's government was able to produce arms and weapons to maintain their defence systems. This presented a markedly different situation to that of the 1950s post-war period, where the government was entirely dependent on the US for the supply of arms for six million SK soldiers. By 1978, SK had become the 7th most advanced country in the world in terms of military technology, capable of manufacturing missiles, tanks, aircraft, and warships. Park went as far as to develop nuclear weapons, although this was halted due to strong objection from the US (Han SJ, 1999; Lee JC, 2009).

Despite these advancements, the exclusive emphasis of the government on economic development spawned serious socio-economic inequalities (Kim DC, 1997; Park ML, 1995; Han SJ, 1999; Lee JC, 2009). While several major cities such as Seoul, Busan, and Daegu were rapidly and disproportionately expanded, the rest of the country remained under-developed, involved in and dependent on agriculture. In addition, despite the upward trends of GNP/GDP, economic gains were not distributed equally. This was particularly problematic for the working class. While workers – especially those who worked at large private

²⁶ Academy of Korean Studies - <https://encykorea.aks.ac.kr/Contents/Item/E0038494>

²⁷ Evidence of the rapid economic growth of SK such as GDP, GDP per capita, GNI, etc. is provided in detail in Chapter Five.

companies - grew substantially in number during the industrialisation of SK, the abject labour conditions did not ameliorate. This is because the main source of economic growth in SK was manufacture-based exports at that time such as fibre, textile, and steel, and it was most convenient for the government to lower the prices of domestic products to attract more foreign purchasers in the international market (Kim DC, 1997). Within this export-dependent economic structure, the workers were forced to sacrifice themselves. Indeed, the poor labour conditions characterised by long working hours and low wages were normalised during this period, causing the deterioration of the general quality of life in South Korea (Lee JC, 2009). These working conditions and ethics shaped through the process of industrialisation and economic growth during this period have significant implications for the specific form of penal populism in SK, which will be explained in Chapter Five.

The export-driven economy was also attributable to the corrupt relationships between the government and major South Korean corporates. These corporates grew exceptionally owing to the government's privileges, including policies for the promotion of export and preferential financial investments and loans. Along with existing corporates such as Samsung, LG, and SsangYong, a new group of corporates were granted government's privileges from the 1960s – Hyundai, Lotte, and Daewoo, for example (Lee JC, 2009: 113). The collusive ties formed between the military government and the corporates bred myriad problems, including bribery, illegal political funds, and labour oppression.

In spite of the negative consequences, it is undeniable that SK made a tremendous economic progress during this period, and that the success was led by the governments, based on the developmental state model. The authoritarian governments at that time exercised rigid control over the whole society, not only economically but also socio-politically. In particular, national security had invariably been the highest priority alongside economic growth during that period, due to the military and ideological tensions between SK and NK (Kim DC, 1997; Han SJ, 1999; Lee JC, 2009). As it turned out, the aspiration of these governments to enhance both the economy and national security had a strong impact in the realm of punishment as well.

Immediately after the military coup d'état in 1961, Park's government embarked on the project of eradicating 'social evil', which was defined at their discretion, in the name of social purification. The intention of the project was for the new government to distinguish themselves from the corrupt previous government of President Rhee, in order to secure the

political legitimacy of the military government (Lee SS, 1992; Cho SK, 1998; Lee SR, 2011; Lee SY, 2016).

The project was initiated with a crackdown on gangsters. The government invoked an emergency ordinance for social purification. From May 1961 to October 1963, they arrested members of organised gangs – especially those who had benefited from the political power of the previous president Rhee (Cho SK, 1998: 161). 6,711 gangsters were arrested by police during the first two months of the crackdown alone (May and June 1961) (Lee SS, 1992: 135; Cho SK, 1998: 161). Furthermore, on the 8th October 1961, Park decided to arrest those who commit any minor offence of violence and prosecute them in principle at the Supreme Council for National Reconstruction. Han Sin, then Minister of Home Office, publicly stated, “I must arrest and force them to work in summer clothes in the winter”, which reflected the strong determination of the government and the punitive nature of the project (Lee SS, 1992: 137).

The government continued the ‘sweeping’ of gangsters. Approximately 16,000 people were arrested and sent to the 국토건설단 (*Guktogeonseoldan*, ‘National Reconstruction Unit’ in English) to provide forced labour in 1962. The government went on to arrest 10,306 offenders, including the members of 37 gang organisations (out of the 39 organisations in total in SK) and 15,580 offenders in 1968 (Cho SK, 1998: 161-163).



Figure 1.1.²⁸ National Reconstruction Unit

Figure 1.1. is illustrative of the forced (penal) labour of gang members at the National Reconstruction Unit, taken in Jeju island in August 1968.

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https://search.naver.com/search.naver?where=image&query=%EA%B5%AD%ED%86%A0%EA%B1%B4%EC%84%A4%EB%8B%A8&nso=so%3Ar%2Ca%3Aall%2Cp%3Aall&sm=tab_nmr#imgId=post13563416_1378653311&vType=rollout



Figure 1.2.²⁹ March of political gangsters

Figure 1.2. was the photo published in Kyunghyang Newspaper on the 28th of February 1961, titled ‘The Political Gangster Lee.’ 200 political gangsters, including Lee Jung Jae - the boss of the biggest gang in SK – at the front, were arrested and forced to march around the central areas of Seoul, saying “I am a political gangster.” The gangsters were all surrounded by SK soldiers, representing the military government and their ‘protection’ of the public. This ‘spectacular’ performance symbolised that the government of Park is purifying the society by eliminating the long existing social evils before they open a new era.

The enforcement project for the elimination of social evil was formidable enough to impress upon the public that this government was different from the ‘weak, corrupt, and incompetent’ government of the past President Rhee, who utilised organised gang members for his political gain (Cho HY, 2007; Choo JH, 2018). Certainly, punishing the ‘old evil’ appeared effective in establishing the political legitimacy of Park, who was not democratically elected.

Alongside the punishment of offenders who committed minor acts of violence and organised gang members, political criminals³⁰ were produced/punished in large numbers by the military

²⁹ <http://weekly.khan.co.kr/khnm.html?mode=view&code=113&artid=201003101623181&pt=nv>

³⁰ In fact, the most frequently applied laws in SK from the 1960s to 2000 were all political in nature, which are the National Security Act, the Anti-communism Act, and the Assembly and Demonstration Act (Choi JG, 2002: 147).

government (Lee SS, 1992: Choi JG, 2002; Choo JH, 2018). Since the separation of Korea and the Korean War, the SK governments had maintained the oppression of the ideological freedom of South Koreans, exclusively adopting anti-communism, which was further strengthened under the government of Park.³¹

The government deemed social movements to be the cause of social instability and oppressed them, with the slogans of ‘Eradicating Communism’. They started to arrest those who were associated with social organisations that they defined as ‘unhealthy’ or ‘polluted’, including politicians, journalists, activists, teachers, and students on the 17th May 1961, with 2,014 arrested. Again, more than 2,000 people were arrested on the 21st May (Lee SS, 1992: 136).

In fact, 41.3 percent of all cases processed by the Prosecution Service in 1961 were cases categorised as ‘public order’ or ‘anti-national’. Since these cases included only those prosecuted, the number arrested but not prosecuted would be much higher. It is important to note that the prosecution rates of those cases applied by the National Security Act and the Anti-communism Act were around 70 percent annually between 1965 and 1976. More surprisingly, the highest prosecution rate of the Anti-communism Act was 92.9 percent in 1968 and that of the National Security Act was 98.1 percent in 1969 (Choi JG, 2002: 151-152).

In alignment with the promotion of anti-communism for national security, economic development was one of the two most important goals set by the government of Park, borne out of the miserable living conditions of South Koreans in the aftermath of the war. Park exerted intense efforts to actualise his vision of the reconstructed SK, which had a definitive influence on punishment during his presidency.

Vagrants were the targets of penal control by the government, and then mobilised as a resource of forced labour for the National Reconstruction project. This resonated the government’s intention to reshape the morality and rationality of the nation, in part, by punishing those representing ‘poverty, laziness, and immorality’ – which the government believed to hamper economic progress (Lee SY, 2016).

³¹ This is supported by the fact that both the Anti-communism Act (1961) and the Social Protection Act (1975) were legislated under the government of Park. In particular, the purpose of the Anti-communism Act is a clear example - “The first goal of the Nation Reconstruction is *to strengthen anti-communism*, whereby preventing communist activities, which jeopardise the national security, and ensuring the safety and freedom of South Koreans”.

The Act on the National Reconstruction Movement was promulgated on the 12th June 1961, the purpose of which was ‘to renew and revitalise the nation and people, and to solidify anti-communism... as a *human re-moulding movement* ...’ (Lee SR, 2011: 151, my italics). The idea of reshaping the nation and its people was specified with the establishment of the Nation Reconstruction Unit (‘the unit’, hereafter) on the 11th August 1961, where vagrants, including the unemployed and gangsters, were forced to provide their labour (Lee SY, 2016: 35). The Act and the unit were designed to transform the ‘lazy’ and ‘immoral’ into new, productive subjects that could contribute to national industry and, at the same time, to minimise the correctional costs and utilise their labour (Lee SY, 2016; Choo JH, 2018).

Under this Act, 850 vagrants were first arrested in Seoul and sent to the construction unit in Daeguanryeong in June 1961. In the same way, more vagrants were arrested and supplied for the units in Changwon, Jangheung, and Seosan for land reclamation (Kim AR, 2011; Park HG, 2013; Lee SY, 2016). In 1968, the Ministry of Justice mobilised over 160,000, who were then sent to the units in Ulsan, Chuncheon, Jeongseon, etc. to construct dams and railways (Ministry of Justice, 1988: 321). Together with material assistance from the US, the labour of these vagrants and some other criminalised groups was utilised in establishing the foundation of production of SK under the National Reconstruction project (Choo JH, 2018: 223).

To summarise, punishment under the government of President Park operated around these three groups - gangsters, political criminals, and vagrants - in the name of social purification.

First, since the government gained power by a military coup rather than democratic election, they lacked political legitimacy at the early stages. Thus, in order to obtain legitimacy, they chose to punish gangsters, symbolic of the old evil.

Second, in the drastic ideological conflicts between SK and NK, anti-communism was significantly strengthened during this period. The government labelled and punished any ideology other than ‘liberal’ democracy as communism, which produced countless political criminals.

Third, nation re-building was set as the most important goal of the government within the dire post-war living conditions of SK, and ‘productivity’ was a core rationality of the government. As a part of the human remoulding movement, those ‘lazy and useless’ vagrants were targeted by the government through penal control. The large number of people criminalised by the government were then allocated to the National Reconstruction Unit as a very cost-effective and easily disposable resource.

Punishment during this period was effective in maintaining broad and rigid social control, which the government saw as necessary to mould the new nation they envisioned. It contributed, in the end, to sustaining military authoritarianism, thereby ensuring the political power of Park and his government for two decades.

Transition from military authoritarianism to democracy: 1979-1992

After his 18 year dictatorship, Park was assassinated in October 1979. Soon after the assassination, in December 1979, General Chun Doo Hwan seized political power by a military coup with a group of military elites, all of whom were alumni of the Korea Military Academy.³² General Chun retained power until SK was democratised in 1987 – his government is referred to as *신군부* (*singunbu*, ‘new military government’ in English).³³ The new government was similar to the previous government of Park in terms of the political regime, as the nature of power of both governments was military-authoritarian (Han BH, 1994; Kim YM, 1998; Lee GL, 2004; Sohn HC, 2011). In terms of economy, however, the new government was rather different to the previous one. That is, the national economy under President Chun was no longer as strictly planned by the state as it had been under President Park – also referred to as “a weakened form of developmental state (Sohn HC, 2011: 114)”.

Immediately after the coup in December 1979, the new military government took strategic steps to secure their political power and, later on, legitimacy. Firstly, General Chun appointed himself as Deputy of the Korean Central Intelligence Agency (KCIA) in April 1980, which was to monopolise domestic and foreign intelligence collected in SK. The intelligence supplied by the KCIA at that time was used effectively to repress civil society - university students and opposition politicians in particular, who organised and participated in movements for democratisation of SK (Chung TI, 2011).

In May 1980, the government planned to mobilise the military to repress the civil movements, but they needed justification for the use of military force. Thus, on the 12th of

³² Academy of Korean Studies - <http://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=12%2012&ridx=0&tot=2155>

³³ Academy of Korean Studies - <http://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=신군부&ridx=0&tot=12>

May, they fabricated and circulated a rumour that North Korea would soon invade South Korea. On the 17th of May, General Chun went as far as to proclaim martial law, in defence against ‘invasion from North Korea’ and to prevent ‘social disorder’.³⁴ There was little doubt that the declaration of martial law was to reinforce authoritarian social control and secure the power of the government.

Indeed, on the 18th of May, the government sent the Special Warfare Command to Gwangju to repress the movement of civilians for democratisation of SK. These soldiers assaulted, tortured, and killed civilians in Gwangju, which lasted until the 27th of May. During this military repression, 193 people were killed³⁵, 54 missing, and 3139 injured.³⁶ This incident is now officially referred to as Gwangju Democracy Movement (or 5/18, more often and informally) in SK, recorded as the most tragic incident in the history of SK since the Korean War (Chung TI, 2011).



Figure 1.3.³⁷ 18th May 1980 (a)



Figure 1.4.³⁸ 18th May 1980 (b)

It is true that the Gwangju massacre by the new military government immediately debilitated the civil movements at that time. However, from a mid/long-term perspective, this very

³⁴ Academy of Korean Studies - <http://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=5%2017&ridx=6&tot=5626>

³⁵ Academy of Korean Studies - <http://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=5%2018&ridx=1&tot=5659>

³⁶ Munhwa News - <http://www.mhns.co.kr/news/articleView.html?idxno=213627>

³⁷ Munhwa News - <http://www.mhns.co.kr/news/articleView.html?idxno=213627>

³⁸ <https://blog.naver.com/swoh12290/221006051136>

incident of state violence ignited the continuous, heated social movements for democracy throughout the 1980s, which in the end unintendedly contributed to democratisation of SK (Cho HY, 1993; Sohn HC, 2011).

The government, even after the massacre in Gwangju, maintained their oppressive, punitive governance over society in the early 1980s. 삼청교육대³⁹ (*Samcheonggyoyukdae*, ‘Social Purification Project’ in English) was emblematic of the violent penal control of the government during that period. It was a project designed by the government in 1980 for the (proclaimed) purposes of ‘purifying society’ and ‘restoring social order’.

Under this project, the government assigned approximately 800,000 people from the military and the police to arrest, investigate, and to impose the discipline/punishment upon ‘immoral’ South Koreans from August 1980 to January 1981. As a result, 60,755 people were arrested without warrant for ‘moral illness’, ‘public indecency’, ‘public nuisance’, etc. Amongst these arrestees, 39,742 people were sent to 26 military camps throughout SK, where they were subjected to assault, battery, and punishment, imposed in the name of ‘education’.



Figure 1.5.⁴⁰ Social Purification Project

However, at the end of 1983, the government adopted a new, soft-line strategy of governance. The purpose of this shift was to gain political legitimacy from civil society by appeasing them, since the coup-d'état-government was inherently lacking in democratic, procedural

³⁹ All the factual details regarding 삼청교육대 used in these two paragraphs were provided by the Academy of Korean Studies - <http://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=삼청교육대&ridx=0&tot=1>

⁴⁰ National Institute of Korean History -

http://contents.history.go.kr/mobile/ti/view.do?tabId=01&code=0&subjectId=ti_032&levelId=ti_032_0220#self

legitimacy. The shift was also made because the government believed that it was timely, as they initially secured their power for the first three years since the coup (Ahn SG, 2007; Ha SB, 2008).

Within the relatively (but significantly more) softened political context, civil actors such as university students and politicians resumed their activities (Yoon JG, 1986; Ahn SG, 2007; Ha SB, 2008). The opposition politicians gathered around Kim Young Sam and Kim Dae Jung – both were, in turn, democratically elected as president of SK – and founded 민주화추진협의회⁴¹ (*Minjuhwachujinhyeobuihoe*, ‘Association for Democratisation’ in English) in 1984 and 신한민주당 (*Sinhanminjudang*, ‘New Democratic Party’ in English) in 1985.⁴² The New Democratic Party (‘NDP’, hereinafter), then, won the national election in February 1985, supported overwhelmingly by voters from the working and middle classes in major cities.

The result of the election meant that the NDP rose as a main political actor against the government (Ahn SG, 2007; Chung TI, 2012). Indeed, they raised the issue of the (il)legitimacy of the military government, urged an amendment of the Constitution to introduce the direct presidential election system in SK, and initiated a signature-collecting movement for the amendment of the Constitution.⁴³

As the NDP was broadly supported by civil society, including the religious sector, the government shifted its strategy back to the previous, oppressive one. In particular, the government increased censorship on the media by imposing 보도지침⁴⁴ (*Bodojichim*,

⁴¹ Academy of Korean Studies - <http://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=민주화추진협의회&ridx=0&tot=2>

⁴² Academy of Korean Studies - encykorea.aks.ac.kr/Contents/SearchNavi?keyword=신한민주당&ridx=1&tot=7

⁴³ Academy of Korean Studies - encykorea.aks.ac.kr/Contents/SearchNavi?keyword=개헌서명운동&ridx=0&tot=1398

⁴⁴ ‘보도지침’ was an effective instrument to censor/oppress the media in SK, used by the government of Chun, in the name of ‘guidance’ (Academy of Korean Studies - <http://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=보도지침&ridx=0&tot=149>).

‘Guidance on Media Reporting’ in English) (Ha SB, 2008). In response to the increased levels of oppression by the government, the resistance of civil society became increasingly radical. Thus, in order to avoid potentially extreme and violent confrontations, the government decided to negotiate with the NDP as the representative of civil society. However, the negotiation was not successful. This was because while the NDP agitated for a presidential system, the government insisted on introducing the parliamentary system in SK (Ahn SG, 2007).

The rupture of the negotiation caused extreme tension between the government and civil society. Meanwhile, in January 1987, the police illegally arrested Park Jong Cheol – a student of Seoul National University, who was participating in the movement for democratisation of SK – and tortured him to death.⁴⁵ The general public was deeply frustrated and, at the same time, infuriated by the incident. This led human-rights organisations and religious groups to publicly criticise the government and urge for democracy. However, despite the collective anger and outcry, and the demands of civil society for democracy, Chun nominated Roh Tae Woo – a key figure of the military government - as the candidate for the next president of SK on the 10th of June 1987.⁴⁶ Certainly, the nomination of Roh was intended to ensure the succession of the military government.

The murder of Park Jong Cheol, and the presidential candidacy of Roh Tae Woo, in 1987 engendered a strong solidarity amongst South Koreans, which then fuelled serial resistance movements against the government at the national level. On the 26th of June 1987, the civil resistance expanded to the point where over 1.3 million people participated in demonstrations for democracy in 34 cities, in spite of the violent repression of the police - the number of which was estimated to be around 60,000.⁴⁷ The demonstrations were not only supported by urban workers, but also professionals and office workers – who were previously rather

⁴⁵ Academy of Korean Studies - <http://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=박종철고문치사사건&ridx=0&tot=1543>

⁴⁶ Academy of Korean Studies - <http://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=6.29민주화선언&ridx=0&tot=24151>

⁴⁷ Academy of Korean Studies - <http://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=6월%20항쟁&ridx=4&tot=8953>

indifferent – newly joined and gathered force on the 26th of June (Ahn SG, 2007). In effect, the continuation of the military dictatorship had become untenable.



Figure 1.6.⁴⁸ Protest in June 1987 (a)



Figure 1.7.⁴⁹ Protest in June 1987 (b)

Eventually, Roh Tae Woo, as the successor and representative of the military government of Chun, made a declaration on the 29th of June 1987.⁵⁰ By this declaration, the government promised to fulfil the following; amendment of the Constitution; introduction of the direct presidential election system; the first direct presidential election in February 1988; immediate release of Kim Dae Jung by pardon; freedom of speech/media; freedom of political parties and activities, and; autonomy of universities.⁵¹ The declaration signified, officially and institutionally, the *beginning* of democratisation of South Korea.

After the declaration in June 1987 and the subsequent amendment of the Constitution, Roh Tae Woo was elected as the 13th president (1988-1992) of South Korea in December 1987. Roh's government was different from the previous military governments in that Roh was democratically elected and thus procedurally legitimate (Baek JM, 2013; Yi YJ, 2009). However, SK could not make significant progress in terms of substantive democracy during this period, since the mentality, the political culture and practices of Roh's government still

⁴⁸ Workers' Solidarity - <https://wspaper.org/article/18782>

⁴⁹ June Protest - <https://www.610.or.kr/610/about>

⁵⁰ Academy of Korean Studies - <http://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=6·29민주화선언&ridx=0&tot=24151>

⁵¹ Academy of Korean Studies - <http://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=6%2029%20선언&ridx=1&tot=4108>

remained on the continuum of the past authoritarian governments (Baek JM, 2013; Lee CE, 2013; Yi YJ, 2009).

Despite the success of Roh in the presidential election in 1987, his government was not broadly supported by South Koreans. Only one-third of the electorate voted for Roh, which has so far been the lowest figure since the introduction of the direct presidential election system in SK.⁵² The low levels of public support implied that Roh's government – albeit legally and procedurally legitimate – lacked *political* representativeness and legitimacy (Baek JM, 2013). This problem was clearly reflected in the national election in April 1988. That is, Roh's camp was defeated by the opposition politicians, who now became the majority in the National Assembly - occupying 174 seats out of 299 seats in total (Baek JM, 2013; Ha TS, 2011; Yi YJ, 2009).

As the majority, the opposition politicians urged the government to remove all the legacies of the past authoritarian dictatorship, such as abolishing the existing anti-democratic laws and institutions; and punishing the previous government of Chun for the Gwangju massacre and corruption. However, Roh did not accede to these demands, but merely emphasised 'reconciliation' with the past (Yi YJ, 2009). Indeed, Roh appointed seven Ministers from the previous government during the first year of his presidency (Im TB, 2008).

In fact, Roh was not entirely granted autonomy in making decisions on important state matters, including the military, for the first 15 months of his term. This was because the previous president – General Chun – continued to exercise strong influences on Roh's government through the official channel of 국가원로자문회의 (*Gukgawonrojamunhoeui*, 'Advisory Council of Senior Statesmen' in English – 'the Council', hereinafter).⁵³ Hence, the autonomy of Roh's government had been institutionally restrained until the Council was formally abolished in March 1989 (Ha TS, 2011).

⁵² National Election Commission – www.info.nec.go.kr

⁵³ Academy of Korean Studies - <http://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=국가원로자문회의&ridx=1&tot=2282>

Nonetheless, Roh's government - which was, previously, politically inactive or incapable - became authoritative and punitive since then.⁵⁴ As mentioned above, the opposition politicians formed the majority in the National Assembly, and their demand for socio-political reforms was strengthened at that time. As a response to this pressure, the government established 공안합수부 (*Gonganhapsubu*, 'Integrated Investigation Division for Public Security' in English - 'the Division', hereinafter) in April 1989. The Division recruited those existing members from the police, the Prosecution Service, the Agency for National Security, and the Army Security Command, to efficiently control any political activities against the government (Baek JM, 2013; Lee CE, 2013; Lee SY, 2005; Yi YJ, 2009).

At first, the government repressed labour movements in particular, where the workers merely asked the government to improve the working conditions. However, the government defined the (legal) labour movements as "threatening the existing order and system" (Lee SY, 2005: 164), and declared that "it is important for the government to eradicate leftists, including workers" (Yi YJ, 2009: 267) in June 1989. The leader of the opposition politicians - Kim Dae Jung - was arrested and imprisoned again during this repression (Lee CE, 2013).

In 1990, the authoritarian, penal control of the government over society became more extensive and radical. The government went as far as to proclaim a 'War on Crime' on the 13th of October 1990. Roh then declared that "we were too soft and lenient to violent criminals, but not any longer", and that "we will equip all the policemen on the street with weapons" (Korean Institute of Criminology, 2008: 21). The government soon legislated the Act on Special Cases concerning Punishment of Specific Violent Offences⁵⁵, to execute the 'war' project effectively. As part of the project, the government proposed: execution of the existing prisoners on death row (within three months); execution of the death penalty without delay in the future; construction of super-max security prisons; enhanced police stop,

⁵⁴ This oppressive turn of the government in 1989 is officially referred to as 공안정국 (*Gonganjeongguk*, 'State of Public Security' in English) – Academy of Korean Studies - <http://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=공안정국&ridx=0&tot=2>

⁵⁵ Korea Legislation Research Institute - https://elaw.klri.re.kr/kor_service/lawView.do?hseq=1465&lang=ENG

questioning, and arrest powers – where the police were allowed to use truncheons, handcuffs, and ropes without restriction (KIC, 2008: 22-23).

It is no surprise that the police were used as an instrument of Roh's government for social control. In 1991, for example, the total number of police officers mobilised to repress civil protests under the War on Crime project was 3.5 million, approximately. This was possible because Roh increased the number of police officers significantly during his term - from 66,820 in 1988 to 89,092 in 1992 (Lee SY, 2005: 162, 170). The police were also useful for the government to re-activate the pre-existing National Security Law. The number of people prosecuted for a violation of the National Security Law during the five years of Roh's 'democratic' government was 1,529, which was similar to that during the seven years of the previous military government of Chun – 1,535 (Lee YJ, 2009: 161). These human and legal resources utilised by the government of Roh - in particular for the 'War on Crime' project - controlled the political activities and, further, the everyday life of South Koreans rather than those offenders who posed a specific, vital threat to the social order and national security in that country (KIC, 2008; Lee SY, 2005; Yi YJ, 2009).

In conclusion, the period between 1979 and 1992 has a particular significance in the political history of South Korea, with the shift from authoritarianism toward democracy. It is true that SK introduced the direct presidential election system by an amendment of the Constitution in 1987, which marked a historic moment and progress toward democracy. However, the socio-political landscape in this country did not significantly change, in spite of the institutional and procedural democratisation since 1987. During Roh's presidency, there were rarely any reforms - or only aborted attempts at best - in terms of substantive democracy (Jung SG, 1994; Kwon HS, 1998; Park SK, 2006). Rather, the mode of governance, indeed, largely remained on the spectrum of authoritarianism, which was symbolised by the penal control project of the War on Crime.

Democratic consolidation: 1993-2007

(a) Institutionalisation of democracy, under a secretive leadership

The aspiration of South Koreans for democracy was further reinforced under the pseudo-democratic governance of Roh Tae Woo. At the end of 1992, the aspiration led to the victory of Kim Young Sam at the 14th Presidential Election of South Korea (Jung TH, 2005; Kim

BM, 2012). For the new government of President Kim Young Sam (1993-1997), it was most important to break with the past, which was to root out the persistent, prolonged military-authoritarianism and establish a democratic order in Korean society. To this end, the government strove to remove: military elites from the government and political sectors, and; financial and political corruption and wrongdoings, by introducing the real-name financial transaction system and legislating new election-related laws in particular.

As president of SK, the highest priority of Kim Young Sam, who had resisted the military dictatorship for three decades, was to prevent any political influence of military elites. Indeed, immediately after his inauguration in 1993, Kim Young Sam expelled those political soldiers from power and restructured the existing military system in SK (Jung TH, 2005). Then, in 1995, his government legislated the Special Act on the May 18 Democratization Movement, whereby the two former presidents - Chun Doo Hwan and Roh Tae Woo - were prosecuted and imprisoned for abuse of power (Kim GH, 1995; Jung TH, 2005).

The elimination of those military elites, including Chun and Roh, was not only meant to prevent their political influences in SK. It was a comprehensive attempt to deconstruct the existing power alliance in that country. That is, owners of major SK corporates and government officials at the top level, who had colluded with the military elites, were no longer able to access military/political power. Now, the previous power alliance was broken effectively by the elimination of military elites, and replaced by political elites who long fought for democratisation of SK (Jung TH, 2005).

President Kim also led financial reforms during his term (AKS; Jung TH, 2005; Kim BM, 2012). The compressed process of industrialisation⁵⁶ between the 1960s and the early 1990s accompanied a range of serious problems in Korean society. One of the major problems was financial transactions under a false name or the veil of anonymity. This ethically dubious, but not illegal at that time, practice of financial transactions was a cause of other problems such as illegal political funds, bribery, tax evasion, and property speculation. Therefore, it was critical for Kim to eradicate these wrongful financial practices, in order to solve those related problems. In this context, Kim – *himself* – led the introduction of the real-name financial transaction system in 1993.⁵⁷

⁵⁶ The rapid process of industrialisation in SK is detailed in Chapter Five.

⁵⁷ Academy of Korean Studies - <http://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=금융실명제>

The real-name system was effective in that the government could now trace every financial transaction in SK. They traced the routes of bribes and illegal political funds in particular, which was crucial in breaking the corruption chain between the military/political power and major corporates. The system was also necessary for amending other economic policies that regulated, for example, corporate monopolies in the market, the existing ownership structure of corporates, and taxation (Jung TH, 2005; Kim BM, 2012).

The government of Kim also initiated political reforms in 1994. It legislated several laws regarding election and voting, political funds, and the local government system. Amongst those laws, the Act on Election of Public officials and Prevention of Electoral Malpractices⁵⁸ was particularly important for the government and political reforms. By this Act, all candidates for the National Assembly are required to disclose their personal assets and provide a detailed election report - including the cost and evidence - to the public for three months (Im SH, 1998). The Act has contributed to ensuring the transparency of political funds and parties' activities, and significantly reduced the overall costs of election in SK (Im SH, 1998; Kang MG, 2007).

However, despite the intended purposes and desired effects, Kim's reforms have been criticised. First, his reforms are considered as conservative, of which the goals in the end were to construct a society of/for the middle and high classes (Ahn BY, 1993; Choi JJ, 1996; Kang MG & Park SH, 1997; Kim BM, 2012; Sun HT, 1996). Certainly, power shifted from the military elites to political elites who led the civil movements for democratisation of SK. However, there was no structural change in terms of class and power under Kim. Indeed, there were few serious policies for marginalised groups such as farmers and workers, contrary to the election pledges of Kim as a presidential candidate (Ko CH, 1993).

Second, the process of Kim's reforms was not participatory but exclusionary, being driven by Kim himself and a few key figures from his party (Choi JJ, 1996; Jung TH, 2005; Kang MG, 2007; Ko CH, 1993). In other words, there was neither participation from civil society, nor discussion/debate with opposition politicians – or even those within his own party - during the process (Choi JJ, 1996; Kang MG, 2007). Furthermore, there was no public hearing at the

&ridx=0&tot=161

⁵⁸ Korea Legislation Research Institute - https://elaw.klri.re.kr/kor_service/lawTotalSearch.do?searchDivn=laWord&searchTxt=Act%20on%20the%20Election%20of%20Public%20Officials%20and%20the%20Prevention%20of%20Election%20Malpractices

National Assembly for the appointment of important government posts including Ministers for the reason of “thorough security and secrecy” (Ko CH, 1993: 39). This exclusiveness clearly reflects the undemocratic nature of the reforms, procedurally.

In summary, President Kim Young Sam, undoubtedly, endeavoured to move South Korea towards democracy. He eliminated the military elites, the financial wrongdoings, and political corruptions by introducing new systems and laws. All these (apparently) separate reforms converged to breaking the long-existing power alliance/corruption chain amongst military elites, corporates, and high-ranked government officials.

Nonetheless, Kim Young Sam understood and approached democracy only institutionally, and was thus unable to achieve progress in terms of class structures and relations, and participatory governance – relationships between the government and the civil society, political parties, and the National Assembly (Heo Y, 1994; Kim BM, 2012; Lee KR, 1993; Lee MY, 1996; Yoon YC, 1996). Because of their narrow, institutional approach to democracy, his reforms are criticised as ostentatious or even referred to as “the politics of reform” (Kang MG, 2007: 172), rather than conducive to consolidation of substantive or participatory democracy in SK (Hwang JS, 1996; Kang MG & Park SH, 1997; Seo KJ, 1997).

(b) Inclusive governance, within exclusive conditions

At the end of Kim’s term – November 1997 –, SK faced the worst financial crisis in its history.⁵⁹ At that time, the government had no choice but to rely on the Fast Track Package of the International Monetary Fund (IMF). This package required the next government to restructure SK society extensively, and all candidates for the next president agreed to fulfil the requirements (Ha TS, 2009; Jung TH, 2009). In this context, Kim Dae Jung was elected as the 15th president (1998-2002) of SK in December 1997.⁶⁰ He then declared “advances in democracy and the market economy in parallel” as the highest goal of his government.⁶¹

⁵⁹ The causes and consequences/ramifications of the crisis are described in detail in Chapter Five.

⁶⁰ Presidential Archives - http://www.pa.go.kr/online_contents/president/president15.jsp?pSelect=15

⁶¹ National Archives of Korea - <http://theme.archives.go.kr/viewer/common/archWebViewer.do?singleData=Y&archiveEventId=0051146995>

Along with Kim Young Sam, Kim Dae Jung was one of the most important, influential political leaders who fought against dictatorship and for democracy in SK. However, the political orientations of these two figures were different. While Kim Young Sam was supported by the middle and high classes with conservative political orientations (Im TB, 2008), Kim Dae Jung had for a long time represented socially disadvantaged groups such as workers, farmers, women, and people with disabilities and was thus supported by them (Ha TS, 2009).

Despite the progressive political orientations of Kim Dae Jung, those disadvantaged people were not considered as a priority for policymaking under his government. This was because economic reforms were most urgent, and the (neoliberal) programmes of the IMF reforms were not compatible with those socio-economic policies Kim had envisioned (Ha TS, 2009; Kim BM, 2012). Indeed, from the beginning of the presidential term, Kim concentrated on economic reforms. Neoliberal language regulated the formation and implementation of policies during the reforms – such as the market, openness and competition, privatisation, and entrepreneurial management (Kim BM, 2012). The autonomy of industries in SK – the financial industry in particular – was much restricted, since the reforms were ‘enforced’ rather than voluntary (Sohn HC, 2001). The reforms also created socio-economic insecurities⁶² and deepened inequalities amongst South Koreans, many of whom gradually withdrew their support from the government (Oh SC & Sim YB, 2001; Jung TH, 2009).

Although the economic conditions were not favourable to - and primarily shaped the priorities and activities of – Kim’s government, significant progress occurred in terms of participatory democracy and governance during this period. That is, Kim emphasised the importance of communication and procedures (Im TB, 2008; Kang MG, 2007; Kim BM, 2012). In contrast to Kim Young Sam, whose decisions were made secretly within his power circle, Kim Dae Jung openly discussed important matters with the Prime Minister and the National Assembly – for example, appointment of Ministers. When the government had to restructure major corporates as required by the IMF, Kim Dae Jung himself discussed this with the owners of those corporates. For labour reforms, he met with the representatives of labour unions (Kim BM, 2012).

⁶² Empirical indicators of these insecurities are provided in Chapter Five.

It should be noted that the Tripartite Commission was first established by Kim's government in 1998. Its purpose was to institutionalise communications amongst labour, management, and the government, and to seek solutions to socio-economic injustice and inequality.⁶³ Although it was not easy to satisfy all the parties involved, the Commission had significance as the first official communication channel in SK through which organised labour was ensured a right to negotiate with management and the government as an equal (Kang MG, 2007).

Along with the Tripartite Commission, the Ministry of Gender Equality and the National Human Rights Commission were also first established under the government of Kim Dae Jung. These new institutions represented the values of Kim Dae Jung such as human dignity, inclusiveness, and democracy – spelt as one of the goals of his government; “민주인권국가 건설 (*minjuin-gwon-gukgageonseol*, ‘to build a nation with democracy and human rights’ in English)”.⁶⁴ Importantly, these political beliefs and values of Kim Dae Jung had direct relevance to the *low imprisonment rates* in the 2000s in SK – the main question of this thesis. This will be explained in Chapter Six.

(c) Participatory democracy, under an enthusiastic ‘visionary’

Subsequent to the government of Kim Dae Jung – the first progressive government in the history of SK -, Roh Moo Hyun was elected as the 16th president of SK in December 2002.⁶⁵ In the hope of carrying SK towards participatory democracy beyond institutional democracy, President Roh Moo Hyun (2003-2007) officially named his government ‘Participatory Government’ (Kang MG, 2007; Kim BM, 2012). He declared at the inauguration that his government would seek to create a society where any member of the public could speak out and where their voices would be heard.⁶⁶

⁶³ Presidential Archives -

http://www.pa.go.kr/research/contents/policy/index07.jsp?scate=PS4_06&tcate=PS4_06_05

⁶⁴ National Archives of Korea -

<http://theme.archives.go.kr/viewer/common/archWebViewer.do?singleData=Y&archiveEventId=0051146995>

⁶⁵ Presidential Archives - http://pa.go.kr/online_contents/president/president16.jsp?pSelect=16

⁶⁶ Presidential Archives - http://pa.go.kr/online_contents/inauguration/president16.jsp?pSelect=16

Roh Moo Hyun had worked as a human rights lawyer for seven years before he became a career politician. As a lawyer, he defended the socially disadvantaged, in particular innocents who were penalised as political criminals by the military government of Chun.⁶⁷ What Roh witnessed from criminal justice procedures then was, simply, state violence. Through these experiences, he became critical of state power, which in SK was monopolised by a handful of elites - no matter whether they were military elites or political elites -, and the fact that the public had to stay voiceless at the margin of the political domain. He believed that the public should be the genuine, legitimate source of power, and that this could be realised by participatory democracy (Hong ST, 2003; Kim BM, 2012). Thus, in pursuit of participatory democracy, his government concentrated on: decentralising state power, and; improving communication between the government and the public (Back JG, 2006; Hahm SD, 2005; Heo WS, 2006; Jeong HG, 2004; Kim BM, 2012; Park CW, 2004).

Firstly, Roh Moo Hyun minimised his own power as president and as the leader of the ruling party. Previously, presidents in SK had the exclusive rights to appoint candidates for the National Assembly from the ruling party, and to appoint executive members of the ruling party as well. This means that the president had significant control over the ruling party, which was thereby used instrumentally to serve the political interests of the president (Kim BM, 2012). However, Roh argued for the independence of the ruling party from the office of the president and renounced all his rights as the leader of the ruling party before the National Election in 2004 (Hahm SD, 2005; Kim BM, 2012).

He also weakened the power of the Blue House – the South Korean equivalent to the White House in the US -, the Presidential Secretariat in particular. Aware of the abuse of power committed by previous Presidential Secretariats, he clearly re-defined the responsibilities of the Presidential Secretariat. These responsibilities were to assist the President to achieve the government's *official* goals, and assist the Prime Minister *upon request* (Hahm SD, 2005).

In addition, the autonomy of government organisations – particularly the National Intelligence Service, the Prosecution Service, the National Police Agency, and the Taxation Service - was ensured under Roh. While these organisations, in the past, were used by the governments as repressive state apparatuses, they enjoyed independence and, at times, checked the presidential power during Roh's presidency (Heo WS, 2006).

⁶⁷ The official website of Roh Moo Hyun Foundation - <http://archives.knowhow.or.kr/rmh/chronology>

For example, in March 2003, Roh met with ten (lowest ranked) prosecutors, to discuss possible ways to improve the existing practices regarding personnel affairs of the Prosecution Service, which was aired live on the national TV.⁶⁸ During this conversation, the prosecutors expressed strong objections in a derogatory, overbearing way to the plan of Roh for criminal justice reforms at that time.⁶⁹ The public conversation between President Roh and the prosecutors itself was exceptional then - which was unimaginable under the military dictators in the past. However, what was more exceptional was the fact that the prosecutors could give their opinions publicly as an equal to president, even in an overbearing manner. This is not to criticise those prosecutors for their objection to the CJS reforms or their disrespectful attitude, but to say that government organisations and any of their individual members were given complete freedom and autonomy. This occasion is clearly illustrative of the democratic nature of governance and power distribution under Roh.

Furthermore, Roh even attempted to transfer the capital city of SK from Seoul to Sejong - located in the middle of SK - to decentralise power that has long operated exclusively around Seoul.⁷⁰ Although Seoul is still the capital city of SK, Sejong was designated as the *de facto* administrative capital of SK, where 22 government organisations and 15 research institutes have so far been successfully relocated from Seoul.⁷¹ This transfer attempt was representative of Roh's radical, structural ways of re-distributing the centralised power in SK and one of the most important values he pursued - equality.

In tandem with the decentralisation of power, Roh emphasised communication between the government and the public, to establish participatory democracy in SK. He encouraged the general public to engage in discussions with the government on important social issues and government agenda, particularly through online channels (Park CW, 2004). In the belief that informed public opinions were a valuable source for policy formation, the government created, for example, 'Presidential Report' on the official website of the Blue House (Heo WS, 2006; Kim BM, 2012). This online space provided the public with detailed information

⁶⁸ Chosunilbo - https://www.chosun.com/site/data/html_dir/2018/06/19/2018061902442.html

⁶⁹ Hankyoreh - http://www.hani.co.kr/arti/society/society_general/806384.html

⁷⁰ The official website of Roh Moo Hyun Foundation - <http://archives.knowhow.or.kr/m/president/story/view/950?cId=912>

⁷¹ More details are available from the official website of Sejong city - https://www.sejong.go.kr/ac/sub03_01.do

about a wide range of projects conducted by the government at that time such as politics, economy, and culture.⁷²

Nonetheless, Roh's reforms were not flawless. First, his reforms were too comprehensive and radical, since he wished to establish a new political order in SK. The experiments for decentralisation of power and public communication generated instabilities in the administration of the government and intensified conflicts between the ruling party and the (conservative) opposition parties (Kang MG, 2007). Moreover, direct communication between the government and the public in the name of participatory democracy was considered problematic, as the roles of intermediate agencies that represent the interests of different groups in civil society – political parties in particular – were weakened during this period. For this reason, some commentators criticised the reforms of Roh Moo Hyun as *party-less* democracy or the malfunctioning of representative democracy (Choi JJ & Park SH & Park CP, 2007; Kang MG, 2007).

Despite the criticism, it is generally accepted by South Korean political scientists that Roh succeeded in breaking the existing political order to a significant degree and accelerated the process of democratic consolidation in SK. His efforts to build systems and institutions to eliminate authoritarian political cultures, decentralise state power, and engage the public in the political and policy realms moved SK towards substantive democracy (Back JG, 2006; Hahm SD, 2005; Jeong HG, 2004; Ji JH, 2011; Kim BM, 2012; Yoon MJ, 2015).

To summarise, the period between 1993 and 2007 was an incremental process of consolidating democracy in SK. In other words, legacies of authoritarianism, deeply embedded in the institutions and practices in the government and political sectors, including the presidential system, were removed, and; at the same time, democracy was institutionalised and then further advanced towards participatory democracy during this period.

As shown above, the process of *institutionalising* democracy in this country began in 1987, which was accelerated and almost completed during the presidency of Kim Young Sam. However, power was centralised around Kim and the mode of governance was not yet democratic: in that the National Assembly, political parties, and civil society were subjected

⁷² The Presidential Report is still available from the official website of Roh Moo Hyun Foundation - <http://archives.knowhow.or.kr/m/policy/presidentialReport>

to ‘management’ by the government, rather than cooperation based on a partnership. It was the next two governments of Kim Dae Jung and Roh Moo Hyun, under which the mode of governance shifted towards participatory one, whereby democracy became substantively established in SK.

Developments of laws, policies, and the criminal justice system were geared towards democracy, too. Indeed, ‘democracy’ and ‘human rights’ predefined the trajectory of the criminal justice system since 1987 in SK (Han IS, 2007; Son DK, 2009). Criminal justice reforms – under the two progressive governments in particular - played a crucial role in driving these new developments then.

It is important to remember here that the criminal justice system was used politically by the military governments of the past. The politicisation of the CJS meant more than simply the breakdown of its functions. It, consequently, meant the cultural internalisation of South Koreans of state violence, oppression, and discipline, which also meant the prolongation of dictatorship in their country. Therefore, the ultimate purposes and desired effects of the CJS reforms since 1993 were not subsumed within the field of criminal justice separately, but to firmly establish a democratic order all over the SK society, by means of extensive changes to existing CJS institutions and practices. That is, the criminal justice reforms between 1993 and 2007 were instrumentally chosen by the democratic governments for the purpose of establishing democracy, which were, simultaneously, a part of the process of democratic consolidation itself. This also suggests that the criminal justice/penal system operates within contemporary history, and that it serves socio-political purposes of the state, beyond punishing offenders.

It is true that the CJS reforms continued with(in) the democratic consolidation in this country. However, the reforms under Kim Young Sam were significantly less effective than those of the next two governments.⁷³ In addition, 23 prisoners on death row were executed under his government – in 1997 -, which was the last execution of the death penalty in SK.⁷⁴ This execution was, certainly, contradictory to the goals of the CJS reforms at that time – to ensure *human* rights and democracy. On the contrary, the reforms of the governments of President

⁷³ Statistical indicators of the effects of the reforms of each government are provided in Chapter Six.

⁷⁴ Death Penalty Worldwide - <https://dpw.pointjupiter.co/country-search-post.cfm?country=South+Korea>

Kim Dae Jung and President Roh Moo Hyun, as will be explained later, are directly relevant to the specific features of penal populism in SK.

Lastly, independence of the judiciary is critical in explaining the democratic reforms of the criminal justice system in SK. Since the end of the dictatorship and the politicisation of the CJS, judicial independence has gradually been restored. However, it was *not* restored by the amendment of the Constitution in 1987 - or any constitutional changes later. This was because, independence of the judiciary was already spelt out in the first Constitution of SK in 1948.⁷⁵ That is, judicial independence is not supposed to be regained by constitutional changes in SK, since it has always been there in the Constitution - but was thoroughly infringed by military governments.

Importantly, independence of the judiciary, as a value and principle, broadly dictated the criminal justice reforms from 1998 to 2007. The specific way it operated during the reforms and how it has subsequently linked to penal populism in SK - as a control mechanism of the impact of penal populism- will be explained in Chapter Six.

Conclusion

The socio-political and penal history between 1961 and 2007 in SK can be summarised as a journey to democracy or a narrative of democratisation. Situated in this historical context, penal populism has emerged as a predominant trend of punishment since the 2000s in SK. As evident of historicism of punishment in SK, penal populism is discrete to the explicit, violent penal control of the state, or authoritarian populism.⁷⁶

Certainly, the socio-cultural legacies of the past since the 1960s have significant, formative effects on the contemporary life of South Koreans and implications for penal populism. For example, the oppression and violence of the state under the military dictators have long created resistant sensibilities of South Koreans towards the state, governments, and the criminal justice system/actors in particular. These resistant sensibilities have strong

⁷⁵ Korea Legislation Research Institute - https://elaw.klri.re.kr/kor_service/lawView.do?hseq=1&lang=ENG

⁷⁶ This should not be understood as stating that democracy – participatory democracy in particular – is the only necessary condition for penal populism. The specific characteristics of and conditions for penal populism in SK will be explained in Chapter Five.

implications for penal populism that has now operated in this country – discussed in the analyses in Chapter Three and Chapter Four.

In addition, through the oppressive and compressed process of industrialisation led by the military government, ‘productive’ and ‘hardworking’ mentalities were created and gradually more solidified amongst South Koreans (Kim DC, 1997). This cultural attitude regarding work and life has paved the specific context where SVC has risen since around the 2000s – explained in Chapter Five.

However, this country has structurally changed at the same time. The successful industrialisation facilitated the transfer from the developmental state to the free market economy from the late 1970s onwards – which has taken a more intensified form, neo-liberalism, since 1997. In parallel, democracy has increasingly been established as a socio-political order since the late 1980s. These broad changes now give a different picture of the public and the state as a political entity, and the way punishment operates in this country.

The South Korean society is no longer oppressed by the state, and people now can raise their voices collectively. They have become active agents who substantially influence the formation of agendas and policies of the government, rather than individuals being objectified, controlled, and mobilised at the mercy of the state. The people have grown as a part of the new penal power to the degree that they shape the detour of punishment discourses and directly influence the legislative process. The conventional, two-party relationship of punishment between the state and offenders has now been intervened by ‘democratic’ forces. The new penal trend that has emerged since around the 2000s in SK is investigated in the remainder of this thesis.

Chapter Two

Penal Populism

This thesis explains ‘penal populism’ in South Korea and the central argument is that punishment in SK has become marked by punitiveness, engendered by penal populism – predominantly around sexual offences against children since the 2000s. Hence, the main task is to empirically demonstrate and explain the making and working of penal populism in SK, including the characteristics of it and the social conditions in which it has hitherto been able to flourish.

The most important term for this thesis is ‘penal populism’. The concept of penal populism is used in this study as a theoretical and interpretive frame to read the penal developments of SK since around 2000, in its social and historical context. Thus, the purpose of this chapter is to first offer an explanation of the political term ‘populism’ first, and secondly to delve into ‘penal populism’ as the foundational concept of the thesis, leading into further investigation of the Korean specificity of penal populism in the later chapters.

Populism

Populism can be translated literally as a political principle which prioritises the voices of ‘the people’ or at least the angry voices of all those people who feel that they have been left behind or ignored by governments. The term can broadly refer to different social movements, ideologies, styles and strategies of politics, including demagogueries and charismatic leaders, etc. Although this term has been used in a range of academic disciplines for decades, political studies in particular, it is generally agreed that it is difficult to define the term precisely to develop a general theory (Akkeman, 2003; Ardit, 2003; Canovan, 1981; Mudde, 2004; Taggart, 2000). There are various reasons for the difficulty in clarifying the concept.

First, the term has been used pragmatically to refer to different social/political objects and phenomena with different characteristics comprehensively (Canovan, 1981). The social movements, ideologies, political styles and leaders referred to as ‘populist’ can be positioned anywhere on the political spectrum, from the revolutionary to the conservative (Puhle, 1986) and, at times, contradicting ideologies coexist under the label of populism (Laclau, 1977; Chu CL, 2006). Because of this ambiguous and – sometimes - contradictory nature of populism, genuine democratic political leaders or movements can also be accused of populism, only if they appeal to the public and draw support and voluntary mobilisation of the public. In other

words, the boundary between democracy and populism has not been precisely defined within the political reality, which also reflects the difficulty of circumscribing the denotation of populism, conceptually (Akkerman, 2003; Mansfield, 1995; Mudde, 2004; Suh BH, 2012; Urbinati, 1998).⁷⁷

Nonetheless, there appears to be a consensus on the negative implications of populism. From the dominant perspective in political studies, populism was generally regarded as pathology, which is characteristic of the distortion of democratic ideals (Taguieff, 1995: 9). That is to say, populism was regarded as undermining or subverting existing democratic institutions, which, it claims, only serve the 'worthy' elite groups. As the majority of research in political studies was conducted from this perspective, their focus was placed on the external conditions of a particular society where populism is conceived and rises. Hence, without considerations of the intrinsic part of democracy/populism, populism is seen in these studies as an aberrational form of democracy (Mudde, 2004: 552-558).

However, a new perspective on populism has emerged and gained momentum since the late 1990s. It emphasises that populism does not exist independently from or outside of democracy but arises from the inherent limits of democracy. Populism, from this view, can even be interpreted as a challenge to the contemporary democracy (Suh BH, 2012: 2). The leading proponent of the new perspective is Margaret Canovan (1999), who was critical of the dominant 'pathology' thesis of populism. While the previous perspective focused on the social contexts where populism was able to emerge and burgeon, Canovan looked at the 'inside' of democracy in delineating the relationship between democracy and populism. Canovan (1999) argued that populism is an attendant part of democracy as the shadow of it, which reveals the insufficiency of democracy. She argued that the focus of researchers in political studies should be on the tensions generated at the heart of democracy in order to precisely examine populism which flourishes in societies where democracy has firmly been established – Western Europe, for example (Canovan, 1999). In order to illuminate the tensions within democracy, she introduced the concept of 'two faces of democracy' (Canovan, 1999: 2), grounded in Oakeshott's distinction between 'the politics of faith' and 'the politics of scepticism' (Oakeshott, 1996).

⁷⁷ According to Taggart (2002: 62-63), the problem of defining populism is also attributable partly to the discrete attempts to theorise the term. This is because the research trend of populism is cyclical, dependent on the intermittent rise of populism in the real world of politics.

Canovan (1999) argues that democracy has two faces – ‘redemptive’ and ‘pragmatic’. Democracy promises the redemption of human life through political activities and political participation of the people, and it enables resolution of conflicts amongst different groups with different interests through institutionalised principles and rules. The redemptive side focuses on the idealistic meaning of political activities and thus requires the sovereignty and expanded political participation of the people to realise ‘redemption’. In contrast, the emphasis of the pragmatic side is laid on political institutions, procedures, and the roles and responsibilities of professionals to mediate conflicts and distribute resources in preference to the expansion of direct political participation of the people (Canovan, 1999).

It is pointed out that contemporary democracy has lost the balance between the redemptive and the pragmatic, leaning too heavily toward the pragmatic. Canovan (1999) argues that this imbalance facilitates populist mobilisation (Canovan, 1999). Populists have, as Canovan interprets, gained ascendancy in politics, criticising the orientation of pragmatic democracy while arguing for the importance of the people’s voices and their direct political participation. Therefore, the tension created between the two faces at the heart of democracy gives rise to populism, as well as the social contexts and surroundings within which the people suffer from frustration and grievance (Canovan, 1999: 2-16).⁷⁸ This perspective as an inherent part of democracy has complemented the existing understandings of populism. In addition to the previous understandings that focused on external conditions of populism, this reflection on the intrinsic part of it has provided a more comprehensive picture of democracy/populism.

Core characteristics of populism

(a) Political dualism – ‘We’, and ‘Enemy’.

The main characteristic of populist politics is political dualism (Suh BH, 2012). This means

⁷⁸ There are other important studies regarding the relationship between democracy and populism, published by Benjamin Arditi (2003, 2004, and 2005). These works focused on the boundary and gap between democracy and populism. In these works, he agreed on the argument of Canovan that populism is an attendant part of democracy, and he further argued that it is almost impossible to demarcate between ‘normal’ democracy and ‘abnormal’ populist politics. However, he stresses that populism and democracy are not entirely identical, albeit their common features and the boundary between them should be illuminated. With the focus on the tension (gap) between them, he positioned populism on the edge, underside, or periphery of democracy, rather than at the heart of it, which is the main difference of the ‘shadow’ thesis of Canovan and is more concerned about the negative aspects of populism.

that populists invoke a dichotomous society which simply comprises ‘we’ and ‘enemy’ – us vs them (Puhle, 2003: 18). ‘Enemy’ can refer to a wide range of entities and groups, including state, government, political parties, the establishment elites, politicians and intellectuals, as well as welfare dependents, immigrants, criminals, and certain religious groups. That is, they are all those ‘unworthy’ citizens who seem to have been favoured by governments at the expense of ‘good’ citizens who have been ignored. They are, at times, defined by populists as an aggregate of anything ‘different or foreign’ to ‘us’ - ‘the people’ (Chu CL, 2006: Cuperus, 2003: Todorov, 2003). Insofar as any group of people who do not belong to ‘the people’ can be defined as an enemy, ‘the people’ and its identity are of particular importance in populist discourses.

As Taggart (2000: 92) explains, ‘the people’ is a core concept in understanding populism. The people, for Taggart, have been variously characterised as the ‘silent majority’, ‘good/worthy citizens’, and ‘the little people’, etc. The status and legitimacy of the people are granted due primarily to their number. Almost invariably, the people are comprised of the vast majority in society and thus those who claim to speak for and in the name of the people are certainly given justification.

‘The people’ are not only dominant in number but are also seen as morally superior to elites, and their emotions, grievances and anger in particular, are always justifiable in populist discourses (Chu CL, 2005). They are even deemed to have a ‘natural’ ability to distinguish right from wrong and to rule themselves with the principle of equality, thus enabling them to avoid class conflicts (Hellmuth, 2002: 10).

‘The people’ are often described as the ‘silent majority’. As Taggart (2000) sees the matter, ‘silence’ is a virtue of the people in opposition to the vice of the ‘loquacious’ elite class, in particular intellectuals and politicians, who are believed only to make empty promises. The ‘silence’ of the majority means that the people make a contribution to society as a civil and productive subject, who pays taxes but is politically quiet (Taggart, 2000: 92-93). Populists claim that the rights and voices of the people should be respected, and that this can only be realised by populists themselves as the legitimate representatives of the people.

Populists also apply the logic of political dualism to specific political issues as they simply divide the political world into the people and others. The dichotomies of good and bad, right and wrong, and support and objection are characteristic of the political discourses of populists (Taggart, 2000: 113). The creation of a simple dichotomy of the political world and issues, in

particular the construction of the people and their enemy, is an effective strategy of populism. That is, they draw the undivided attention of the people and focus it on the ‘demonised’ groups. The solidarity amidst the populist camp, including the people, is created and reinforced by this strategy, which grants further political support and justification to populists (Taggart, 2009: 94).

(b) Risk, and the ‘politics of fear’

Populism can be understood as a reaction to risks - which are ‘perceived’ by the public. The collective sense of risks is generated when the political systems and institutions of representative democracy are unable to cope appropriately with challenges or threats posed by socio-economic changes (Taggart, 2000). In the face of risks, populist politicians make use of the ‘politics of fear’, where they amplify public fear, which is often perceived in the abstract, instead of seeking to identify the causes of fear and offer rational solutions (Steinert, 1999). In order for populist politicians to convert the public sense of risk and fear into their political capital, they stress the urgency and gravity of the risk, thereby magnifying the fear as well as the importance of their own answer to the problem - which is often irrational and unscientific (Chu CL, 2006).

There is a South Korean example of the politicisation of risks and fears. In 2008, the government of President Lee Myung Bak – from the Conservative Party - decided to import beef from the US. At that time, it was rumoured at the national level that if Korean people consume the US beef, they would immediately contract ‘mad cow disease’. The public became extremely anxious because of the rumour, and the fear and anxiety led to a (candlelight vigil) demonstration against the government, initiated by leftist political parties – which gathered force in partnership with citizen-based organisations, later. The demonstration went as far as to demand the resignation of Lee and his government. The demonstration lasted for more than a hundred days and the total number of people who participated in Seoul was estimated to be in the millions. In spite of the fact that US beef was medically proven to be safe to eat at that time and there has so far been no single person diagnosed with mad cow disease, some members of the public still refuse to believe this. Some of the leftist politicians and the representatives of the NGOs who initiated the demonstration still proudly say to the media that the demonstration

was a victory of ‘democracy’ and that ‘the candle’ was a very mature form of demonstration.⁷⁹

As regards ‘risk’ in the context of populism, it should be pointed out that the existence of risk at the ontological level is perhaps less important than that at the epistemological level. That is, risks should necessarily be ‘perceived’ by the public, irrespective of their objective existence. The public’s subjective perception that they are at risk or disadvantaged is found to be one of the conditions on which populism can emerge and flourish (Chu CL, 2006). The politics of fear is an effective strategy of populists, whereby they harness the public sense of risk and fear as a political resource for electoral success or having an impact on government policy, reliant in particular on sensationalising political rhetoric and slogans (Steinert, 1999).

(c) The politics of simplicity

One of the features shared by various phenomena referred to as populism is the ‘politics of simplicity’. For populists, the presumed wisdom of common people should be respected in the political arena and thus political principles, rationalities, and practices should be direct and simple (Taggart, 2000). First of all, populists use simple and direct language, in preference to the convoluted and difficult. They strongly argue that terminology and jargon are used as a tactic of the privileged class to block the access of the people to political issues - simple words are therefore representative of the people and their virtue (Suh BH, 2012).⁸⁰

In addition to the simple language, their political perspectives, analytical frames of political issues, methods of solving problems, and the answers they propose are simple and clear. Aware that professional knowledge and procedures of experts are seen by the public as ineffective in solving everyday insecurities and anxieties, populists tend to simplify complicated social structures, relations, and processes and guarantee easy answers, relying on ‘common sense’ (Akkerman, 2003; Taggart, 2000).

To summarise, there is no uncertainty and complexity but simplicity and spontaneity in populist

⁷⁹ The description here is based on the information provided by https://ko.wikipedia.org/wiki/2008년_대한민국_촛불_시위., which used a wide variety of sources, including articles published in Korean and foreign newspapers with different political orientations.

⁸⁰ The populist strategy of simplification has drawn much criticism for its lack of deliberation. According to Mansfield (1995: 31), deliberation means to do something slowly and it thus requires a “considerate and rational” attitude. This is because human rationality is not expected to operate properly under urgency.

discourses (Chu CL, 2006). The politics of simplicity gains support from the people because populists claim that their views, thoughts, processes of decision-making, and actions are based upon the ‘common sense’ of ‘the people’ (Canovan, 1999; Taggart, 2000). The people, in this context, can be construed as a collective subject who is mature enough to examine social problems and political issues rationally and make right decisions. The simplicity and clarity of populist language may appear attractive and even desirable to the public, but is in fact emotionally loaded, which is effective in amplifying the public sense of risk and fear – as the SK example shows above. The politics of simplicity is not meant to resolve political issues but engender and establish the dependency of the people on populists, who claim to be the only guardian of the people.

As such, populism emerges within certain conditions where the establishments including, in particular, political systems and institutions have been discredited, in parallel with the public’s strong sense of uncertainty and insecurity in respect of their present and future life. In addition to these conditions, the ambiguous boundary between populism and democracy is also favourable to populists, who pretentiously act as the authentic representative of common people, mobilising the emotion and sentiments of the public in pursuit of the expansion of their political power. Indeed, populism, regardless of its political orientation, has exerted strong influences in the politics around the world such as the US (the 2016 presidential election – Donald Trump), the UK (the 2016 Brexit referendum), France (Front National), Denmark (Danish People’s Party) and Austria (Freedom party of Austria), etc. – right wing populism – and Argentina (Peronism), Brazil (Lula’s government), and Venezuela (Hugo Chavez’s government), etc. – left wing populism.

Penal Populism

Penal populism is one of the key concepts representing the recent penological discussions in Western democratic society (Newburn, 1997; Pratt, 2007; Roberts et al., 2003). The origins of penal populism are found in the work of Sir Anthony Bottoms (1995), ‘*The philosophy and politics of punishment and sentencing*’. Here, the term ‘populist punitiveness’ first appeared. Bottoms discussed the development of penal thoughts that regulate sentencing in modern society and pointed out three major factors affecting sentencing practices - just deserts/human rights, managerialism, and ‘the community’. In addition to these, he mentioned, rather speculatively, another factor that exists in the political dimension: populist punitiveness.

To quote Bottoms' (1995: 40) words directly, "[t]he term populist punitiveness is intended to convey the notion of politicians tapping into, and using for their own purposes, what they believe to be the public's generally punitive stance". He also provided the three main assumptions for populist punitiveness in the work – First. Increased punitiveness has the effect of general deterrence or incapacitation, intended to reduce crime rates; Second. Punitiveness helps to bolster social morality against certain activities – drugs, for example; and Third. Significant portions of the voter population are thought to be in favour of increased punitiveness.

As such, populist punitiveness can be interpreted as punitiveness increased by the expectation of the effect of general deterrence of punishment, coalesced with the non-social-scientifically measured or, perhaps, groundless assumption of the public's punitive sentiment and attitude toward crime, amidst politicians seeking electoral advantages. Thus, politicians here, in the context of populist punitiveness, do not necessarily know whether or not the sentiment of the general public toward crime is actually punitive, or how punitive they are. What is important in understanding populist punitiveness is that regardless of whether the politicians are purposefully indifferent to or simply ignorant of the public stance toward crime, they utilise 'public opinion' to increase punitiveness for electoral success.

It should also be noted that Bottoms mentioned the bifurcation strategy of sentencing in that the tendency to impose relatively light punishment on offenders who have committed less serious offences coexists with populist punitiveness. Thus, populist punitiveness should not be read as the entire representation of penal trends but an important factor influencing the sentencing practices in late modern societies and this can be an implication in understanding penal populism.

The insight of Bottoms (1995) provided the foundation of criminological thoughts on populist punitiveness, and discussions on populist punitiveness or penal populism have since been accumulated and further developed by numerous scholars (Pratt, 2007). In these discussions, the two terms 'populist punitiveness' and 'penal populism' were used interchangeably in many cases. Roberts et al. (2003: 64), for example, said that "penal populism is an equivalent term to populist punitiveness, defined as a punishment policy developed primarily for its anticipated popularity".

As seen above, in case of populist punitiveness, the concern is less about whether or not politicians are aware of the actual public stance toward crime and the effect of punishment on

crime reduction, if at all. Instead, it is important within this theory that politicians believe that the public has ‘punitive’ sentiments toward crime and use it to attract voters. In contrast, Roberts et al. (2003: 65) pointed out the intentional negligence of politicians, stating that “penal populism involves a wilful disregard of evidence or knowledge” and “the more wilful that such politicians are in their disregard of the evidence about effectiveness and equity, the more we are inclined to regard them as penal populists”. In other words, politicians in the latter are interpreted as a group informed of criminal and penal matters but in utilisation of the ill-informed public’s ostensibly punitive atmosphere toward crime rather than ‘public opinion’. Therefore, the primary difference between populist punitiveness and penal populism lies in whether politicians are ignorant or disingenuous as regards what the public wants in terms of punishment and how punishment works.

It is true that the two terms, albeit different, have been used to refer to the same phenomenon in existing penological discussions (Pratt, 2007: 2). The interchangeable usage of these two terms in different studies is reflective of the focus they share in that their emphasis is on the ‘act’ of politicians and its ‘purpose’ – introducing penal policies for successful election. This can be clearly read in the work of Roberts et al. (2003: 5), “Penal populists allow the electoral advantage of a policy to take precedence over its penal effectiveness. In short, penal populism consists of the pursuit of a set of penal policies to win votes rather than to reduce crime rates or to promote justice”. That is, political opportunism is located at the centre of understanding the mechanism of the punitive penal trend. Indeed, these works contributed to the development of the concept of penal populism and, thus, the knowledge of punishment in contemporary society. However, the extant understandings of penal populism are rather different in the later explanation of Pratt (2007), as will be discussed below.

Pratt's explanation on penal populism⁸¹

According to Pratt (2007), penal populism should not simply be considered to be a linear process, where individual politicians at the local level attempt to introduce punitive penal policies for electoral advantages by, in collusion with the mass media, manipulating the general public into voting for them because they seem to be 'tough' on law and order issues. It is, instead, understood as a fundamental change of the structure of penal power, which occurs in the context of late modernity, characteristic of deeply held insecurities and anxieties produced by social and cultural changes.

(a) Reconfiguration of penal power

As emphasised by Pratt (2007), penal populism should be understood as a fundamental rearrangement of penal power that occurs in late modern societies, rather than local political opportunism, contingent solely on individual politicians.

"It is the product of deep social and cultural change which began in the 1970s and which now extends across much of modern society. The rise of penal populism is the reflection of a fundamental shift in the axis of contemporary penal power brought about by these changes (2007: 3)" and "Penal populism has become a phenomenon that represents a dramatic reconfiguration of the power to punish that had been characteristic of post-war modern society (2007: 24)".

In the post-war period, criminal and penal policies were shaped by bureaucratic rationalities and professional knowledge of experts behind the scenes (Loader, 2005). However, since the 1970s the public has impugned the natural ability and right of the establishment who previously enjoyed the exclusivity of governance (Pratt, 2007). From early 1990s onwards, penal policy formation has increasingly become influenced by extra-establishment forces, including law and order lobby groups and citizens' rights-based organisations, who are critical of the 'criminal justice expert' and whose knowledge is usually based on common sense, newspaper headlines, etc (Pratt, 2007: 3). The public influence on penal affairs and the fundamental shift in the axis of penal power has occurred within certain conditions, where the public distrust in the existing

⁸¹ The purpose of this section is not to restate the entire explanation of Pratt but to summarise the main features of it, distinctive to the existing understandings on penal populism and its variants.

establishment, experts groups, and political institutions is deepened, and where uncertainties and insecurities are growing, in the era of late modernity.

To explain, socio-economic security for citizens was a key objective among advanced liberal democracies during the post-war era, and thus public anxieties arising from security-related problems such as unemployment and poverty were not pronounced during this period (Garland, 2001). However, the post-war welfare state began to be seen as too bureaucratic, expensive, and inefficient, and hence the entire system was depicted as a failure. Thus, in the late 1970s the neoliberal polity of Margaret Thatcher attempted to transform the economic structure of Britain. Consequently, widespread public insecurities and anxieties were generated. In pursuit of 'small government', neoliberalism was characterised by privatisation of public sectors, curtailment of welfare, and deregulation of corporates. Government elites regarded the civil service and those state industries with strong trade unions and welfare policies including state pension as a 'waste' of public expenditure, and a hindrance to the economic development of the country (Pratt, 2007: 42). It is true that with neoliberal influences, the economic security of individuals was no longer provided by government but was supposed to be 'achieved' instead by individuals. The effect of these changes was, perhaps necessarily, a growing sense of insecurity and anxiety among individuals and communities. It is not surprising that as the state provision of socio-economic security was withdrawn - translated as an existential threat to individuals - public distrust in the government and bureaucracy increased to the extent that the public were not 'deferential' anymore to the authority of the establishment.⁸²

However, generalised socio-economic insecurity and public distrust in governments and their bureaucratic organisations do not, by necessity, lead to punitive public attitudes toward crime and, further, penal populism. It is increasing crime rates that bridge "ontological insecurity" (Pratt, 2007: 60) and penal populism. Certainly, crime rates increased between 1960 and 1990 in many Western countries, and the public demanded that the government protect them from crime and incapacitate criminals through punitive legislation (Pratt, 2007). That is, the public's lack of confidence and sceptical, even hostile view of the establishment, shaped in the context

⁸² Along with the neoliberal or late modern insecurity, the 'decline of deference', referred to as the cultural attitude of the public who once were deferential (but are no longer) to the authority in society, is also attributable to the emergence of educated people, according to Pratt (2007). Providing the statistics showing the significant increase in the number of tertiary students from 1960 to 2002, he said "[t]hose in government or other establishment sectors would no longer be viewed as the social superiors of the rest of society – many of whom would now be able to compete with them in terms of educational achievement" (Pratt, 2007: 41).

of the social and cultural changes that occurred from the 1970s, combines with the fear arising from increasing crime trends, providing a condition where the public relies on populist politicians and organisations, who then claim to speak on their behalf. These groups offer simple, straightforward answers to complex crime problems, which the public can easily understand and believe to be effective. Within the context of late modern anxieties and frustrations, the legitimacy to address crime and punishment matters has increasingly been granted to 'democratic' social organisations and politicians, rather than the traditional establishment.⁸³ Therefore, according to Pratt (2007), penal populism should be read as a reflection of the rearrangement of the power to punish.

(b) Media

As mentioned above, crime rates had risen from 1960 to 1990 in Western countries in general. From the 1990s crime rates decreased while punitive social and legal reactions to crime became more prevalent. It is ironic that penal populism has flourished despite declining crime. How, then, can this phenomenon be explained? In this respect, it is crucial to understand public perceptions about crime and how those are shaped.

The public still believe that crime rates are increasing, irrespective of the official statistics showing the opposite. Pratt (2007) pointed out that public perceptions about crime are strongly influenced by media, rather than official documents and statistics produced by experts. He also explained the specific effects of the media on perceptions of crime - "the volume and nature of crime reporting enlarges the dimensions of this problem and increases the immediacy of its threat, making it seem one that is acute, requiring drastic and dramatic action" (2007: 67). The public are reliant on the media for information about crime and the media therefore shape public view on crime and appropriate reactions to it. Media representations of crime are often accepted by the public as accurate and reliable. In this way, crime and punishment matters have come close to people's everyday life and crime reporting of media has also become more important as an 'authoritative source of crime knowledge'.

⁸³ Pratt (2007: 27) gave the example of the Sensible Sentencing Trust in New Zealand, and there is some Korean research on the role of civil organisations - based on women and victims' rights in these cases -, in the formation process of criminal justice policies in the 1990s in SK (Han IS, 1994; Lee HJ, 2008; Lee KJ, 2010). These are discussed in Chapter Three.

How is it, then, that the media reporting of crime has expanded its influence over the public? According to Pratt (2007), the volume of crime reporting has gradually increased from the post-war period through the 1970s and to the present. Media reporting has not only changed quantitatively but the change has also been qualitative in that the reporting on violent and sexual offences has significantly increased. Changes in media crime reporting both in quantity and quality are ascribed to the diversification of news sources, underlying cause of which is the structural change of the media sector.

Throughout advanced liberal democracies, state ownership of mainstream media continued until the 1980s when the media sector was largely privatised. Since then, individual companies have competed to attract audiences and, in turn, increased revenue from advertising and subscriptions. Since crime is intrinsically attractive to the public, media companies have invested in crime news to generate profits. However, the selection of crime news is not neutral. Rather, the media prefer certain types of cases – the unusual, bizarre, and shocking - since these attract more people and thus are more lucrative (Jewkes, 2011). In this way, the public have gradually become acquainted with - the media representation of – crime, and the media has become regarded as a reliable source of crime knowledge, vastly expanding its influence on public perceptions of crime.

In line with the quantitative growth of crime news and the sensationalised practice of crime reporting, broadcasting has also undergone changes - also a product of broader structural changes within the media sector, characteristic of deregulation and privatisation. The changing features of broadcasting include emphasis on providing attractive programmes which are interesting and entertaining rather than serious and informative – what Pratt (2007: 75) refers to as the ‘Glamourization of Broadcasting’. Television channels and programmes have tended to deal with celebrities’ stories in preference to political and economic issues. This ‘glamourization’ is not simply a matter of the nature of the subjects chosen for broadcasting. The qualitative nature of broadcasting has also changed from being scientific, objective, and thematic to episodic and personalised with journalists requiring fewer intellectual and analytical skills. Alongside this change, crime and punishment issues are also addressed, prioritising in-depth interviews with victims and survivors of crime, rather than expert opinions based on research and analysis. The experience, pain, and trauma of crime victims are shared with the general public, through which crime has become personalised and, at the same time, generalised. Given the pervasiveness of crime related news, it is understandable that the public believe that crime occurs everywhere and we all are potential victims.

Further, from the ‘constitutive’ media effects on public knowledge of crime, Pratt (2007: 72-75) also noted how the media is given the power to define criminal justice issues and galvanise the public into action. He described a campaign led by a popular English newspaper – *News of the World* - in 2000 which helped launch the legislation known as Sarah’s Law, in memory of Sarah Payne, an eight-year-old victim of sexual murder. The newspaper released the names and photos of 49 convicted paedophiles and initiated a campaign that demanded the personal details of sexual offenders be notified to the public. The campaign was successful in drawing public attention to punishment matters regarding sexual offenders. The media also reported on punishment and sentencing selectively, focusing on the incompetency of the criminal justice system, lenient sentencing practices, while decrying the ‘luxuries’ of prison life (Pratt, 2007). The gap between the establishment and the public was widened in regard to penal affairs while the media has successfully delivered the impression that they side with the public against the criminal justice establishment. As a result, public demands for alternatives to the existing establishment including populist organisations, politicians, and media increased.

The democratisation of knowledge production and practical mass involvement with regard to crime and punishment are not only facilitated by the traditional media such as TV and newspaper, but also by information technology. In a departure from communication by means of the traditional media, the internet and talk-back radio in particular have opened a new era of communication, characterised by interaction between the media and the public. Since the 2000s the general public has also been able to partake directly in creating and disseminating information and knowledge about crime through social media platforms such as Facebook and Twitter.⁸⁴ The new, democratic method of communication utilising information technology and social media platforms has provided a channel where not only the media but also citizens, politicians, and interest groups can have their say on crime issues. Although it has arguably contributed to the expansion of democracy, it is problematic since public opinion is informed and based on personal experiences, anecdotes, news headlines, common sense, and groundless rumours, rather than social scientific research and detailed analysis of crime (Pratt, 2007).

The impact of the democratic ‘say’ concerning criminal and penal issues is explained by Pratt (2007: 84) in the following way –

⁸⁴ The case of South Korea is exemplified in Chapter Three, where social media messages posted by South Koreans regarding crime and punishment are analysed.

“[a]s a result of the attention given to them, they were able to rearrange the terms of penal debate: policy was judged on the basis of sentence length, deterrence and satisfaction to victims, rather than financial cost, effectiveness as measured by reconviction rates and humanitarianism” and

“the desire for longer, more punitive prison sentences was inextricably linked to the desire to curtail the power and authority of those members of the establishment who seemed to want to defend the criminal rather than protect innocent victims”.

As is evident in this excerpt, the diversified sources of ‘say’ led to public distrust in the ability and authority of the criminal justice system and to public sarcasm on liberal elites – ‘ultraliberals’, for example. The vacuum of criminal justice authority in society can easily be filled with populist forces, as demonstrated in the literature on penal populism.

(c) Victimisation

It is important to remember that the public should not simply be construed as a resource for political mobilisation; they are effective players in institutionalising punitiveness via the mechanism of penal populism. In consideration of the statistical fact of the low proportion of crime victims in society, why is it that the public, the vast majority of whom have never been criminally victimised to any significant extent, have become one of the major actors in penal populism? In this context, ‘victimisation’ should be given particular attention in understanding the association between actual crime victims and the general public - and media has a crucial role in creating this association. This also suggests that victimisation is further related to the devolution of penal power from the criminal justice establishment to extra-establishment actors, who draw on and are supported by media-informed public opinion.

Pratt (2007) observes that victimisation has a special status in the working of penal populism. To explain, most people in society do not experience crime as a victim, but they do have fear and anger about it since the public share ‘victimisation’ with crime victims by way of the media and information technology. The experiences of actual crime victims are exaggerated and personalised in the media, which extends their experience to the public. The shared experiences of victimisation can be further dramatised and extended via social media and the internet, as explained previously. Victimisation has now become an authentic source of crime knowledge,

which generates and amplifies the public's fear of crime (Pratt, 2007: 85). The collective anger and fear of crime prevalent in society is, obviously, a core resource for the development and consolidation of penal populism.

Pratt (2007: 18) stressed the importance of the symbolic status of crime victims and victimisation in populist discourses through an excerpt from Garland (2001: 144):

“[t]he symbolic figure of the victim has taken on a life of its own, and plays a key role in political and policy argument. The crime victim is no longer represented as an unfortunate citizen who has been on the receiving end of a criminal harm. His or her concerns are no longer subsumed within ‘the public interest’ that guides prosecution and penal decisions. Instead, the crime victim is now, in a certain sense, a representative character whose experience is assumed to be common and collective, rather than individual and atypical”.

The excerpt clearly shows the influence of victimisation on penal debates and policies, and more importantly that the ownership of victimisation is not solely granted to victims, but rather has become ‘public’ that the rest of society – depicted as potential victims - can possess.

The identification of the rest of society, who have never been victimised by criminals, with potential victims of crime has significance in the process of the transfer of penal power from the existing criminal justice establishment to non-establishment actors such as citizens' rights groups and victim support organisations. A typical product of the power shift is the legislation of punitive policies named after victims – for example, Megan's Law in New Jersey in 1994 and Jessica's Law in California in 2005. Pratt (2007: 18) interpreted the meaning of the victim-memorial legislations as,

“The way in which particular laws have been named after crime victims becomes a way of honouring their loss while also memorializing them through the protection that the legislation they have inspired provides for potential victims in the future. This breaks through the cold anonymity of criminal justice procedure and captures the emotive force that victimization brings with it”.

Indeed, it is understandable that the criminal harm inflicted on individual victims is transferred to the general public, and the successful introduction of punitive legislation in memory of crime victims is a reification of the ‘public’ experience of victimisation.⁸⁵

⁸⁵ As mentioned above, ‘individual’ experiences of victimisation are becoming ‘collective’ through various

Together with this common experience of victimisation, the public increasingly accuse the existing establishment of failure to provide protection and security to the entire society rather than actual crime victims. The establishment is discredited, and the public become sceptical of expert knowledge and the introduction of punitive measures is justified in the belief that the security net of society will be enhanced (Pratt, 2007: 86). In the shift of penal power, rational discussions and decision-making based on expert knowledge have increasingly given way to the public emotion, reflective of the status of 'victimisation'.

(d) 'With' the people, not from 'above'

Pratt determined that penal populism is clearly distinguishable from governance that draws upon authoritarian sources. While authoritarian populism, for example, is marked by the 'drift-from-above' process (Hall, 1979), driven by power and authority from 'above', the driving force of penal populism is 'democratic', based on alliances amongst the public, social organisations, media sectors, and populist politicians, or even led by the public.

This specific feature of penal populism, in comparison with authoritarian populism, can be briefly read here. As regards authoritarian populism, "[t]here was no mechanism that allowed the public to speak at this level of governance", "the public were effectively 'dummy players' with no direct input themselves to penal thinking and policy". "In contrast, penal populism today is built around the idea that the public, or its various representatives, are not mere dummies but can and should have a strong influence on penal affairs" (Pratt, 2007: 32).

Again, the distinct feature of authoritarian populism is clear in Hall's (1979) explanation.⁸⁶ Public opinion on social problems and issues are formed by 'above' by governments or political leaders. The public are then disingenuously consulted by the authorities 'above', who also proffer solutions to the problems. Thus, it can be said that there are no public and other representative groups involved in the drift from above. While the public are 'consulted' in the process, they have no real or substantial influence. That is, they are not active participants with an equal status but a puppet-like subject whose perceptions and opinions are moulded and then

forms of media. In addition, it is important to note that this process can be further expedited if the victim is 'ideal' – an innocent and defenceless child from a white, middle-class family, for example (Pratt, 2007: 85-89).

⁸⁶ The early years of Thatcherism were closely associated with authoritarian populism, according to the analysis of Stuart Hall (1979).

reaffirmed by governments, who claim to speak for the public.

When it comes to penal populism, however, the public do have their voices heard and there are diverse actors at play, including self-professed representatives of the public. The perceptions and opinions of the public regarding criminal and penal issues are shaped by the media and through online communication channels. Regardless of whether public perceptions are informed by reliable sources or not, they are taken seriously by various citizens' organisations, populist politicians, and governments, which means that discourses on penal affairs are not dominated by the above but shared 'with', or even led, by the public. There are close relationships between the public and those groups and this kind of partnership is the central force of populism.

Nonetheless, because both generate or increase punitiveness, authoritarian populism and penal populism are often mistaken as identical or similar. However, the 'apparently' identical end product of penal populism and authoritarian populism – increased punitiveness – should not be understood as an indication that these two share a common mechanism in operation. Punitiveness can be produced by criminalisation under an authoritarian regime. In order to secure political legitimacy, this process can include legislation, implementation of punitive policies and enhanced law enforcement targeting particular groups for social control.⁸⁷ This kind of punitiveness is, certainly, not germane to penal populism.

According to Pratt (2007), the consequences of penal populism and authoritarian populism are also different in terms of penal policy. That is, punitive penal policies shaped by tough-on-crime doctrines of a certain government or political party are 'episodic' rather than 'structural' and 'durable' in that those policies tended to be quickly discarded after electoral success. In contrast, penal populism is about a fundamental shift in the penal axis, which has coincided with socio-cultural changes over several decades, rather than a particular set of penal policies implemented temporarily for electoral advantages.

The main difference between penal populism and authoritarian populism lies in the extent to which the public are involved and the degree of democracy in terms of governance. It is the specificity of penal populism that the public is not merely a passive object of socio-political engineering or discipline but an active subject that partakes, collectively, in the interplay of

⁸⁷ Punitiveness generated by criminalisation as a strategy of social control has, demonstrably, existed in different societies, and the specific case of South Korea is discussed in detail in Chapter One.

increasing punitiveness, in partnership with diverse non-establishment groups.

In summary, penal populism, unlike authoritarian populism, is democratic in character, which means that it gains impetus from the 'bottom' of society. Also, it should not be regarded as consumed episodically by local politicians for specific electoral purposes via introducing punitive penal measures. It is a process of structural shift where the new order of penal power replaces the existing order. At the centre of this process is, the media which plays a critical role in that it virtually defines the knowledge of crime and shapes public perceptions of crime. The experience of victimisation among a small proportion of the population is shared with the rest of the society through the media. People have become psychologically and emotionally tied into this common experience of victimisation. The unified public then gather force in conjunction with other (interest) groups who claim to support or represent the public, to fight against the establishment, which is now incapable of providing protection and security to the public, seemingly favouring the rights of criminals. Power and legitimacy over penal affairs have now been transferred away from those believed by the public to be detached and incompetent, to the 'sympathetic and wise'.

Penal populism has its effect not only on public discourses on crime and punishment, but also on criminal law and penal policies. The typical product is punitive legislation, characterised by increased sentence length, such as 'three strikes' laws, which are supposed to have a subsequent impact on imprisonment rates. However, the crime control measures brought about by penal populism result in more extensive use of imprisonment. These have included (post-prison) special confinement or indefinite confinement, registration of sexual offenders and community notification of their personal information, and numerous shaming penalties in the US in particular (Pratt, 2007). Nonetheless, penal populism should be viewed neither as the exclusive influence on penal strategies and thoughts in contemporary society nor an inevitable characteristic of late modernity (Pratt, 2007).

Punitiveness, and penal governance in different societies

Complementary to the theoretical understandings of penal populism, it is also important to describe the various shapes and characters of penal governance/penal populism in different societies in order to specify and expand our knowledge of it. Existing literature on penal developments of a particular region or country demonstrates that the penal trends of a society, including penal governance, the degree of punitiveness, and the impact of penal populism, are dependent on multiple factors such as geography, historical experiences, cultural values, political regimes and structures, institutional arrangements, welfare, corporatism, and media (Aarten et al., 2015; Boda, 2015; Campbell, 2014; Cavadino & Dignan, 2006; Demker et al., 2008; Hamai & Ellis, 2006; Hathazy, 2013; Li, 2015; Miao, 2015; Pratt, 2008; Sozzo, 2016; Tripkovic, 2016; Webster & Doob, 2014, etc.). Whereas not all these penological works explain the penal trends by drawing strictly on penal populism as a theoretical lens, their explanations have an affinity with penal populism since the punitive penal discourses, policies, and practices of individual societies can be at least partially captured by penal populism. Nonetheless, the specific trends of punishment in different societies vary, as does the focus of the explanations on why and how the specificity or differences have been shaped.

As discussed earlier, the working of penal populism is neither akin to that of punitiveness driven by military regimes for political oppression, nor authoritarian populism. This suggests that there is a relationship between the characteristic of the political regime of a society and its penal governance. From this perspective, Tripkovic (2016) attempted to explain punitiveness in Serbia, where the political regime was shifted from authoritarianism to democracy in 2000.

Tripkovic (2016) found that while the penal norms and policies in Serbia have become more humane and democratic, the penal practices in that country have consistently been punitive since 2000. The evidence of punitive practices was a consistent increase in the number of prisoners and those on pre-trial detention, a reduction of the number of probation orders applied, and increased sentence lengths imposed between 1993 and 2011. He argued that the punitive judicial practices are moulded under the influence of the executive and the institutional arrangement of the High Judicial Council.

First, as regards the executive, some of the elites of the past authoritarian regime survived the collapse of communism in Serbia and they have now been incorporated into the current democratic government, persistently exerting their influences on punitive penal practices. Second, judges are exposed to extra-judicial, political pressures through the Council. This is

because the Council determines the re-appointment of judges with one third of the members from outside the judiciary, which means that judicial decisions and sentencing are vulnerable to external pressures. In fact, the Council and the re-appointment process were roundly criticised by the European Commission as “generating a high risk of political influence” (European Commission, 2010: 10), which is detrimental to the independence of the judiciary.

The historical experience of authoritarianism in Serbia produced public resistance to authoritarianism and a demand for democratisation. In this historical context, the new, democratised regime is much more conscious of the sensitivity of the Serbian public and international community toward authoritarian punitiveness and there has thus been no expressively punitive legislation since 2000 (Tripkovic, 2016). However, the legacy of the past authoritarian regime still remains in the current executive and their influence on legislation is not exerted directly but indirectly via judicial practices. Therefore, penal governance in Serbia is referred to by Tripkovic (2016: 370) as “authoritarian governance of crime within democracy”.

Sozzo (2016) also notes the relationship between political regimes and penal governance. His case study of penal governance in Argentina shows that this country has been through a number of changes in penal governance during the process of democratisation for three decades. The transition from authoritarian regime to democracy began in 1983. During the 1980s, punishment in this country was characterised by penal moderation, driven by experts but it had become increasingly punitive under the influence of neoliberalism since 1990. The next period between the late 1990s and 2001 experienced a change again, marked by “penal populism from above” (2016: 307), followed by “penal populism from below” (2016: 311). Since the late 2000s the situation has been more ambiguous, with small scale initiatives of punitive policies contradicting those oriented toward penal leniency.

One of the main implications of this study is that the penal developments of a society can be intimately associated with the degree of democracy in that society. For example, the political institutions in Argentina were democratised in the initial stage of transition from authoritarianism to democracy, but the mentality of the regime had not yet followed the newly democratised institutions. Penal governance of that period is thus interpreted as remaining grounded in authoritarian thinking, which was elite-driven, top-down, and detached from the public (Sozzo, 2016). However, since 2001, as democracy in Argentina became more established, the voices from below such as the public, social organisations, and media rose to

the point that they intervened in penal matters. Penal populism in this period certainly seems relevant to the development of democracy.⁸⁸⁸⁹

Political influences on penal governance are not restricted to political regimes. The political structure, in particular the party system, and political will also affect the shaping of penal policies, practices, and penal populism. This is clearly illustrated in the penal trends of China since 2000 (Li, 2015; Li, 2017; Miao, 2013). Post-2000 China has seen the conditions necessary for the development of penal populism – including the generalised anxiety of the public about socio-economic insecurities, marketisation, the development and deregulation of mass media, and information technology (Li, 2015). However, penal populism has had a limited impact on punishment in China. As discussed below, penal governance since 2000 in this country is characterised by penal moderation, based on penal professionalism (Li, 2017).

Political leaders in China have emphasised “economic growth, good governance, and social stability” (Li, 2017: 65) since the early 2000s. The new governance is based upon two pillars: the rule of law, and the realisation of judicial justice. For the Chinese government, Li claims, it is particularly important to ensure the reasonableness of judicial decision, the efficiency of justice administration, and humane methods of punishment to realise judicial justice. Specifically, the principle of ‘Balancing Leniency and Harshness’ is prioritised in punishment and sentencing, reducing the application of the death penalty and promoting light punishment. As a result, the number of crime types subject to the application of the death penalty has been reduced and the implementation of it also reduced by 50 percent (Li, 2017). Furthermore, decriminalisation and decarceration became the major rationale of the Chinese criminal justice system, introducing community correction programmes, monitoring and rehabilitating offenders in the community. Administrative detention has also become less coercive and labour punishment has been abolished.

This transformation was driven by professionals. Penal experts have recognised the limited

⁸⁸ The relationship between political regimes and penal governance is also supported by Hathazy (2013). He analysed the developments of punishment and welfare in Argentina, Chile, and Peru. His main finding is that the three different regimes of the countries (authoritarian/democratic/semi-authoritarian) reacted to neoliberalism differently, which produced different penal and welfare policies. He argues that the developments of penal and welfare policies in these countries are, primarily, related to the political regime of the individual countries.

⁸⁹ This is not to suggest that the characteristic of the political regime of a society determines the penal governance and the impact of penal populism in that society. As stated above, the working of penal populism is affected by numerous factors, including the political regime.

deterrent effect of harsh punishment and the “uncontrollable social insecurity” (Li, 2017: 67) – increased rates of public order offences in urban areas, and social injustice and inequality created by rapid social changes, which led to a rise in petitions and protests since the mid-2000s. Penal professionalism of post-2000 China is a product of the political choice of the Chinese Communist Party (CCP) to establish a state characterised by and based on the rule of law. Fundamentally, this political decision and its execution would be almost impossible without the one-party dominant system, absent of any political resistance since other parties are “assistants” (Li, 2015: 158). In alignment with rapid economic growth, the CCP has also endeavoured to promote the status of China in international society, in compliance with international norms and expectations, which also contributed to the changes in penal governance since 2000. Li (2015) argues that the political will of a one-party state is strong enough to make a significant change in policy. As the Chinese case shows, political arrangements and political determination can have a critical impact on the direction of the development of punishment, creating expertise-based penal governance that is resistant to penal populism – at least in this specific case.

Another case study by Webster & Doob (2014) also shows that politics has a crucial role in addressing penal affairs. The authors found that in Alberta, Canada, a political decision to solve a budget deficit problem, without any consideration of punishment *per se*, led unexpectedly to a significant drop in the prison rates. Considering the fact that imprisonment rates are the main indicator of the punitiveness of a society, this case study has implications for the defence of penal populism since the decarceration-oriented policies and the decision to close prisons had a significant impact on the reduction of imprisonment rates in Alberta.

Alberta, which according to Webster & Doob (2014) is the most politically conservative province in Canada, had a serious budget problem in the early 1990s. The budget problem meant a political crisis for the Conservative party, which had long been in power. Klein, the Conservative candidate in the Premier election in Alberta, proposed to solve the budget crisis and won the election. In pursuit of a small government, he stressed the importance of reducing government expenditure while maintaining existing tax levels. He reduced government spending by 20 percent in almost every sector, including the budget for the Ministry of Justice as well as Corrections from 1993 to 1994. This budget cut led to a 32 percent drop in imprisonment rates between 1993 and 1997 in Alberta. Webster & Doob (2014) suggest that the decrease of the prison rates in Alberta was a result of the political decision of the Klein government, and demonstrated that there was no reduction in crime rates or the transfer of

prisoners from the province prison to the federal prison during the same period (2014: 14).

It should be emphasised that there was a consensus at the societal level during the process of decarceration. This means that there was almost no political opposition of the liberals, no serious media attention, and no public resistance. This is because the budget cut for the justice sector was relatively unnoticeable – 71 million dollars -, in comparison with that for the health sector – 530 million dollars. Clearly, closing hospitals and universities was perceived as far more troubling than justice matters at that time.

In the absence of political resistance, the civil servants involved in the criminal justice system enjoyed independence. For administration and policy-making, the Ministry of Justice recruited people whose background is in social science, including criminology, since the 1970s – the new recruits perceive themselves as progressive in general. These people decided to reduce the costs and levels of imprisonment, and finally close prisons, based on their criminological knowledge (Webster & Doob, 2014). As a result, the largest prison with the largest number of prisoners and staff, and several small prisons were closed in the province. The overall prison capacity in Alberta was reduced, and alternatives to imprisonment were introduced to avoid the resulting overcrowding problem in the remaining prisons. In addition, the use of police discretion in less serious cases increased, the number of criminal charges and prosecutions dropped, and conditional early-release programmes were also expanded, thereby significantly reducing the number of offenders entering prisons (Webster & Doob, 2014: 20).

It is true that the decarceration experience of Alberta was initiated at the political level, but there was also no concern about crime and imprisonment rates. In other words, while politics had driven the change at first, the specific form and direction of the changes in punishment and how to make it were not politically determined. According to the authors (2014), these are pertinent to the fundamental cultural and penal values of Canada. These values, within which the social perceptions of punishment are formed, include tolerance, integration, and a less violent and communitarian culture. According to Webster & Doob (2014: 24), the Canadian-specific perceptions of punishment are represented by “the normative and pragmatic scepticism on incarceration and its effect, the public view of offenders as full citizens, and the rejection of such exclusionary policies as capital punishment, the disenfranchisement of offenders and sentences of life without parole”.

As seen in this case, interventions in punitive developments of punishment are not necessarily initiated on the basis of discussions on crime and punishment. Punishment trends and penal

governance can unintentionally be affected and developed by political decisions. In addition, as the authors speculate, penal developments are also influenced by the fundamental culture and penal values of that society (Webster & Doob, 2014: 26).

The effect of culture on the developments of punishment in a society is substantiated in Pratt's (2008a and 2008b) work. He explained the less punitive features of punishment in Scandinavian countries – Finland, Norway, and Sweden –, represented by significantly low imprisonment rates and high standard of prison conditions by international comparison. He argues that the low degree of punitiveness or resistance to penal populism at that time was deeply rooted in the egalitarian and inclusive culture of the region, which was institutionalised through the development of the welfare state model in the three countries.

Pratt (2008a) first described the distinctively high standard of prison conditions in Scandinavia. The detailed description includes explanation of the small prison size, the purpose of punishment – no more than loss of liberty –, the very close social distance between prisons and the outside world, the appropriate ratio of staff to inmates, the comparatively favourable social perceptions of prison and prison staff, the attitude of communities toward prisons, and the conditions of open prisons. These are then explained in relation to the particular historical experiences of this region due to the geography, the very limited class divisions – no serfdom or feudal system, for example –, and the high degree of egalitarianism. The regional sense of 'sameness', generated by ethnic and religious (Lutheran church) homogeneity, is also constitutive of the cultural values emphasising collectivism and consensus rather than individualism and conflict, and rule compliance based on inclusion and solidarity rather than exclusion and punishment. The value placed on education and professional knowledge, the respect for experts, the educational functions of state-funded media, research-based rather than emotive media reporting of crime, and low levels of public fear of crime are also highly relevant to the low levels of punitiveness in Scandinavia (2008a: 124-126).

According to Pratt (2008a), the cultural values of the region were institutionalised through the development of the welfare state, with which the shaping of penal policies and practices were aligned. Since the 1930s there had been a belief in Scandinavian countries that crime and other social problems can be solved by welfare reforms. At that time, crime was perceived as a contagious disease, thus subject to treatment and rehabilitation rather than punishment. This belief was reflected in, for example, the Sentences Act 1945 in Sweden, which stated that the purpose of punishment is merely the loss of liberty and there should thus be no more

deprivation or suffering than imprisonment and that the human dignity of prisoners should be respected. Sweden also introduced open prisons, where there were neither armed guards nor barred windows. Indeed, prisoners were not seen as subjects of harsh punishment but as welfare clients. The high value placed on education and the trust in government organisations and professionals were also attributed to the Scandinavian style of penal development, characteristic of inclusive penal policies formed by experts. The Scandinavian Research Council for Criminology, established in 1962, and the special social workers in the Prison Service, in fact, contributed to the formation of penal policies. As such, the penal policies in this region are the product of the evidence-based, considered processes of experts (2008a: 130).

It is true that penal developments in Scandinavia are much less punitive and are reflective of the deeply seated culture of egalitarianism. However, this penal exceptionalism has recently dissipated, more significantly in Sweden than Finland and Norway, as an increase in imprisonment rates in Sweden indicates (Pratt, 2008b).⁹⁰ Pratt (2008b) discusses the underlying causes of this dissipation via the decline of security, equality, homogeneity, and solidarity of the region, and provides numerous quantitative indicators and detailed analyses of government documents. Nonetheless, he stressed that the recent indication of punitiveness in this region should not be exaggerated as an internationally hegemonic, universal phenomenon. Instead, penal governance in different societies varies, even those in the same region with similar cultural identities. As shown in the case of Scandinavia, Pratt argues that the penal governance of a society should be understood as the product of the particular culture and values, the social arrangements, specific political decisions and the activities of particular organisations (2008b).

Lastly, ‘contingency’ should not be overlooked in understanding punitiveness and, in particular, the operation of penal populism. This does not mean that whether or not penal populism flourishes is entirely dependent on accidental factors, but that the occurrence of contingent events can, at times, provide a catalyst for penal populism and can create or reinforce certain

⁹⁰ Demker et al. (2008) also support the idea that the Swedish society is becoming punitive. They argue that Sweden is still less punitive by international comparison, but that the attitude of the Swedish public toward crime has become increasingly punitive. They analysed the relationship between the media consumption of the public and their perception on sentencing in Sweden. The main finding is that there is a relationship between the consumption of tabloid media specifically, (not media consumption in general) and the punitive public attitude regarding sentencing. In a similar context, the relationship between the tabloid exposure of the public and the levels of crime fear is demonstrated in Finland (Smolej and Kivivuori, 2006).

conditions necessary for penal populism. This will be illustrated in the case of Japan.

Despite its reputation for being the safest country in the world, punishment in Japan has become more punitive since 2000 (Fenwick, 2013; Hamai & Ellis, 2006 and 2008; Kuzuno, 2012; Miyazawa, 2008). This punitive penal trend was formed in correspondence with the sharp increase, between 1998 and 2006 in particular, of the public perception that crime problems in Japan were getting more serious (Hamai & Ellis, 2006). The punitive public discourses and penal developments started from two (mutually independent) murder cases in 1999. In both cases, the family members of the victims requested protection from the police a number of times, but the police used their discretion and did not respond to the requests. These cases drew unprecedented media attention and the police were severely criticised for their negligence, inability and inefficiency. As a reaction to the criticism, in 2000 the National Police Agency implemented a policy requiring all reports of violence to be recorded and investigated without discretion. As a result, the number of crimes reported dramatically increased from 347,000 in 1999 to 744,000 in 2000, the majority of which were trivial offences. The increase in reported crime was read as an increase in the crime rate and a decrease of the clear up rate, despite the drop in the actual risk of victimisation in Japan between 2000 and 2004 (Hamai & Ellis, 2006). This, again, led to heavy criticism of the police, and public demand for punitive policies. This was indicated by the increase of the number of articles in two of the major Japanese newspapers in which the word ‘punitiveness’ was used - from two in 1999 to 44 in 2000 (Miyazawa, 2008). In parallel, the Juvenile Law was toughened, which has been effective since 2001. Also, the Justice Ministry proposed for a general increase of sentencing levels of the Criminal Code, including raising the upper limit of single-crime/combined-crime prison sentences (Miyazawa, 2008). The use of the death penalty is also reflective of punitiveness in Japanese society, which has significantly increased recently: the number of executions in the ten years to 2018 was 67, and 134 prisoners are now on the death row (Death Penalty Worldwide).⁹¹

In fact, victim support organisations played a critical role in institutionalising punitiveness in Japan – most importantly, the National Association of Crime Victims and Surviving Families (NAVS) (Hamai & Ellis, 2006; Miyazawa, 2008). The NAVS argued that while victims are excluded, offenders’ rights are protected by court. They also criticised the criminal procedures in Japan, in comparison to those countries where victims have the right to prosecute offenders.

⁹¹ Cornell Center on the Death Penalty Worldwide - <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Japan>

In partnership with NHK (the Japanese equivalent of the UK's BBC), the NAVS held a series of symposia such as the Crime Victim Appeal, and aired a programme titled 'Why Crime Victims Are Not Saved' (Miyazawa, 2008). The NHK and the NAVS have become established as the sole representatives of crime victims and the voices of the general public, participating directly in criminal proceedings in Japan. Miyazawa pointed out that "they have become the agenda-setter and overseer of criminal justice policy making" (Miyazawa, 2008: 69).

As seen above, the Japanese studies do not seem to focus on the political aspects of penal populism, on the activities or strategies of (populist) political parties or individual politicians for election or the politicisation of crime and fear in particular. Nonetheless, the dynamics of the institutionalising process of punitiveness in Japan can be clearly captured by the theoretical lens of penal populism. It is also noteworthy that contingent factors, such as the two murder cases and the subsequent change of the crime reporting/counting mechanism of the police, have ignited the increase of penalty, and the roles of victim support organisations are of great importance in the Japanese case.

The specific forms of penal governance and the different emphases of these accounts above have provided a stepping stone to understand the shape of and conditions for penal populism in SK from a comparative perspective, which is delineated in the remainder of this thesis. In the case of SK, its traditional culture and contemporary history have primarily shaped the trajectory of penal populism there. Within this context, contingency in the form of several cases of violent crime triggered the development of penal populism. Nonetheless, penal populism would not have been able to operate in SK without two important conditions – the sensationalised media, and populist politicians. This is explained in much more detail in the next two chapters.

Chapter Three

Manufacturing ‘Demons’

“...He has no heart, no empathy... He can insulate himself thoroughly from his own memory and emotion... hypnotising his own memory... He is a man with no heart and soul...”

- from a newspaper article, published in Hankyoreh on the 13th of March 2010.

Drawing on the comprehensive account of penal populism presented in the last chapter, the purpose of the following two chapters is to establish that penal populism, as an interpretive lens, is particularly relevant in explaining the punitive development of punishment in SK since the 2000s. The demonstration will be divided into two parts. Firstly, the perceptions, attitudes, and discourses of the media and public regarding sexual violence against children will be analysed in this Chapter. Secondly, the specific ways in which punitive policies targeting SVC have been formed and legislated will be explained in Chapter Four, which focuses on the political discourses on SVC.

The present chapter consists of five sections, which are as follows:

First, informed by the existing Korean literature, recent penal trends of SK will be discussed, with its focus on punitiveness and penal populism.

Second, in order to establish that punitiveness in SK has been institutionalised by penal populism, five penal policies will be presented first.⁹² These policies are representative of the punitive measures introduced to control SVC, which has rapidly been problematised since the mid-2000s in SK.

Third, four cases of SVC will be described in detail. These are the most frequently reported SVC cases in the Korean media, which generated unprecedented attention from both the public and politicians, thereby prompting the legislation of those punitive measures for SVC.

Fourth, newspaper articles reporting on the four cases will be analysed to interpret public perceptions regarding SVC and also to illustrate the sensational nature of crime reporting in SK. The analysis is focused on the ways in which SVC and its perpetrators are represented, and

⁹² The presence of punitive public perceptions only - without actual *legislation* of punitive policies/measures - is not sufficiently evident of penal populism. This is another reason to describe the five policies first, before the SVC cases and the analyses of the media in this chapter.

on public perceptions of the criminal justice system and punishment in SK.

Lastly, in addition to the analysis of crime reporting by the traditional mainstream media, social media messages will also be analysed. The chosen messages for analysis are those posted by Korean Twitter users regarding SVC.

Punishment trends since 2000 in SK

A large body of Korean literature on penal trends developed since 2000 has accumulated over the past decade (Kim DO & Kim JE, 2009; Son DK, 2009; Lee KJ, 2010; Song KS, 2010; Chung JJ, 2011; Lee DI, 2011; Lee JS, 2011; Kim TM, 2012; Lee HJ, 2013; Han YS, 2013; Kim IJ & Jung KS, 2014; Song MH, 2014; An NH, 2016; Lee EY, 2016; Lee IY, 2016, etc.). Much of the literature presents a similar argument that punishment trends in SK have become increasingly punitive since the 2000s, and that the criminal law and punitive penal measures⁹³ introduced to control sexual violence, against children in particular, have been toughened (Son DK, 2009; Lee KJ, 2010; Song KS, 2010; Lee DI, 2011; Kim TM, 2012; Han YS, 2013; An NH, 2016; Lee YI, 2016, etc.).⁹⁴ Most of these works are focused on the increased use of mandatory sentencing and punitive security measures, and discuss their normative justifiability or policy effectiveness, while some also add a brief sociological discussion in respect of sexuality and gender since the penal changes occurred around sexual violence (against children).

There are two interesting studies to note briefly here since they are exceptional to the dominant view above and thus are useful to consider when mapping the broad trends of punishment in SK. First, Lee HJ (2013) sought to interpret Korean penal trends, by drawing upon Wacquant's neoliberal penal state thesis (2009). Having analysed and interpreted the provisions for punishing begging-related acts, which were amended in 2002, he contends that the so-called underclass, characterised as 'lazy and useless', are targeted for punishment in SK. Although his contention is valid in interpreting certain types of acts, it is insufficient in explaining

⁹³ These include increased minimum sentencing for sex offenders, increased maximum terms of imprisonment, sex offender registration and community notification, electronic monitoring, and chemical castration. The specific provisions of the policies will be provided in detail in the next section.

⁹⁴ It should be re-emphasised here that the trend of imprisonment rates in SK - mentioned in Introduction - has been levelled out at around 110 (per 100,000) since the 2000s, inconsistent with the punitive law and policies introduced during the same period.

punitiveness in SK, which has emerged specifically around SVC since the 2000s.

Second, Kim IJ & Jung KS (2014) utilised a market-oriented perspective and maintained that the punishment trends in SK are characterised by over-criminalisation, rather than punitiveness. They pointed out that the total number of recorded crimes in SK gradually increased during the 2000s and that 60 percent of the increase involved administrative offences. In SK, administrative offences are those behaviours set out as illegal in the Administrative Law and thus punishable by this law, other than the Criminal Act. The unlawfulness of these behaviours regulated by the Administrative Law is regarded as much smaller than that of crimes applied by the Criminal Act and, hence, the legal consequences of administrative offences are often a fine.⁹⁵

Based on their statistical analysis of administrative offences in SK, Kim IJ & Jung KS (2014) developed an argument that this kind of *regulatory* offending should be de-criminalised, since punishing these offences reduces the volume of legal economic activities. However, as the focus of their work is on administrative offences and its increase, its explanatory power for the recent penal development in SK is also limited. This is, again, because punitiveness in SK, represented primarily by those punitive policies implemented around SVC, is tangential to those market activities - subject to criminalisation, according to Kim IJ & Jung KS (2014).

Numerous articles have argued that punitiveness in SK society has been institutionalised through the mechanism of penal populism (Son DK, 2009; Lee KJ, 2010; Lee DI, 2011; Lee JS, 2011; Kim TM, 2012; Song MH, 2014; An NH, 2016; Lee IY, 2016, etc.). However, these typically refer to penal populism as the impetus of the punitive penal trends without engaging in theoretical discussions or providing empirical evidence of the mechanisms of penal populism.

In fact, so far there has been only one single article (Choo JH, 2017) that provides a theoretical discussion on the concept and mechanism of penal populism in SK. However, even the purpose of this article is to review Western penal theories regarding punitiveness, based primarily upon Pratt's penal populism (2007) and Wacquant's neoliberal penal state (2009), rather than to explain the specific trends of punishment in SK.

Moreover, some of those works interpret the punitiveness driven by military governments for

⁹⁵ Dictionary for legal terms -

<https://terms.naver.com/entry.nhn?docId=3655061&cid=42131&categoryId=42131>

the purpose of political oppression before the democratisation of SK as penal populism (Kim IS, 2010; Chung JJ, 2011). Their perspective, however, is criticised due to its lack of understanding of the historicism of penal governance (Choo JH, 2017), as well as its inability to distinguish authoritarian populism from penal populism, as emphasised in Chapter Two.

Nonetheless, the considerable number of articles that ‘refer’ to penal populism is an indication of the general consensus in Korean criminology that the punitive development of punishment in SK is attributable to penal populism, despite an absence of serious understanding of this subject.

However, it is also true that existing Korean studies have contributed to knowledge production regarding punishment in SK since they provide critical discussions of the normative justifiability of punitive penal policies from a legal-philosophical perspective, centred on the principle of proportionality and social scientific analyses of the effectiveness of those policies. Despite this, it is insufficient yet to conclude that penal populism is at play in SK, as the premise of this claim is based only on the serial introduction of toughened penal policies since the 2000s. As seen in the previous chapter, other conditions⁹⁶ are also required for the operation of penal populism.

To be precise, it is not the case that there is *no* study on the mechanism of penal populism in SK. A few Korean articles do exist that arguably provide empirical evidence of penal populism. However, they do not acknowledge or explicitly present this as evidence of penal populism (Han IS, 1994; Lee HJ, 2008), do not actually use the term or any associated terms, and only focus on one specific condition of penal populism (Lee KJ, 2010; Koh BH, 2012).

For example, some researchers emphasised the leading role of civil organisations, particularly women and victims’ rights-based organisations, in the formation of criminal justice policies since the 1990s in SK (Han IS, 1994; Lee HJ, 2008; Lee KJ, 2010). According to them, these organisations drew the attention of the public and politicians to the seriousness of domestic violence and sexual violence, therefore leading to the introduction of new legislation and policies. However, while all these studies specifically described the awareness raising activities of particular women’s organisations, other significant issues including how the organisations actually colluded with politicians, what roles the media played, and the socio-economic and

⁹⁶ With the political condition described in Chapter One, socio-economic, and cultural conditions of penal populism in SK will be explained in Chapter Five.

political contexts of the 1990s, were not considered by their research.

There also are some other works on the media, which perform an important role in the mechanisms of penal populism (Yang JH, 2010; Kwon IS & Lee HY, 2011; Koh BH, 2012; Park JS & Park SC, 2013; Kim EK & Lee NY, 2015). These researchers analysed the representation of SVC cases committed during the 2000s and suggest that the practice of ‘sensational’ media reporting on crime, in particular the ‘otherised’ representation of offenders, increases the public fear of crime, which then is politicised and used as justification for increasing punishment. However, none of the researchers provided any empirical evidence to establish the relationship between the media representation of SVC and the punitive policies introduced around SVC.

For example, Park JS and Park SC (2013), based on their own survey, empirically demonstrated a positive correlation between exposure of respondents to media reporting on crime and their perception that crime levels are increasing and, consequently, their fear of crime. Nonetheless, as their research is specifically focused on the effect of the media on public perceptions regarding crime, it does not provide any explanation for the relationship between media/public and penal policies or punishment trends in SK.

Indeed, these individual pieces of research which describe the participation of ‘non-expert’ civil organisations in the creation of criminal and penal policies, and the analysis of media representations of crime, are directly relevant to the mechanism of penal populism. Nonetheless, this partial knowledge produced on penal populism in SK – even when combined – is not sufficient to provide a comprehensive explanation of the entire process of how punitiveness is institutionalised by penal populism in SK.

In summary, the vast majority of Korean literature on South Korean punishment trends since 2000 found that punishment in this country has developed in a punitive way. Discussion of punitive developments is centred on a series of disproportionately harsh penal policies and measures, and their questionable effects, introduced in response to SVC since the 2000s. This punitive penal development has been largely attributed to the emergence of penal populism within Korean criminological literature. However, there is virtually no theoretical discussion on the mechanisms of penal populism, with the specific purpose of explaining penal developments in SK, nor any comprehensive empirical works on this subject. It appears that the punitive laws and policies are, by themselves, equated with penal populism, and relatively few pieces of relevant research justify the assumption or speculation that penal populism has

operated in SK. Therefore, in order to interpret the penal trends of SK through the lens of penal populism, the process through which punitive penal policies were introduced to control SVC should be first analysed and then the specific mechanism of and conditions for penal populism in this country explained.

Punitive penal policies in SK⁹⁷

According to various Korean studies⁹⁸, evidence of the development of punitive punishment for sexual offences involving children lies in the increased use of minimum sentences of imprisonment and the introduction of post-release security measures, including registration and community notification, electronic monitoring, and chemical castration. These changes in punishment and the various security measures imposed on sex offenders are described below.

(a) Increase of the maximum imprisonment term⁹⁹

In April 2010, an amendment to Article 42 of the Criminal Act increased the maximum term of imprisonment from 15 to 30 years. In cases where there are aggravating factors regarding the criminal liability of an offender(s), the term may be extended to 50 years, which had been 25 years before the article was amended.

(b) Increase of the minimum sentencing term for sex offenders¹⁰⁰

On the 15th of April in 2010, the minimum sentence for offenders who commit a sexual crime against children under the age of 13 was raised via amendment to Articles 7 and 9 of the Act on Special Cases concerning the Punishment of Sexual Crimes. The amendments are detailed

⁹⁷ The description of the five punitive policies here is based on a summary of the full provisions of the five individual policies. The original provisions are provided by the Korea Legislation Research Institute - <http://elaw.klri.re.kr>

⁹⁸ These works are referred to in the first section of this chapter, regarding the trends of punishment in SK.

⁹⁹ The full provisions can be found from http://elaw.klri.re.kr/kor_service/lawView.do?hseq=40950&lang=ENG

¹⁰⁰ The full provisions can be found from http://elaw.klri.re.kr/kor_service/lawView.do?hseq=46314&lang=ENG

below:

- The minimum term for an offender who commits a rape on a minor under the age of 13 has increased from 7 years to 10 years, or for life.
- The minimum term for an offender who, through violence or intimidation, commits the act of inserting the genitals into the inner part of a minor's body (excluding genitals) such as the mouth or anus, or inserting a part of the body (excluding genitals) such as fingers, or implements into a minor's genitals or anus, has increased from a fixed term of at least 5 years to 7 years.
- An offender who commits a sexually indecent act by compulsion on a minor under the age of 13 shall be punished by imprisonment for a fixed term of at least 5 years.
- An offender who murders a person in the course of committing a rape or sexually indecent act shall be punished by death or imprisonment for life.

(c) Electronic monitoring¹⁰¹

Electronic monitoring has been in effect since the 1st of September 2008, regulated by the Act on the Probation and Electronic Monitoring of Specific Criminal Offenders. It is important to note that the Act has so far been amended four times since its initial enactment. The Act was to come into effect 18 months after the initial legislation was passed. However, several extreme incidents of SVC – including two of the cases described below - occurred during the 18 months' period between its legislation and enactment. Because the media gave these cases such a high profile, public concerns about SVC and their demand for harsh punishment also grew during this time. In response to public pressure, the Ministry of Justice and the Legislation and Judiciary Committee of the Congress made further recommendations on the initial Act. Based on these recommendations, the Act then went through four different amendments, becoming gradually more punitive each time (Koo HS, 2013).

A public prosecutor may file a request with a court to issue an order to attach an electronic device to a person deemed to pose an unacceptable risk of recommitting a sex crime, excluding those offenders aged below 19. The minimum term for the attachment is 10 years and the

¹⁰¹ The full provisions can be found from http://elaw.klri.re.kr/kor_service/lawView.do?hseq=40949&lang=ENG

maximum term is 30 years. An attachment order is executed by a probation officer under the direction of a public prosecutor immediately prior to the release of the offender – termination of a sentence, release on parole, or termination of medical treatment or custody.

Offenders eligible for and subject to this provision are as follows:

- An offender who recommit a sex crime within ten years from the time he/she has completed a sentence of imprisonment, or has been exempted from an execution, for committing a sex crime.
- An offender who once wore an electronic device under this Act for committing a sex crime recommit a sex crime.
- An offender who is found to have a tendency to repeat sex crimes because he/she has committed a sex crime on at least two occasions (including where he/she has been found guilty in a final and conclusive judgment).
- An offender who recommit a sex crime against a minor under the age of 19.

The provision may be equally applied to any person who has committed a crime of abducting a minor or murder or robbery and is deemed to pose an unacceptable risk of recommitting such a crime.

In issuing an attachment order, the court may set a period of observation within the scope of the attachment period, and impose a duty to observe one or more of the following:

- Night curfew or movements confined to a specific time period
- Prohibition of entry into a specific area or place,
- Limitation on residential area,
- Prohibited to approach certain individuals, including the victim
- Completion of rehabilitation programmes for specific crimes (no more than 500 hours),
- Other conditions may be imposed, if deemed necessary to prevent recidivism, and/or in an attempt to rectify the character and conduct of the person placed under the attachment order.

(d) Registration of sex offenders

The provisions of the registration of sex offenders and the notification of their personal information were initially included in the Act on the Protection of Juveniles from Sexual Offence. Since its enactment in 2000, a number of amendments have been made, which changed the name and scope of the policy, and the way that the personal information of sex offenders is disclosed. Since 2009, the notification for offenders who commit SVC has been regulated by the Act on the Protection of Children and Juveniles against Sexual Abuse.¹⁰² Those who commit sexual offences against adults have been regulated by the Act on Special Cases concerning the Punishment of Sexual Crimes.¹⁰³

Offenders finally declared guilty of sexual violence, or offenders to whom a definitive order is issued to disclose information, shall submit his/her personal information. The information shall be submitted to the head of the police who has jurisdiction over his/her place of domicile, within 30 days from the date on which the judgment becomes final and conclusive. The personal information to be submitted for the register includes name, resident registration number, address, occupation and the place of work, height and weight of the offender, the registration number of his/her vehicle, a summary of a sex offence subject to registration (including date of judgment, name of the offence and pronounced sentence), previous criminal record of sexual assault (names of crimes and number of time of crimes), and whether an electronic device is attached. The information is kept and managed by the Minister of Justice for 20 years. The information is available to anyone who visits and goes through the identification procedure of the government website of ‘Sexual Offender Notification’.¹⁰⁴

(e) Pharmacological treatment of sex offenders (chemical castration)¹⁰⁵

This policy is regulated by the Act on Pharmacological Treatment of Sex Offenders and Sexual Impulses, which has been effective since the 24th of July 2011. The treatment order is imposed on offenders who are aged over 19, who commit a sexual offence against children under the

¹⁰² The full provisions can be found from http://elaw.klri.re.kr/kor_service/lawView.do?hseq=33019&lang=ENG

¹⁰³ The full provisions can be found from http://elaw.klri.re.kr/kor_service/lawView.do?hseq=46314&lang=ENG

¹⁰⁴ <http://www.sexoffender.go.kr>

¹⁰⁵ The full provisions can be found from http://elaw.klri.re.kr/kor_service/lawView.do?hseq=46408&lang=ENG

age of 16. This order is given to those who are determined to be incapable of controlling their behaviour due to sexual abnormalities, according to a psychiatric assessment by a mental health professional. And so, this order is used in an attempt to suppress abnormal sexual impulses or desires. The treatment is conducted by administering medication and psychotherapy to weaken the sexual impulse or treat the sexual function of the offender. The length of treatment cannot exceed 15 years from the time the public prosecution is instituted, without a court judgment being finalised.

The five punitive penal policies described above are applied to sex offenders against children. It is important to note that some of these measures have been extended and applied to crimes other than sexual violence against children or adults. Nonetheless, it is undeniable that those policies were initially legislated to control SVC, which will be substantiated in the remaining section of this chapter.

SVC cases in SK¹⁰⁶

In SK, reported cases of, and public concerns about, SVC have become much more pronounced since the mid-2000s. Between 1999 and 2008 the number of sexual crimes committed against children who are aged below 13 increased gradually from 478 to 1,194 (KIC, 2010).¹⁰⁷ The problematisation of SVC at the societal level in SK appears – on the surface, at least¹⁰⁸ - to be largely attributable to a series of heinous SVC cases that occurred since the mid-2000s, with an inundation of media reporting on those cases.¹⁰⁹ Politicians have since proposed hundreds of bills¹¹⁰ to increase the severity of punishment for sexual offenders, some of which were

¹⁰⁶ The description of the cases below is given in the order that they occurred. All the information about the cases and offenders provided here are based on the final judgments of the courts. The references of the individual judgments will be provided below.

¹⁰⁷ It is reasonable to assume that the almost three-times' increase of the number of SVC in just nine years is a result of a changed counting/reporting practice of the criminal justice system in SK, corresponding with changing social perceptions of SVC, rather than an actual increase of the absolute number of SVC committed.

¹⁰⁸ Chapter Five seeks to provide a deeper, sociological understanding of the emergence of SVC as a social problem since the 2000s, focusing on the socio-cultural value of children and the public sensibilities toward children and their safety in SK.

¹⁰⁹ The number of newspaper articles reporting these cases is more than a thousand. Relevant figures will be provided in more detail below in the analysis of newspaper articles.

¹¹⁰ I searched the Database of Bill Information, provided by the National Assembly of the Republic of Korea, using the keywords of '아동' (*adong*, 'children' in English) and '성' (*seong*, 'sex' in English). The result showed that the number of bills proposed regarding SVC between 2000 and 2016 is 701. Although only a few of the

successfully legislated. Indeed, punitiveness around SVC has become institutionalised in SK, which will be clearly seen through the analysis of newspaper articles below and through analysis of legislative bills in Chapter four.

What, then, are the SVC cases? Were they sufficiently serious and exceptional to draw attention from the media/public, create their collective anger, and lead to the legislation of those punitive policies? There are four cases chosen and described below. These were selected on the basis that they were the most heavily reported cases in the media amongst all the SVC incidents that have so far occurred in SK (Na JH, 2013). In addition, the exceptionality of the four cases can be simply demonstrated in quantity. The number of recorded crimes in SK was 2,006,682 in 2013. During the same period, the number of sexual offences was 33,933 and those committed against children under the age of 13 was 1,051. Amongst the entire sample of SVC cases, the average number of cases which caused serious bodily harm or death of victims – of which the four most reported cases belong to - was approximately *ten* per annum between 2004 and 2011 (KIC, 2014).

(a) Hye-Jin and Ye-Seul case¹¹¹

Two girls – Lee Hye Jin, ten years old and Woo Ye Seul, eight years old - were abducted and murdered in Suwon in December 2007.

The offender - Jeong Seong Hyeon, 38 years old – is reported as saying that he felt a sudden sexual impulse and then went to search for a target to rape at 17:30 on the 25th, December 2007. He found and approached the two girls. He brought them to his house, deceiving them by saying that he would offer them a city tour. He forcefully pushed the girls into a small room in his house, overcoming their resistance. Then he raped both of them, penetrating and inserting his fingers into their genitals. After the commission of rape, he started to feel worried about possibly being arrested. And so, he suffocated them to death, putting his hands over their noses and mouths. After he murdered both of the girls, he mutilated their bodies and buried them in

bills passed at the National Assembly and were legislated successfully, the total number of the proposed bills regarding SVC since 2000 is, certainly, indicative of the political attention bestowed on or political sensitivity regarding SVC.

The National Assembly website - <http://likms.assembly.go.kr/bill/main.do>.

¹¹¹ Seoul High Court, Case number – 2008노1708, Court Judgment p. 10-11

a mountain in Suwon. The offender was arrested on the 16th, March 2008 and he confessed that he murdered the two girls.

The court imposed a death sentence¹¹² on him. This case has encouraged the public and politicians to raise the minimum sentencing from seven years to ten years, or for life imprisonment, for offenders who commit sexual violence, in particular, against children.

(b) Na-Yeongi case¹¹³

An eight-year-old girl was sexually assaulted in the toilet of a small shopping centre in An-San, December 2008.

The offender - Cho Du Sun, 56 years old - consumed alcohol to intoxication and raped the victim at 08:30 on the 11th, December 2008. He stated that he dragged the victim, who was on her way to primary school, into a toilet and raped her. The offender forced her to lick his penis, but the victim fiercely resisted. Then, he punched her face a number of times and strangled her to oppress her resistance. He tortured her, pushing her face into the toilet bowl and she lost consciousness as a consequence. The offender penetrated her anus, when she was unconscious, and he ejaculated in her right ear. According to the medical report, 80 percent of the victim's intestines and anus were permanently ruptured. This required anus replacement surgery.

At the time of committing the crime, Cho was intoxicated. The court applied Article 10 of the Criminal Act, "the act of a person who is unable to make discriminations or to control one's will shall not be punished (Clause 1), and the conduct of a person who is deficient in the abilities mentioned in the preceding paragraph, the punishment shall be mitigated (Clause 2)".¹¹⁴ Cho was, finally, sentenced to 12 years' imprisonment. The court decision was subjected to strong criticism at that time, which soon initiated discussions on the amendment of Article 42 of the Criminal Act - increasing the maximum term of imprisonment from 15 years to 30

¹¹² According to Death Penalty Worldwide (2018), SK is classified by Amnesty International as Abolitionist de facto. To remind, the last execution of death penalty in SK was carried out on the 30th of December 1997. The number of prisoners executed on the day was 23. As of 2018, the number of prisoners under a death sentence in SK is 62.

¹¹³ Suwon District Court, Case number - 2009고합6, Court Judgment p. 2-5

¹¹⁴ Korea Legislation Research Institute - https://elaw.klri.re.kr/kor_service/lawView.do?hseq=46319&lang=ENG

years.¹¹⁵

(c) Kim Gil-Tae case¹¹⁶

A 12-year-old girl was kidnapped, sexually assaulted, and murdered in Busan in February 2010.

The offender – Kim Gil Tae, 33 years old – broke into a house, through one of the back windows. The victim was home alone at 17:07 on the 24th, February 2010. He punched the face and body of the girl numerous times and moved her to a different location close-by. He oppressed the victim’s resistance and forcefully penetrated her vagina. When the victim cried in pain, he pressed her nose, mouth, and neck. The victim eventually died of strangulation. At around 21:00 the offender wrapped the body in a black bag and hid it in the water tank of the house, where the murder was committed. The body was found on the 7th of March 2010.

The court imposed a life sentence¹¹⁷ on him on the 15th of December 2010. This case prompted the introduction of the provisions for sexual offender registration and community notification.

(d) Go Jong Seok case¹¹⁸

A six-year-old girl was abducted and sexually assaulted in Na-ju in August 2012.

The offender - Go Jong Seok, 23 years old - met one of his acquaintances at an internet café at 01:00 am on the 30th of August 2012. He talked with the person and was told that her daughter was at home with her husband, who was sleeping heavily due to alcohol intoxication. Go Jong Seok already had previously met her daughter and found her sexually attractive. Knowing that

¹¹⁵ The increase of the maximum imprisonment term is not exclusively applicable to SVC but can be applied to any type of crime.

¹¹⁶ Busan District Court, Case number - 2010고합164, Court Judgment p. 5- 6, and 21- 22

¹¹⁷ In SK, a ‘life sentence’ means, literally, imprisonment for the entirety of an individual’s remaining life. However, according to Article 72 of the Criminal Act, “A person who has behaved himself/herself well and has shown sincere repentance may be provisionally released by an act of the administrative authorities when 20 years of a life sentence or 1/3 of a limited term of punishment has been served.”

- Korea Legislation Research Institute https://elaw.klri.re.kr/kor_service/lawView.do?hseq=46319&lang=ENG

¹¹⁸ Gwangju High Court, Case number - 2012고합942, Court Judgment p. 2-4 and 8-13

there was no one to protect the girl, Go Jong Seok left the café and broke into her house at around 01:30. He took the girl, who was sleeping, to a vacant land, 200 metres away from her house. He took her clothes off, choked her so she could not resist, and raped her at 02:00. In fear that the victim would tell her mother what happened, the offender attempted to strangle her to death. Not long after, he left the crime scene, believing that the victim was dead. Yet, the victim was alive but unconscious at that time, and needed over a month of medical treatment.

The court imposed on him a life sentence with other security measures, which included notification of his personal information for 10 years, pharmacological treatment for 5 years, and electronic bracelet for 30 years (in the event that he became released on parole in the future).

It is worth noting that according to the descriptions of the life histories of the individual offenders, which were provided in the courts' judgments, all were from economically unstable – extremely destitute in the case of Cho - or broken families. Another common feature shared by these offenders was their poor educational background, lack of stable employment, and economic insecurity. However, while these facts were not reported by the media, the criminality of the offenders was reduced by the media as individual or psychological, as will be analysed below.

SVC has increasingly become perceived as a grave social problem since the mid-2000s in SK. The problematisation of SVC at the societal level was possible because the victims are children and, in particular, these four cases were the most heavily publicised, and were extremely cruel and violent. The public attention and anger toward SVC in SK was generated and amplified by the media, and this was later actively exploited by politicians in SK as a justification for punitive legislation, including the five policies described above.

The representation of SVC in the media in SK

Despite their different political orientations, the analysis found no significant differences between the two newspapers¹¹⁹ in terms of the ways in which crime was represented. The only noticeable difference between them is the fact that there are five articles published in The Hankyoreh, suggesting that the sensationalised practice of press reporting might act as a pressure, and thus it can affect the independence of the judiciary and impinge on the rights of criminals as well. Rather, for both newspapers, the ways of representing SVC and the dominant frames found are virtually identical. The representations of the four SVC cases were also found to be similar to one another, rather than case-specific. Hence, regardless of the newspapers and cases, three main categories were identified from all the articles analysed: offender representations, and public (and political) discourses on the criminal justice system, and punishment for SVC.

(a) The representations of SVC offenders

The core representation of the offenders found is marked by ‘otherisation’, whereby the offenders are reconstructed as a “breed apart” (Jewkes, 2011: 50), who are distinguished from the vast majority of people in society represented as ‘normal’. These otherised offenders are largely divided into ‘non-human’, as ‘psychologically and psychiatrically broken’, and as ‘untreatable’ beings.¹²⁰

Dehumanisation

As can be seen from Table 3.1. below, SVC offenders are represented as: demon, monster, beast, worse than beast, animal, and non-human. Their image is constituted by, in particular, sensationalised headlines and depictions as irrational and dehumanised beings, who are essentially different from ‘us’. By emphasising the ‘non-humanness’ of the offenders, there is no fundamental explanation or context about who they are, why and how SVC is committed.

¹¹⁹ To remind, these two newspapers are The Chosunilbo and The Hankyoreh.

¹²⁰ This finding is consistent to the constructed images of criminals analysed by Madriz, “Criminals also differ from ‘us’ morally or psychologically: They are dehumanized, immoral, animalistic, irrational, violent strangers” (1997: 352).

Table 3.1. Representation of SVC offenders in the media – Dehumanisation

Dehumanisation	Publication date
‘Sexual beast’ walking around the street... a paedophile, who uses children as a sex toy, untreatable mental disorder...	02, 04, 2008
Sexual beast in search of prey... destroying children’s soul...	02, 04, 2008
The criminal looks human but is merely a beast...	30, 09, 2009
The offender is a beast, pretending to be human...	30, 09, 2009
They are worse than beasts...	01, 10, 2009
A demon walking around... a demon lives in our neighbourhood...	02, 10, 2009
A monster who appears in the victim’s dream every night...	04, 10, 2010
Sexual offenders are beasts... beast-like offender...	07, 10, 2009
Incarcerating SVC criminals? Are they any different from chained dogs?...	21, 10, 2009
He has no heart... no empathy...who can insulate himself thoroughly from his own memory and emotion... hypnotising his own memory... a man with no heart and mind...	13, 03, 2010
He is a beast that pretends to be human... are you a human?... sexually assaulted a child like a beast...	31, 08, 2012
Uncle in the neighbourhood, who is worse than an animal... no better than a beast... no human nature...	31, 08, 2012
Show us the face of the beast!... we must see the beast...	01, 09, 2012
Can God really love this monster?... execute him...	01, 09, 2012
He looks human but is a beast in nature...	02, 09, 2012

Pathologisation

Concurrent with the tendency to dehumanise SVC offenders, they are also represented as ‘abnormal, pathological individuals’. Their abnormality is defined in psychological and psychiatric terms such as paraphilia, paedophile, and psychopath. Despite insufficient evidence, if any is presented at all, the ‘different’ individual traits of offenders are emphasised at the beginning of press reporting. In particular, Kim – one of the four SVC offenders analysed – has consistently been labelled as a psychopath in the media. The press-led pathologisation of Kim

was successful without the involvement of any experts and without the application of any tests for psychopathy (Yang JH, 2010: 367). SVC offenders are framed in the media as pathologised, aberrational individuals rather than socially marginalised, who have difficulty with (re)socialisation.

Table 3.2. Representation of SVC offenders in the media – Pathologisation

Pathologisation	Publication date
Mentally ill, paraphilia...	26, 01, 2008 14, 03, 2008
Sexual perversion, paedophilia...	18, 03, 2008
Suspected to have anti-social personality disorder, sexual masochism, and paedophile...	11, 04, 2008
Remorseless psychopath...	15, 12, 2009
Sociophobia, extreme anxiety, no social interaction, anti-social personality disorder...	09, 03, 2010
No empathy... watching child pornography, mental disorder like paraphilia and Lolita syndrome...	01, 09, 2012
He can't empathise with the suffering of the victim... can't see the pain that he imposed on the victim...	02, 09, 2012
No empathy... he gained gratification while watching the terrified victim... enjoying sexual assault against vulnerable, scared children... a possibility of assaulting elderly as well as children...	03, 09, 2012
Possibly psychopath... personality disorder, paedophilia...	21, 09, 2012
Psychopath... no remorse and empathy for the victim... personality disorder...	22, 09, 2012

The dehumanising and pathologising representations of SVC offenders in the media is problematic, since it distorts the reality of SVC and can breed misperceptions that SVC is committed solely by a few monstrous and pathological individuals, irrelevant to most people in society. None of the articles analysed here mentioned the fact that SVC is most likely to be committed by biological fathers, stepfathers, relatives, and acquaintances of victims. According to the Korea Sexual Violence Relief Center, 85 percent of the SVC offenders in 2009 were someone the victims have known, some of whom have a high socio-economic status and are highly respected in their community (Yang JH, 2010). A consistent finding was that 57 percent of SVC in 2013 was committed by a family member or relative of the victim. Because of media representations of SVC offenders, a myriad of SVC cases committed by 'normal' people in

intimate relationships become invisible and only those abnormal strangers and non-human beings featured in the reporting exist in the public consciousness (Kim EK & Lee NY, 2015).

Without explanations of the causes and contexts of SVC, the messages from the press, which merely reports the growth of SVC in quantity and depicts individual SVC offenders in a sensationalised way are misleading. These reporting practices suggest to the public that protecting children from the ‘different breed’ is the highest priority, and this simultaneously magnifies the public fear of strangers (Kwon IS & Lee HY, 2011: 96; Shin DJ, 2011).

It should also be noted here that the frequency of press reporting on sexual violence cases in SK between 2001 and 2011 increased more than 14 times, from 384 to 5,471, while the number of identified cases of sexual violence (against children) increased less than twice during the same period (Park JS & Park SC, 2013). Irrespective of the actual cause of the growth, the statistical increase of identified SVC incidents and, more importantly, the discursive growth of SVC in the media since 2000 can be interpreted as an indication of the increased levels of public fear of crime and punitiveness in SK. This also is strongly indicative of the escalated public anxiety about children and their well-being, as will be explained in the later chapters.

Indeed, despite the fact that (sexual) violence is a matter of culture, social structures and relations, the media representations of SVC are focused on deviant individual offenders and exclude any consideration of the socio-cultural attributes of sexual violence. It is to be expected, then, that the general public are ill-informed of the socio-cultural causes of SVC and that they are in turn unaware of the importance of changing everyday discourses on any form of violence in society. Rather, the public believe that SVC is committed by unknown, unpredictable predators and there is nothing that they can do about this matter, which further compounds the existing feelings of debilitation and impotence in preventing SVC (Kwon IS & Lee HY, 2011). Paradoxically, the public has become more dependent on the responses of the legal and justice system while, at the same time, being sceptical and disparaging of criminal justice actors.

With the dominant discourse that ‘SVC offenders are a different human species, who are unpredictable and untreatable’ and that ‘they exist ubiquitously in society’, it is understandable that the public believe that the best possible preventative measure for SVC, which can also decrease the levels of public fear, is ‘isolation’ (Surette, 1994; Kim EK & Lee NY, 2015). Indeed, the discourses around SVC have led to the introduction of punitive penal policies in SK, and isolation in the form of longer prison sentence in particular, in the belief that harsh punishment can best protect children.

(b) The representations of criminal justice actors

One of the most common themes of media reporting on SVC revealed by the analysis was in regard to the criminal justice system. The analysis makes clear that the public is highly critical of the Korean criminal justice system. As presented in Table 3.3. below, criticisms found in the press are focused on police incompetence and their limited investigative abilities, human rights violations of the Prosecution Service in criminal justice procedures, and lenient sentencing decisions of the Court.

Table 3.3. Representation of the criminal justice system in the media

CJS Representation	Publication date
Police investigation is a ‘waste’ of time...	14, 03, 2008
People got infuriated at the ‘inability’ of the police... what made us angrier is the police who have not been able to catch the suspect for around 80 days...	17, 03, 2008
Poor and reckless investigation of the police... they missed the possibility of arrest, they are just lazy...	18, 03, 2008
Faulty police investigation... stupid...	25, 03, 2008
We can’t trust the police... they don’t care about public safety... poor police investigation... they don’t make any sense. How can we trust the police?... they get paid by our taxes, but they don’t do anything, they are not responsible...	31, 03, 2008
Police, are they stupid or haunted?... we need to examine their intelligence... they only make fuss... they are helpless, pathetic...	01, 04, 2008
Inability of the police, very poor initial investigation... they are doing nothing but waiting for the suspect’s confession...	06, 04, 2008
Those ‘evils’ are the police, prosecutors, and courts... the justice system, they must come to themselves...	07, 04, 2008
People got outraged at the Prosecution Service and Court...	02, 10, 2009
The judiciary does not care about the public’s emotion and punitive sentiments toward SVC and victims’ suffering... public’s criticism on and anger towards the courts...	05, 10, 2009
The court is severely criticised for not isolating SVC offenders from society for eternity...	05, 10, 2009
The judiciary is lenient about SVC... criticisms of the court decisions... criticisms of the Chief of the judiciary...	09, 10, 2009
The court is soft, they give too light punishment...	18, 10, 2009

The victim got secondary victimisation by the Prosecution Service... they required the victim to give unnecessary court statements... they didn't review the police investigation report properly...	15, 12, 2009
Reckless prosecutors...infringing the victim's rights... unnecessary victim statements required... secondary victimisation...	15, 12, 2009
Blind police... missed the sleeping suspect... the police encountered the suspect but missed, the investigation is so poor...	07, 03, 2010
The suspect should have been strapped in electronic bracelets... poor management of sexual offenders... what have the police been doing for the last 10 days?... helicopters were provided for the search, but they got 'nothing'... missed the suspect who was sleeping...	08, 03, 2010
The initial investigation of the police was reckless from the very beginning... important evidence was there... no grasp of basic investigation... the investigation itself is questionable... faulty investigation...	10, 03, 2010
The police, desperately waiting for the suspect's confession... poor police investigation... clumsy open investigation... foolish initial investigation...	10, 03, 2010
Parents of daughters got scared because the court is 'too soft'... the lenient sentencing of the judiciary favours criminals and it makes innocent citizens more vulnerable to crime...	11, 03, 2010
The whole process of the investigation is wrong, full of problems... it's infuriating to see the police, who are so helpless and pathetic... the investigation has all kinds of problems... people are so frustrated with the standard of police work...	15, 03, 2010
The victim received so much pain during the investigation at the Prosecution Service... secondary victimisation during the prosecutors' investigation...	26, 10, 2011

The criminal justice actors are represented in the media in terms of (in)ability, based on the effectiveness and efficiency of the investigation by the police and prosecutors, and the severity of punishments handed down by the judiciary. Their public image is constructed in the media as incompetent, reckless, and thus unreliable, as demonstrated by the use of humiliating and sarcastic language in Table 3.3. above. However, this does not mean that the criminal justice system in SK is, in reality, ineffective and negligent. As Pratt (2007) writes, press reports tend to concentrate on the ineptitude of criminal justice actors rather than their successes. Nonetheless, it is important to recognise that media representations regarding crime and the criminal justice system are influential in shaping public perceptions.

The criticisms of the criminal justice actors in the media can be interpreted as reflective of the public's resistant, distrustful sentiments toward the governments and criminal justice system,

which were historically moulded for several decades (Choo JH, 2017). As was discussed in Chapter One, the specific forms and rationalities of (penal) governance in SK from 1961 to 1992 varied, depending on the social contexts of each period and the aims and objectives of each government. Nonetheless, what was consistent over those three decades is the fact that criminal justice actors were used instrumentally by all governments, without exception, for socio-political oppression and persecution of South Korean people. Let alone the Gwangju massacre in 1980, hundreds of thousands of people were arrested and punished for behaviours deemed as damaging to the morality of society and for their ‘contaminated’ ideologies under the military-authoritarian governments in SK.

For example, ‘Red Hunting’ was conveniently delivered with the legislative support of the National Security Act and the Social Protection Act. The former was legislated under President Syngman Rhee in 1948, for the purpose of ensuring the freedom and security of South Korea. However, in reality it was used to oppress left-leaning ideologies. The number of people arrested under the Act in 1949 alone was 118,621. The Social Protection Act was legislated under the military government of Chun Doo Hwan in 1980. The stated purpose of the Act was to promote the rehabilitation of offenders, and therefore to protect society. Under the Act, offenders classified as posing a ‘high risk’ of recidivism – not based on any scientific analysis - and that required special treatment and education were sent to a correctional facility for the ‘protection’ of society and themselves. Such special treatment was imposed on offenders despite having already completed the imprisonment term for the crime that they initially committed. The Act was abolished in 2005 since it was considered undemocratic and, hence, unconstitutional.¹²¹

The collective experiences of state violence have thus long created resentful and even belligerent sentiments amongst Koreans toward power, officialdom, and the criminal justice system and its actors, especially the police, who were always at the forefront of oppressing the public.

¹²¹ Academy of Korean Studies - <http://encykorea.aks.ac.kr/Contents/SearchNavi?keyword=국가보안법&ridx=0&tot=22>



Figure 3.1. CJS torture



Figure 3.2. Torture - 'whole chicken'

Figures 3.1. and 3.2. are illustrative of the cruel, torturous practices of police investigation, prevalent under the past authoritarian regimes in SK. Figure 3.1. shows a victim of torture and Figure 3.2. is representative of a typical form of torture at that time, called 'whole chicken', both of which were committed by the police in 1964. What is more appalling is the fact that the victim in Figure 3.1. - with 25 other victims - was arrested for the violation of the National Security Act, which was, however, completely fabricated by the government.¹²²



Figure 3.3. Police flying kick



Figure 3.4. Police trampling on SK citizens

Figure 3.3. and Figure 3.4. show the physical violence of the police in the 1980s in SK. The police in both of the Figures are beating South Korean citizens, who joined democratic movements. These photos represent the political oppression of the military governments and also the fact that the police were a loyal, effective apparatus of the power, before the democratisation of SK in 1987 in particular.¹²³

In fact, the critical representation of the criminal justice establishment in media reporting is similar in tone to public perceptions – which is to say low levels of public trust and confidence. According to 2014 OECD statistics, public trust in the SK government had generally been low

¹²² Academy of Korean Studies - <http://encykorea.aks.ac.kr/Contents/Item/E0046893>

¹²³ Korea Democracy Foundation - <http://en.kdemo.or.kr/>

for the previous decade. More specifically, public confidence in the judiciary was just 27 percent, the fourth lowest amongst 42 OECD countries.¹²⁴ The media discourse and lack of public confidence in criminal justice actors in SK has significance for penal populism, since public dissatisfaction and distrust in the existing establishments is an attribute of penal populism.

It is also important to note that criminal justice actors are framed in the media as solely responsible for the problem of SVC from poor investigation to lenient sentencing as well as an inability to prevent and deter. However, within this frame, fundamental questions about SVC such as ‘why and how does SVC occur?’ become irrelevant and the social origins of SVC become lost (Fiske, 1987: 294). The public, encouraged by sensational media reporting stripped of social, cultural, and economic context, think that only those solutions provided by criminal justice actors, including much tougher punishments, can be effective. Hence, the structural problem of ‘violence’ becomes subsumed under formal institutions and control, and discussions about the fundamental causes of and solutions to sexual ‘violence’ against children are marginalised in the public sphere (Yang JH, 2010).

(c) Perceptions of punishment

Public and political discourses on punishment regarding SVC are also clearly apparent in the analysis of media content, as presented in Table 3.4. below. The predominant themes were found to be public and political demands for heavy punishment and punitive penal policies, based around public intolerance of SVC and a collective indignation about the current levels of sentencing associated with it.¹²⁵ The punitive stance of the public and politicians is characterised by a zero-tolerance attitude toward SVC offenders and calls for their permanent isolation, manifested in the demand for the death penalty, life imprisonment, a ‘two strikes and you are out’ law, imprisonment without parole in principle, chemical castration, electronic

¹²⁴ <http://www.oecd.org/governance/public-governance-a-matter-of-trust.htm>

¹²⁵ The media discourses about punitive punishment have also grown quantitatively in SK. According to the KINDS (Korean Integrated News Database System), the frequency of the word ‘엄벌’ – *eombeol*, ‘punitive’ in English’ - used in the Korean newspapers has increased exponentially from 40 to 1673 between 1998 and 2017 (searched in July 2018).

The website of KINDS – www.kinds.or.kr

monitoring, and offender registration and community notification.

Table 3.4. Public perception on punishment in the media

Perception on punishment	Publication date
SVC, heavy punishment... death penalty or life sentencing... no eligibility for parole in principle... strong measures are necessary... SVC offenders must be entirely isolated from society... electronic bracelet required...	01, 04, 2008
Matters regarding children matters are something that all people in this country and the government must get involved in, so much stronger measures such as electronic bracelet and chemical castration must be taken...	07, 04, 2008
SVC punishment is too soft... people got angry... execute him... light punishment is unjust and unfair...	30, 09, 2009
The Justice Minister said 'no parole'... female organisations and netizens 'punishment is too light'...	30, 09, 2009
The Republic of Korea is too lenient to sexual criminals... punishment is too soft... it is regrettable that our children were born in this country, too lenient to sexual offenders... we need punitive measures...	30, 09, 2009
Why is sentencing soft? Too light punishment... people got enraged at the soft punishment ... President Lee 'such people should be isolated for life... this kind of crime must disappear in this country.'... the Female Committee of the Congress 'the most punitive measure should be taken to control SVC...'	01, 10, 2009
The conservative party, taking a move to abolish the upper limit of imprisonment sentencing... the party leader 'the sentence length in this country is too short and people are frustrated with it... it is right that SVC offenders must be isolated from society for life... we need to listen very carefully to the public voices...'	01, 10, 2009
We have become oblivious to our responsibility, obsessed with the very sophisticated but empty argument of 'criminals' rights'... why should we protect the rights of those non-human beings?... the politics are now thinking seriously of increasing sentencing levels for and 'permanent isolation' of SVC offenders...	01, 09, 2009
The conservative party has begun to drive a new amendment of Criminal Law, regarding SVC... the liberal party 'there is no left and right in increasing the levels of punishment'...	01, 10, 2009
Punishment is too light... the court is too lenient... public criticism on human-rights organisations for being silent about the rights of crime victims...	02, 10, 2009

Amending the Criminal Law... the politics have taken a step to increase punishment levels... the conservative party leader ‘imprisonment sentencing for 100 years, 200 years, like the United States’...	02, 10, 2009
A huge gap between the current levels of sentencing and the public sentiments towards crime... the heaviest possible sentencing should be imposed... public opinion that punishment is too soft...	02, 10, 2009
Only 12 years? Growing public criticism...we don’t want to think about the rights of offenders...	05, 10, 2009
President Lee ‘People in the community should be informed about the SVC offenders living in their community’... expanding the application of the community registration and notification of offenders... isolating SVC offenders from society as much as possible...	05, 10, 2009
Expanding the application of the community registration and notification of SVC offenders... the Ministry of Justice is discussing increasing the length of electronic monitoring and offender notification...	06, 10, 2009
The liberal party is expected to propose a bill on SVC... SVC, ‘Two Strikes Out’... recidivists should be given life imprisonment... no suspension, no parole...	07, 10, 2009
Both the conservative and the liberal parties are now specifying a bill to strengthen punishment regarding SVC... the conservative party leader ‘We can impose a 50 years or a 100 years’ imprisonment sentencing on SVC offenders like the United States...’ the liberal party ‘Two Strikes Out’...	07, 10, 2009
Electronic monitoring will be effective on sexual offenders retroactively... the chief of the police ‘we will manage not only those sexual offenders against children but every single sexual offender, it is a 1 on 1 management...’	09, 03, 2010
SVC offenders should be imposed the death penalty... thousands of comments on the internet ‘they must be executed’, ‘life sentence or 100 years’ imprisonment’, ‘they must be castrated’...	10, 03, 2010
Public safety is more important than the human rights of heinous criminals... do not protect their privacy, are their rights more important than those of victims?...	11, 03, 2010
Celebrities expressed their anger toward SVC... execute the monster... SVC occurs because our society is still very tolerant...	01, 09, 2012
Thousands of SVC offenders are laughing on the internet... we must increase punishment levels...	03, 09, 2012

The public demand for punitive penal policies, based on the perception that punishment for SVC is too lenient and that the judgments of the courts are too distanced from public sentiments, appears to be associated with the media constructed images and representations of SVC offenders. As shown in Table 3.4. above, SVC offenders are discursively reconstructed by the

media as essentially different beings and dehumanised. This encourages and justifies the public belief that universal ‘human’ rights should be ensured only for those regarded as ‘human’, and not for those criminal, non-human beings. ‘Normal’ punishment should not be imposed on the ‘abnormal’ or ‘non-human’ and disproportionately harsh punishment and punitive measures that infringe criminals’ human rights are justified as socially desirable and even necessary. This rationale engenders a consensus amongst the public that harsh punishment is the only answer to SVC problems. As a result, structural causes and prevention of violence, and discourses on the protection and restoration of victims have become progressively less important in SK.

It is also interesting to note that the ‘law and order’ or ‘tough on crime’ mantra, and associated legislation had traditionally been adopted by conservative parties in SK. However, the analysis of media content has revealed that over the past decade punitive legislation has also been supported by left-leaning political parties. In other words, punitive legislation regarding SVC since the 2000s in SK is no longer so clearly associated with particular political orientations. Also, media and public discourse is reflected in political discourse and in turn punitive legislation, which will be discussed and substantiated in the next chapter.

Lastly, it is abundantly clear from the newspaper analysis referred to above that media reporting on SVC in SK is highly sensationalised. The sensationalisation of crime reporting is characterised by numerous words and phrases depicting the offenders, unnecessarily detailed reporting on the gruesome methods of offending, and the publication of photos of and personal information about offenders prior to conviction, all of which has been consistently highlighted by existing research on media and crime in SK conducted since 2000 (Yang JH, 2010; Kwon IS & Lee HY, 2011; Koh BH, 2012; Kang HI, 2013; Na JH, 2013; Park JS & Park SC, 2013; Kim EK & Lee NY, 2015). Indeed, the Korea Press Ethics Commission issued warnings to 9 newspapers for their violation of reporting ethics in 2012, which reflects the scale of the sensationalisation of media reporting in SK (Na JH, 2013: 52).



Figure 3.5. Go Jong Seok (a)



Figure 3.6. Go Jong Seok (b)

Figures 3.5. and 3.6. are the photos of Go Jong Seok, one of the offenders of the four most publicised SVC cases in SK. These were published in The Chosunilbo on 3rd and 12th of September 2012, prior to his conviction on 31st of January 2013.

In the context of a sensational media, Pratt has argued that the quantity and quality of crime reporting amplifies the dimensions and immediacy of the threats of crime, which in turn requires drastic actions in response to the problem (2007: 67). As the results of the analysis suggest, the media plays a crucial role and is a key mechanism in developing and sustaining penal populism and in engendering and magnifying punitiveness in SK. As supported by the analysis below, a similar role is performed by social media.

Social media¹²⁶

The communicative structure of traditional media is unidirectional, which means that the media only can deliver messages to the public. The public, thus, is unable to participate directly in the process of shaping important social issues or agendas within the structure of traditional media. By contrast, the structure of communication in social media is interactive and multi-directional in that individual users can express, spread, and share their beliefs and opinions on any issue (Kim GH, 2014; Kim MH & Jeong DE, 2015). Hence, it is useful to analyse messages created by social media users in reading public perceptions of a certain subject or issue, since the messages are unmediated, spreadable, and sharable (Kim MH & Jeong DE, 2015; Hong YJ & Hwang JS, 2015).

The number of social media users in SK has gradually increased over the past decade. In the case of Twitter, the number of Korean users was estimated to be around 5 million in 2011, accounting for approximately 10 percent of the total population of SK (Park CM & Cho JW, 2013). Different to other social media platforms such as Facebook which is oriented towards human networking, Wikipedia and its objective of co-production of knowledge, and YouTube which is dedicated to creating and sharing content, Twitter is a ‘communication-centred’ platform, where its users can co-generate dialogues and discourses on important social issues (Park CM & Cho JW, 2013).

Twitter is regarded as a space in which current social trends and public perceptions of important issues can be identified. Thus messages posted on Twitter have been analysed by social scientists in SK, in terms of its socio-political influences, and studies have focused on its spreadability and sharedness (Chang DJ & Kim GH, 2011; Lee WT & Cha MY & Yang HR, 2011; Kim YS & Yoon JB, 2012; Hong YJ & Hwang JS, 2015). Twitter is, therefore, chosen for analysis here to identify general perceptions of SVC in SK.¹²⁷ The analysis was confined to messages that were retweeted a minimum of 1,000+ times, the total number of which was 12. However, three of these were excluded because they were not specifically relevant to SVC.

¹²⁶ Despite the relevance and usefulness of social media as an indicator of public perceptions of crime and punishment, it was absent from Pratt’s (2007) explanation. This is presumably because the influence of social media at that time was not as significant as it now is and was therefore not considered seriously in his work.

¹²⁷ It should be noted that considering the limited number of Korean Twitter users, Twitter messages are not entirely representative of public perceptions of SVC in SK. However, as suggested in the previous research above, it is used here as an indicator of the general perceptions of Korean people on SVC.


Thus, nine messages, two of which contained a photo, were analysed.

Figure 3.7. Perceptions of SVC in social media

Date	ID	RT	Message
13/08/2018	Realgxx	17,710	A thirteen-year old child with a mental disorder got sexually assaulted and no punishment was imposed on the offender. I am really frustrated with this country and the fact that there is no law that I can rely on in our society.
18/08/2018	Cometxx	11,608	Recidivism rates of SVC increase because punishment imposed on SVC offenders is too lenient. We must show that SVC criminals can never get back into society.
05/01/2018	Andanxx	8,678	Punishment for SVC. The US - at least 25 years' imprisonment or death penalty, Taiwan/France - 20 years' imprisonment, China/Iran - death penalty, England/Swiss - life imprisonment without parole (isolating them even after their release), South Korea - 4 years and 9 months' imprisonment on average.
08/07/2018	xxmixPe	6,300	The statutory limitation of prosecution period for SVC should be abolished. Please abolish it. I am so frustrated with the social perception of sexual violence and the limitation of prosecution on SVC in this country.
18/07/2018	Birdfx	3,463	Crimes are becoming more revolting and more children are victimised. But there is no action, no legal amendment at all. It is so painful to face this cruel reality. Sexual violence is a murder, but the society is silent.
01/05/2018	Hankxxx	2,200	'Please, protect me from SVC criminals', a high school girl is picketing for heavy punishment at the Gang-nam subway station (the most trafficked area in Seoul).



The board in the photo says “Protect me, please! The number of children who are sexually assaulted in SK is 9,025 every year and 25 every day. Am I really safe from sexual violence? Please, make a petition to the government for heavy punishment for SVC. Let me live without worrying about sexual violence, please.”

18/08/2018	Radiaxx	2,041	Recidivism rates of SVC increase because punishment imposed on SVC offenders is too lenient. We must show that SVC criminals can never get back into society. The government should impose heavy punishment so that SVC offenders can, indeed, not live in our society any longer.
29/06/2018	cGVJExx	1,700	We must get rid of SVC from society. Incarcerate those perverts who raped our daughters.
 <p><i>In this photo, a woman, whose 9-year old daughter was raped, is protesting alone at the main entrance of the Prosecution Service. “Incarcerate SVC offenders right now. Protect the human rights of girls. Courts, stop releasing offenders”.</i></p>			
17/05/2018	ohmxxxx	1,700	SVC offenders are free. Around half of them got suspended in 2016.

Clearly, ‘punitiveness’ is a key theme of these messages. As shown in Figure 3.7. above, increasing punishment levels appears to be the most important and urgent theme, including abolition of the statutory limitation of prosecution period for SVC and permanent isolation of SVC offenders from society. There is no ambiguity in and the demand for heavy punishment is based on the public’s misperception that ‘crime has increasingly become serious, but punishment is too lenient or there is no punishment, no legal amendment at all’ and the belief that ‘harsh punishment can prevent SVC and thus protect potential victims’.

It is also interesting to note the final message in Figure 3.7., which was retweeted 8,678 times, which claims that levels of punishment for SVC in SK are too low in comparison with those of other countries. The punishment-related information given in the message is problematic in terms of method and veracity. First, as a reference of comparison, those particular jurisdictions where much heavier punishment is (believed to be) imposed on SVC offenders were selected at the discretion of the person who initially created the information. In addition, the message does not disclose the sources of the information such as who produced those figures or what

data and methods is it based on. Second, some of the information is simply incorrect and, thus, misleading; for example, there is no death penalty for SVC in the US. This is a reflection of the fact that the public's punitive sentiments towards and demand for harsh punishment for SVC are based on limited and sometimes mistaken or false information. Incorrect information, absent of any context or explanation, merely simplifies the issue, which then lead to public demands for simplistic solutions.

The results of the Twitter analysis are not surprising, as they are consistent with those of the newspaper analysis presented earlier. That is, the discourses on SVC found in traditional media and public perceptions shown through the messages of Korean Twitter users are similar in that the existing levels of punishment for SVC are claimed to be too low and that more punitive measures should be taken. This consistency can be interpreted as an indication that the media construction of crime does inform public discussions, as reflected in the Twitter messages analysed above.

The analysis of social media conducted here is advantageous in that it shows that public sentiments and perceptions of SVC are in fact punitive. This is to say that the public's punitive attitude toward SVC is revealed through analysing their own language as a direct, primary source rather than presuming it from traditional media reporting. By adding the results of this analysis to those of the mainstream media analysis, it substantiates the alignment of traditional media discourses and public perceptions of SVC, both of which are explicitly punitive. This substantiation is important because the display of punitiveness by both the media and public supplies partial but important evidence of penal populism in SK.

Lastly, it is apparent from the Twitter messages – examples of which include, “I am really frustrated with this country and the fact that there is no law that I can rely on in our society – 17,710 retweeted.”, “It is so painful to face this cruel reality. Sexual violence is a murder, but the society is silent – 3,463 retweeted.”, and “I am so frustrated with the social perception of sexual violence and the limitation of prosecution on SVC in this country – 6,300 retweeted.” - that the public is deeply frustrated with and sceptical of the entire Korean society rather than worried exclusively about SVC. As mentioned in Chapter Two, public frustration with the (perceived) reality and distrust in the existing institutions and establishments in solving the current problems are a harbinger of the emergence of populism. Populist politics in SK will be evidenced in the following chapter.

In summary, this chapter summarised existing Korean literature on penal populism, and

followed this with a description of five punitive penal policies introduced under the influence of penal populism since the 2000s. It, then, presented four SVC cases that have had the most significant social ramifications, and that provided a catalyst for the introduction of punitive penal policies and measures. Articles published in two major Korean newspapers were also analysed to assess how the four SVC cases were represented. This revealed the punitive perceptions of the media and public as well as the sensationalised nature of media reporting. Complementing the traditional media analysis, social media messages (Twitter) were also analysed to gauge public perceptions of SVC and to show that media constructions of SVC have informed the penal languages used by the public in SK. The analysis of the public's unmediated language showed explicitly punitive public attitudes toward SVC.

As discussed in the following chapter, the punitive perceptions and attitudes of the media and public towards SVC were exploited as a resource for punitive legislation promoted by populist politicians in SK. The specific ways in which punitive penal policies for SVC were legislated will also be explained in detail in the next chapter.

Chapter Four

A New Penal Rationality – ‘Public Sentiments’

“... We know well that almost all of those sexual offenders commit crimes habitually. Addiction like this is the nature of sexual violence... SVC is an extremely horrible crime that leaves its victims and their families a psychological and physical scar, which lasts for the rest of their life... Why are the legislature and judiciary so generous to SVC offenders, unable to protect properly our innocent children and women from sexual violence?...” (MP Shin, from a liberal party)

“...Because of the Cho case last year and the Kim case this year, SVC has become a social problem, which is inconceivably serious. We can't pretend that nothing is happening... We need to consider public opinion... We should now listen to the present public opinions about SVC sentencing... There are controversial issues, but we should take into consideration the public sentiments toward sexual violence... The current level of minimum imprisonment terms is too low, which is not aligned with the public sentiments...” (MP Hong, from a conservative party)

The 288th National Assembly of the Republic of Korea – March 2010.

As part of demonstrating the predominant assumption amongst Korean criminologists that penal populism has influenced punishment and sentencing in SK, the previous chapter empirically demonstrated the punitive discourses of the media and public. This chapter will focus on political perceptions of SVC and how, together with media and public discourses, these have shaped the legislation of punitive penal policies concentrated on SVC.

It is important to analyse political perceptions of SVC, and the punitive legislation that has resulted. This is because punitiveness in the media and amongst the public is, in the end, realised as punitive policies and measures through a series of political activities and procedures. In other words, it is through the discussions and debates of politicians that lead to the proposal and passage of legislation for punitive punishment SK.

The introduction of the five punitive policies – described in Chapter Three - means that the bills proposed for them were passed at the National Assembly by a majority vote. In fact, in the case of these five policies, approximately 90 percent of the members at the National Assembly voted in favour of them (Choo JH, 2014). Certainly, the existence of these policies

demonstrates the punitive nature of political discourses in SK. What, then, are the specific perceptions of SVC amongst SK politicians? What kind of problem do they perceive SVC to be and what are its characteristics, as constituted in the consciousness of SK politicians? Is the attitude of politicians toward SVC actually punitive and thus consistent with the media and public? Most importantly, is the legislation of punitive punishment a political reaction to public demands and media discourses regarding SVC and if so, can it be shown empirically?

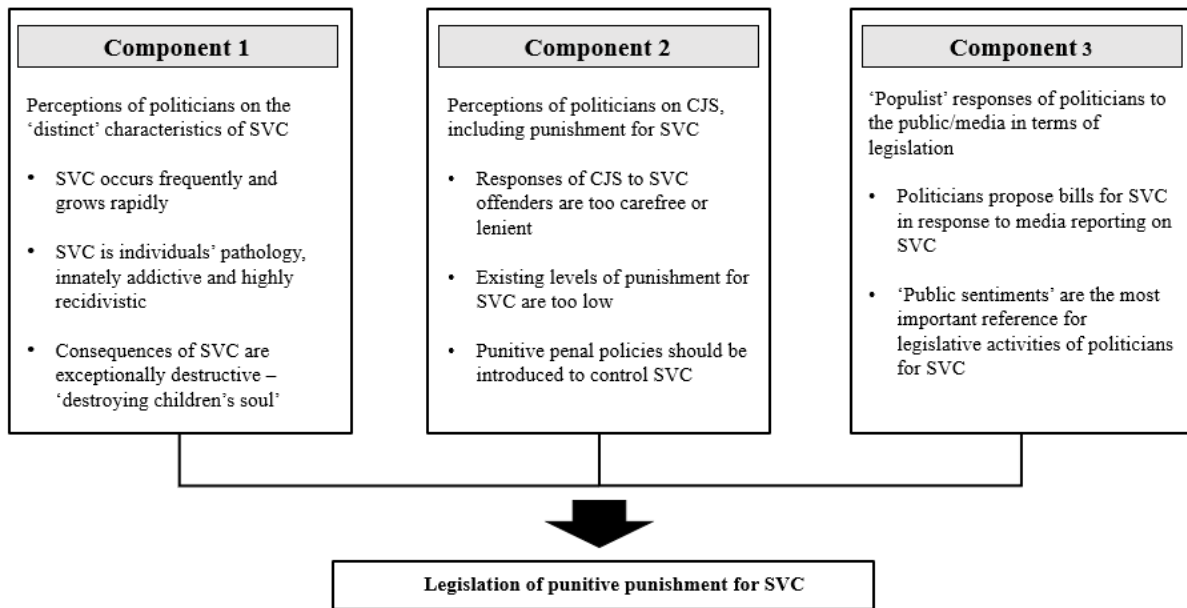
According to a report published by the Korean Institute of Criminology (KIC, 2016), the total number of bills proposed during the 19th National Assembly¹²⁸ was 17,822. Within this, the number of criminal justice bills was 836 or four percent of the total. 88 percent of the CJ bills were aimed at strengthening punishment, and 160 – approximately 20 percent – were related to sexual violence. The report pointed out that sexual violence-related bills, in particular sexual violence against children, were the most dominant trend of legislation during the 19th National Assembly and that this trend is reflective of the punitive atmosphere of contemporary SK society.

I conducted analyses of bills and minutes of the National Assembly, to support the main argument in this chapter that penal populism has influenced penal legislation since the 2000s in SK. The purpose of the analyses was: first, to show the specific perceptions of politicians regarding SVC, and; second, to assess whether the formation of and legislation for those five punitive policies are populist political responses to the public's punitive demands in relation to SVC.

Based on my analyses, the mechanism of punitive legislation in SK was clearly identified, as presented in Figure 4.1. below. In summary, three main components of this mechanism were found, all of which converge to creating punitive policies and increasing levels of punishment for SVC: politicians' perceptions of the characteristics of SVC; politicians' perceptions of the criminal justice system ('CJS'), including punishment for SVC, and; populist responses of politicians to the media and public.

¹²⁸ The legislative activities of the 19th National Assembly are the most recent available data, since the 20th National Assembly will terminate in 2020.

Figure 4.1. Mechanism of punitive legislation for SVC in SK



Perceptions of politicians of SVC

The predominant perception of SK politicians on SVC is that it is clearly distinguishable from other types of crime. The distinct characteristics of SVC are 'constituted' by the following three political perceptions.

(a) 'SVC incidents occur endlessly and grow rapidly in number.'

One of the most prevalent perceptions amongst SK politicians on SVC is that it occurs with high frequency and continues to increase rapidly. This perception can be compressed into one sentence, 'SVC occurs *constantly / endlessly / ceaselessly*, and the *risks are growing, excessively high*', (see Table 4.1).

Table 4.1. Politicians' perceptions of SVC

Bill no.	'SVC occurs endlessly'
2007 – 6222	Children and juveniles are exposed to sexual violence, to the degree where the risks of victimisation are excessively high...
2007 – 6353	The public has increasingly become aware of SVC. It has now become a moral and social problem...
2008 – 509	SVC has continued to occur recently, and the public fear of SVC is growing...
2008 – 939	SVC is on a constant increase. The fear and anxiety of parents regarding SVC have been magnified...

2008 – 8335	With the recent, serial occurrence of SVC incidents, public fear is escalating...
2010 – 8180	SVC has emerged as a social problem since the recent occurrence of the Kim Gil Tae case in Busan...
2010 – 8818	As SVC occurs no matter when and where, risks of victimisation of SVC are rapidly increasing and parents' fear is growing day by day...
2010 – 9089	Every single member of society should try their best to prevent SVC, which occurs endlessly...
2010 – 9131	The recent, serial incidents of SVC... SVC has occurred ceaselessly...
2010 – 9147	SVC has constantly been committed recently...
2012 – 1546	Recently, sexual violence against children, teenagers, and adults as well has occurred endlessly and it has become more heinous...
2012 – 2091	SVC has recently been committed continuously. It has become gruesome and caused social anxiety...

Is, then, the perception of politicians about the frequency and growth of SVC accurate and supported by evidence? The answer is no. Table 4.2.¹²⁹ shows the number of sexual violence offences against children aged below 13, sexual violence against any person, and crime in total, recorded annually between 2000 and 2016 in SK. The proportion (%) of SVC and SV in the entire population of crime in each year is also presented in the table.

Table 4.2. The Number of SVC, SV, and total crime identified in total between 2000 and 2016 in SK

Year	SVC (Below 13)	SV	Total
2000	561 (0.03)	10,189 (0.54)	1,867,882
2001	459 (0.02)	10,495 (0.52)	1,985,980
2002	548 (0.02)	9,435 (0.47)	1,977,665
2003	609 (0.03)	10,365 (0.51)	2,004,329
2004	640 (0.03)	11,105 (0.53)	2,080,901
2005	759 (0.04)	11,757 (0.62)	1,893,896
2006	932 (0.05)	13,573 (0.74)	1,829,211
2007	1,042 (0.05)	13,634 (0.69)	1,965,977
2008	1,182 (0.05)	15,094 (0.68)	2,189,452
2009	989 (0.04)	17,377 (0.80)	2,168,185
2010	1,175 (0.06)	20,584 (1.07)	1,917,300
2011	1,053 (0.05)	22,168 (1.16)	1,902,720

¹²⁹ The original data used in Table 4.2. were presented in 'Crime and Criminal Justice 2009' and 'Crime and Criminal Justice 2017', published by KIC.

2012	975 (0.05)	23,365 (1.20)	1,934,410
2013	1,041 (0.05)	29,090 (1.45)	1,996,389
2014	1,208 (0.06)	29,863 (1.54)	1,933,835
2015	1,268 (0.06)	31,063 (1.53)	2,020,731
2016	1,231 (0.06)	29,357 (1.46)	2,008,290

Although there has been some increase in the incidence of SVC since 2000, it does not warrant the magnitude of the political reaction it has received. Rather, the proportion of SVC in the total of all recorded crime is infinitesimally small – approximately 0.05 percent on average between 2000 and 2016.

Recorded crime, in general, increased slightly from 1,867,882 offences in 2000 to 2,008,290 in 2016, with only marginal fluctuations in-between. The number of sexual violence offences against any person increased from 10,189 to 29,357, and the proportion also increased from 0.54 percent to 1.46 percent during the same period. In the case of sexual violence committed against children aged below 13, it shows a similar pattern to SV, growing from 561 (0.03 percent) in 2000 to 1,231 (0.06 percent) in 2016.

The perception that ‘SVC incidents occur endlessly and grow rapidly’ is contradicted by the official statistics in Table 4.2. Firstly, it is true that the number of SVC increased between 2000 and 2016. However, the growth rate of SVC – 2.19 percent - is in general alignment with the increase in SV – 2.88 percent - during the same period. Second, the (recorded) number of SVC offences and, in particular, the proportion of SVC out of the total volume of crime is extremely small. As seen in Table 4.2., SVC accounts for, at most, 0.06 percent of total crime, which means that if there are 10,000 crime cases, only six of them are SVC. In addition, more than 70 percent of SVC incidents in SK are categorised as ‘Indecent Act’, and those cases where victims are seriously injured or killed account for less than 1 percent of the total number of SVC cases (KIC, 2017). Therefore, political perceptions of and political rhetoric about the gravity of SVC, especially in terms of frequency, are not ground in or supported by empirical facts.

(b) ‘SVC is addictive and highly recidivistic.’

Another common perception amongst politicians is that SVC offenders are highly likely to commit a similar type of offence repeatedly since SVC is innately addictive. This perception is clearly apparent in Table 4.3.

Table 4.3. Politicians’ perceptions of SVC

Bill	‘SVC is addictive and highly recidivistic’
2010 – 7951	SVC, such as the recent case in Busan, has high recidivism rates...
2010 – 8031	Different to other types of crime, recidivism rates of SVC are high...
2010 – 8885	Recidivism rates of sexual violence are high... In consideration of the reality that the sexual offenders are likely to commit a similar offence again...
2010 – 9131	Since recidivism rates of SVC are very high, it is necessary to incarcerate them again to protect the society even after they complete their terms... It is obvious that they will re-commit crime...
2012 – 2656	In most cases, sexual violence is committed because those offenders are not able to control their sexual impulse or desire...
Minute	‘SVC is addictive and highly recidivistic’
288th National Assembly (Mar 2010)	MP Shin, “... We know well that almost all of sexual offenders commit crimes habitually. Addiction like this is the nature of sexual violence...”
311th National Assembly (Sept 2012)	MP Shin, “... Sexual criminals are, as you know, a very distinguishable group, who have different characteristics... We all are aware that sexual offenders are predisposed to sexual indulgence and addiction...”

The perception that SVC is addictive and thus has high rates of recidivism is demonstrated in the language of politicians. For example, at the Plenary Session of the 288th National Assembly, MP Shin Nak Gyun claimed “... We know well that almost all of those sexual offenders commit crimes habitually. Addiction like this is the nature of sexual violence...” (Mar 2010) In the same vein, MP Shin Ui Jin, from the Saenuri Party, stated, “... Sexual criminals are, as you know, a very distinguishable group, who have different characteristics... We all are aware that sexual offenders are predisposed to sexual indulgence and addiction...” (Sept 2012). She placed an emphasis on high rates of recidivism and addiction as an inherent characteristic of SVC, otherising SVC offenders as different types of

beings, and made no attempt to consider or account for the socio-cultural causes of SVC.¹³⁰ As a member of the most conservative party at that time, her perception is, perhaps, understandable.

However, the perception that sexual offending has high recidivism is not supported by the official statistics. The table below shows the recidivism rates of seven different types of crime, as measured in 2013 and 2014 in SK.¹³¹ As Table 4.4. clearly demonstrates, the recidivism rates of sexual offenders were around ten percent, significantly lower than those of theft, assault, and robbery.

Table 4.4. Recidivism rates (%) of crime by type in 2013 and 2014 in SK

Types of Crime	2013	2014
Theft	43.4	42
Assault	31.9	30.4
Robbery	30.2	28.7
Sexually Indecent Act	11.9	10.8
Rape	10.1	8.1
Arson	9.3	8
Murder	6.1	8.9

Nonetheless, this baseless political perception that SVC is ‘addictive in nature, and highly recidivistic’ was used as justification in the argument that SVC offenders should be isolated from society by exclusive, carceral forms of control. For example, “Since recidivism rates of SVC are very high, it is necessary to incarcerate them again to protect the society, even after they complete their terms... It is obvious that they will re-commit crime...” (Bill no. 2010 – 9131) and “Places where employment of SVC offenders, who are highly recidivistic, is prohibited are spelt in the current law. However, their employment has not yet been prohibited at all from those places adjacent to the currently prohibited workplaces...” (Bill no. 2010 – 10290). Such politicians clearly believe that the imagined high risks of recidivism of SVC justify excessive penal control for punishing potential dangers that may (or may not) be posed in the future, while remaining silent about those crimes which are significantly more likely to be re-committed by the same offenders (such as theft). Indeed, the attempt to impose

¹³⁰ The problem of ‘pathologisation’ of SVC was discussed in the media analysis section – Chapter Three.

¹³¹ The original data used in the table were provided by Korean National Police Agency – www.crimestats.or.kr – and Choo JH (2017), which were then re-organised.

additional punishment on sexual offenders who have already completed their sentencing terms in order to ‘protect society’ is reminiscent of the ‘*Social Protection Act*’ and the ‘*National Security Law*’, whereby political prisoners were incarcerated for a prolonged period of time.

Lastly, it is important to emphasise that the argument that punitive punishment should be introduced to control potential risks which might be posed by an abnormal, pathological individual is neither correct nor effective. As Hall et al. (1978) explained, if ‘toughness’ of punishment is effective in curbing crime, criminals are not supposed to ‘repeat’ crime. The perception of SK politicians that SVC is highly recidivistic appears to be, ironically, a reflection of the fact that punitive measures are not the answer to the SVC problem.

(c) ‘Consequences of victimisation of SVC are extremely critical.’

One of the three most generalised perceptions amongst SK politicians of the characteristics of SVC is that ‘consequences of victimisation of SVC are extremely critical’. To summarise, the consequences of sexual victimisation of children are perceived as exceptionally destructive, causing extreme life-long damage to the victims and their families. Hence, in the minds of politicians SVC is constructed as a different, unforgivable crime.

Table 4.5. Politicians’ perceptions of SVC

Bill	‘Consequences of SVC are extremely destructive’
2010 – 8180	SVC gives psychological pains not only to those child victims but also to other children and teenagers who live in the same community with those victims, and thus this country must overcome...
2010 – 9131	SVC destroys the soul of children, imposing pains to those victims and their family for life...
2011 – 12179	SVC is a crime that destroys children’s soul, regardless of its severity...
2011 – 13303	SVC is an extremely heinous crime that destroys the soul of child victims and gives a pain to the victims and their family for life...
2011 – 13336	We need stricter and heavier regulations for SVC than other crimes since SVC destroys the soul of child victims...
2011 – 14224	SVC destroys the soul of victims, giving the victims and their family a huge pain, which is no less than murder... The different characteristics of SVC – destroying the soul of victims – should be considered...

2012 – 1169	SVC is a heinous crime that destroys the soul of victims, giving the victims and their family a huge pain, which is no less than murder... It brings anger to the public, collectively...
2012 – 1633	SVC causes public indignation... SVC destroys the soul of victims...
2012 – 1743 2012 - 1781 2012 – 1803	SVC is a crime that destroys the soul of victims, giving the victims and their family a huge pain, which is more serious than murder...
2012 – 1855	SVC is a crime that destroys the soul of victims, by which the victims and their family get a serious PTSD that lasts for the rest of their life...
2017 – 8965	SVC is a serious crime that gives the victims and their family an indelible scar...
2018 – 12369	SVC is an inhumane act that tramples on a person's entire life, which can never be forgiven for any reason...
Minute	'Consequences of SVC are extremely destructive'
288th National Assembly (Mar 2010)	MP Shin, "...SVC is an extremely horrible crime that leaves the victims and their family a psychological and physical scar for life..."
291st National Assembly (June 2010)	MP Lee, "...We must eradicate SVC, which kills the soul of victims and thus can never be forgiven..."

Interestingly, in numerous bills and minutes SVC is described as 'destroying the soul of children', despite the fact that over 70 percent of SVC incidents in SK pertain to an 'Indecent Act', which does not cause any serious injury to its victims (KIC, 2017).

This classification of SVC as the worst kind of crime that destroys the soul of children can be interpreted from the perspectives of 'purity and pollution' or 'purity and danger' (Douglas, 1966; Hacking, 1991 and 2003; Pratt, 2005). Hacking (1991: 253) described the unified, punitive mentality of society toward offences against children, "[w]e must protect as many children as we can. We want also to discover and help those who have already been hurt. Anyone who feels differently is already something of a monster". These punitive sentiments are formed and displayed, not only because children carry the connotation of purity, but also because children/purity manifest the origin and identity of society (Hacking, 2003; Pratt, 2005). In the same vein, for Douglas (1966), purity is symbolic of social order and, naturally, any threat to purity is a transgression of the social order. The demarcation, separation, and punishment of offenders represents a process of purifying the pollutants in society. Thus, any (potential) threats or dangers to children, who are given exceptional value, particularly in this

age of fears and insecurities, are recognised as an erosion of the purity of society, which triggers exclusive and punitive forms of punishment (Pratt, 2005).

As such, punitive social sentiments towards offences against children can be, perhaps, accepted as universal, and also the punitive discourses and legislation regarding SVC in SK signify the desire to protect and maintain the purity of children and the socio-cultural places they now have in Korean society. Nonetheless, it is important to mention here that within the tradition of Confucian familialism, and through its own adaptations to the macro social changes for several decades, the status and value of children in SK have become *exceptionally* enhanced. This will be explained in the next chapter. Indeed, the ‘purity’ of children is positioned behind the alarming concern about SVC in this country.

The fact that the exact same phrase ‘destroying the soul of children’ was used in different bills repeatedly has another implication for legislation and penal populism in SK. This is to say, it is a reasonable assumption that some politicians unabashedly copy phrases from existing bills and paste them in their own bills. This (suspected) ‘copy and paste’ practice can be an indication that SK politicians tend to prepare and propose bills without serious consideration and discussion, in an attempt to respond to public pressures as fast as they can. In fact, a bill on the pharmacological treatment for sex offenders was passed both at the Committee of Legislation and Judiciary and the Plenary Session of the National Assembly in one single day – 29th June 2010 -, thereby being successfully legislated (Cho HW, 2015).

This rapid and superficial process of legislation in SK has been criticised by legal professionals and researchers for over a decade. According to Eum SP (2012: 153-154), who analysed the legislative trends of the 18th National Assembly, “Politicians do not take sufficient time in preparing and reviewing bills” and “It is often found that numerous bills are, all at once, ‘quickly’ dealt with at the National Assembly because of the negligence and recklessness of politicians”. In a similar context, the superficial review of proposed legislation during the 19th National Assembly was also criticised by a KIC report (2016). Lastly, the following excerpt is a vivid illustration of the practice of excessively rapid legislation in SK, “... Ministry of Justice should listen to the public voices more and make a quick decision... We should make a conclusion, no later than the upcoming Thanksgiving (in 4 days)...” (MP Kwon, at the 311th National Assembly - Sept 2012).

Perceptions of politicians of the CJS

Along with the perceptions of politicians of the characteristics of SVC, their perceptions of the CJS are also an important component of the mechanism of punitive legislation for SVC. Considering the fact that punitive penal policies were introduced in the 2000s and given the scepticism of the media and public about the criminal justice system and punishment for SVC in particular, it is predictable that the political perceptions of CJS are equally negative. In fact, the analysis of the bills revealed that politicians are highly critical of the responses of the CJS to SVC along with the sentencing for SVC.

Table 4.6. Perceptions of politicians on the criminal justice system in SK

Bill	Perception on CJS
2009 – 6470	More than 70 percent of SVC cases get too lenient punishment...
2009 – 6559	The judiciary is not really aware of how serious SVC is... The judiciary, punishment, and sentencing are too lenient, in favour of offenders...
2010 – 9131	SVC has been committed ceaselessly but the criminal justice system in our society does not provide public safety properly... When offenders complete their prison terms and get released, it is obvious that they are likely to commit crime again. The current criminal justice system is not able to protect the society and rehabilitate offenders...
2011 – 13303	The judiciary interprets law at their discretion, but their interpretation is against public sentiments and opinions... This leads to the public's generalised distrust in the criminal justice system as a whole...
2012 – 229	Despite the fact that SVC destroys the soul of child victims, the courts overuse their discretion in sentencing, by which a significant proportion of SVC offenders gets released on suspension...
2012 – 1881	Punishment for SVC in the present is too lenient. The courts frequently impose suspension and reduce prison terms at their discretion, which has a very low effect on crime deterrence...
2012 – 2091	Considering the fact that SVC destroys the soul of victims, the current levels of sentencing are too low...
2013 – 6663	Even in case that a life sentence is imposed on SVC offenders, there is a possibility of reducing the term or parole. This is problematic because we can't give them heavy punishment, in proportion to the cruelty and brutality of those offences...
Minute	Perception on CJS
288th National Assembly (Mar 2010)	MP Hong, “... Our society has so far been too carefree and naïve. Especially the Prosecution Service and the Court have been too lenient...”

As shown in Table 4.6. – there is strong distrust in the CJS and judges -, the perceptions of politicians on the CJS can be summarised as follows: ‘The CJS is not aware of the seriousness of SVC’, ‘Because of the discretion of the CJS, in particular the Court, punishment imposed on SVC offenders is too light, such as suspension, reduced sentencing terms, or parole’, and ‘The CJS have not been able to protect the society since levels of sentencing are too low’. Presumably, the perception that punishment for SVC is too soft is presupposed by another misperception that any SVC incident is always heinous and its impact on victims is always too profound to restore – irrespective of its actual consequences in individual cases. It appears that the criterion for the level of punishment for a crime is the (perceived) seriousness of that crime. In other words, SVC is an incomparably serious crime and, hence, harsh punishment is required in proportion to its seriousness, instead of ‘lenient’ sentence currently imposed at the discretion of the CJS. Certainly, the equation of harsh punishment with crime deterrence is firmly established in the perceptions of SK politicians and is consistent with those of the media and public.

Responses of politicians to the media/public in SK

In parallel with the perceptions of politicians of SVC and the CJS, the most important, necessary condition for penal populism is ‘populist responses’ of politicians to the public demands in terms of legislation. As I will set out below, the five key punitive penal policies for SVC in SK were not shaped and legislated independently from the influences of the media and public opinion and, in particular, ‘public sentiment’ provides a rationale for the legislative activities of politicians.

(a) Media and legislation

It can be inferred from Table 4.7. and Table 4.8. below that legislation for SVC was influenced by the SK media. The tables show that the trend of media reporting on SVC and the proposal of bills focused on SVC share a similar pattern.

Table 4.7. Number of newspaper articles on SVC, published between 2000 and 2010 in SK

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Articles	6	7	3	8	10	11	30	42	563	616	1103

Table 4.7. shows the number of newspaper articles reporting on SVC incidents in SK, published between 2000 and 2010.¹³² As argued in the existing Korean literature that penal populism has operated in SK since 2000, the number of articles began to increase noticeably from 2005. It then grew exceptionally rapidly between 2007 and 2008 from 42 to 563, and the increasing trend continued until 2010. It should be noted that the most high-profile SVC incidents in SK history, including those cases introduced in the previous chapter, were all committed during this period.

Table 4.8. Number of SVC bills, proposed between 1989 and 2010 in SK

Year	1989 ~2004	2005	2006	2007	2008	2009	2010
Bills	less than 5	40	23	30	36	68	108

Table 4.8. shows the number of bills proposed by politicians for SVC from 1989 to 2010 in SK.¹³³ Similar to the number of newspaper articles, the number of bills began to increase from the mid-2000s. From 1989 to 2004, the average number of bills proposed was less than five annually. However, this increased dramatically to 40 in 2005. With the exception of 2006, the number of bills showed a gradual upward trend since the mid-2000s, reaching 108 in 2010.

In summary, the number of media reports and the number of bills proposed regarding SVC show a similar trend, with both increasing since the mid-2000s. It is rather early to conclude whether the shared pattern shown in those two tables is simply a coincidence or an indication of a direct causality between them. Nonetheless, one can reasonably assume that the practice of bill proposal amongst politicians appears highly responsive to the media in SK, which will be further supported by the results of the analysis presented below.

¹³² KINDS (Korea Integrated Newspaper Database System) - <https://www.kinds.or.kr/>

¹³³ The original data used in this table were taken from Choo (2014: 56), which were then re-organised.

(b) The public, legislation, and ‘public sentiments’

The phrase ‘법감정’ (*beop-gamjeong*, ‘public sentiments’ in English) forges the link between the legislative activities of politicians and the public/media in regard to SVC and penal populism in SK. The analyses of bills and minutes found that the most significant and frequently used words in punitive legislation are ‘public’ and ‘public sentiments’. While not all of those bills which include the phrase ‘public sentiments’ are presented in Table 4.9., it is clear that politicians often invoke ‘public sentiments’.

Table 4.9. Political responses to public sentiments

Bill	Public sentiments
2009 – 6559	In fact, the justice system is not really aware of how serious SVC is, which is why CJS responses to SVC are not reflexive of the public sentiments...
2010 – 9411	The number of SVC incidents have continued to rise recently, which are reported by media and becoming problematised as a serious social matter...
2010 - 10290	It is public sentiments that decide whether or not criminals’ rights to employment should be more valued than protecting the public from SVC. The public fear of SVC is serious, which can thus justify the limitation of employment of criminals... Public interests are superior to criminals’ rights to employment...
2011 – 13293	The public has increasingly become aware of SVC since the release of the film ‘Dogani’, based on the SVC committed in In-hwa School for mentally ill students in Gwang-ju...
2012 – 229	Quite many of those SVC offenders get released on suspension. This is against the public sentiments towards SVC and, thus, the discretion of judges should be limited in cases of SVC...
2013 – 6663	In case of SVC, we should be able to impose a life sentence without any possibility of reducing prison terms and parole, which is to increase deterrence effects of punishment. Punishment should be correspondent to the public sentiments toward SVC and their demand for punitive punishment...
2014 – 11202	We should consider the sentiments of the vast majority of the public that heavy punishment – including abolition of the statutory limitation of prosecution period for SVC - be imposed on those offenders who commit sexual violence against children as a member of our society...
2016 - 567	Despite the fact that SVC is a crime that destroys the soul of child victims, many of those offenders get released on suspension. This is against the public sentiments and thus the discretion of judges should be limited in order to ensure crime deterrence...
2017 – 8965	Indifferent to the fact that SVC is a serious offence which gives an irreparable pain to the victims and their family, levels of sentencing imposed on SVC are low, including suspension. This is against the public sentiments and can have a detrimental effect on recidivism rates of SVC...

2018 – 11754	In some high-profile cases of sexual violence, levels of sentencing imposed by judges at their discretion were low and thus problematic. These low levels of sentencing are opposite to the public sentiments and a cause of increasing recidivism rates...
2018 – 12364	The statutory limitation of prosecution period for sexual violence against children under the age of 13 should be abolished, which is to follow the public sentiments toward SVC...
2018 – 12369	Reducing prison terms at the discretion of judges, ensured in the current law, is problematic, because it is against the public sentiments and of no use in eradicating SVC...
Minute	Public sentiments
288th National Assembly (Mar 2010)	MP Park, “...Electronic monitoring is, certainly, controversial. However! How desperate is the public now?... We, politicians, should not avoid the reality that the public faces regarding SVC. We should answer to the public voice first, and then we can discuss further later...”
288th National Assembly (Mar 2010)	MP Hong, “...Because of the Cho case last year and the Kim case this year, SVC has become a social problem, which is inconceivably serious. We can’t pretend that nothing is happening... We need to consider public opinions... We should now consider the present public opinions in SVC sentencing... There are controversial issues, but we should take the public sentiments toward sexual violence into consideration... The current level of minimum imprisonment terms is so low that we, actually, are not able to respond to the public sentiments...”
291st National Assembly (June 2010)	MP Park, “...How are the things now in SK? Five of our children on average get sexually assaulted everyday... We all are potential victims... The soul of our children gets destroyed repeatedly... We are obliged to take an action, to answer the public anger toward SVC...”
311th National Assembly (Sept 2012)	MP Kwon, “... Ministry of Justice should listen to the public voices more and make a decision quickly... We should make a conclusion, no later than the upcoming Thanksgiving...”
311th National Assembly (Oct 2012)	MP Ryu, “...SVC, of course, is very brutal and serious now. If we compare public interests and individual criminals’ rights, it (sexual offender registration and community notification) is justifiable, which is the public sentiments in the present...”
311th National Assembly (Oct 2012)	Minister of Gender Equality and Family, “...Punishment has been too soft. The public is fearful that sexual offenders walk around anywhere without restriction. In order to relieve the public fear, I think we need to enhance this kind of measure (sexual offender registration and community notification) for now, temporarily...”

311th National Assembly (Nov 2012)	MP Yoo, “... Regarding the limited criminal liability of a person under intoxication, I am telling this again that we should abolish it in accordance with the current public sentiments... I must pass this bill, considering the public sentiments...”
311th National Assembly (Nov 2012)	MP Lee, Chair of the Special Committee for SVC, “... I already asked the Court to consider the public sentiments in sentencing, and today I am asking it again to the Minister of Justice...”

In fact, the Korean word ‘법감정’ has not been discussed seriously and there is thus no formally agreed definition of it amongst criminologists in SK. Nevertheless, the word has, pragmatically, been used interchangeably with public perception, public emotion, public attitude, public opinion, and common sense within the particular context of crime and punishment. Hence, it seems acceptable to interpret 법감정 as what is believed to be the complexity of what the majority of people in SK feel, believe, and think regarding crime – SVC, in this case -, and punishment matters. An important finding of the analysis is that ‘법감정’ (public sentiments, hereafter) is utilised as a justification for legislation in SK – specifically, for the introduction of punitive penal measures relating to SVC. That is, SK politicians are highly sensitive and responsive to public sentiments in legislating policies for SVC.

Firstly, in the bills and minutes politicians refer directly to those SVC incidents that occurred recently and to the media reporting on them. For example, bill no. 2010 – 9411 says that “The number of SVC incidents have continued to rise recently, which are reported by media...” and MP Hong stated, “...Because of the Cho case last year and the Kim case this year, SVC has become a social problem...” (Mar 2010). Here, it is important to remember that these statements were given in each of their bills as a ‘reason’ why they proposed the bill.

It is also apparent that appeasing public sentiment is highly prioritised by politicians, - “...the public tolerance toward SVC has reached the critical point...” (Bill no. 2011 – 10727) and “Recently, sexual violence against children, teenagers, and adults as well has occurred continuously and become more heinous, which causes public anger...” (Bill no. 2012 – 1546 / 2012 - 1643). The Minister of Gender Equality and Family went as far as to state, “... In order to relieve the public fear, I think we need to enhance this kind of measure - sexual offender registration and community notification - for now, temporarily...” (Oct 2012). These statements, in particular the Minister’s, reflect typical populist thinking, proposing special punitive measures to ‘temporarily’ placate public emotion shaped on the basis of

misperceptions, rather than adopting effective, just, and sustainable policies from a long-term and evidence-based perspective. The problem of SVC is understood by politicians to be so serious that it needs special measures of control.

It is little wonder, then, that the perceptions of politicians of penal policies and sentencing correspond with public sentiments, and that public sentiment is the most important reference in sentencing. These perceptions are clearly apparent in many of the bills analysed (Bill no. 2009 – 6559 / 2012 – 229 / 2013 – 6663 / 2014 – 11202 / 2016 – 567 / 2017 – 8965 / 2018 – 11754 / 2018 – 12364 / 2018 – 12369 / MP Hong / MP Yoo / MP Lee). Indeed, as illustrated in the following excerpt, the normative justification for punitive penal policies for SVC is based on public sentiments.

“... If we compare public interests and individual criminals’ rights, it (sex offender registration and community notification) is justifiable, which is the public sentiments in the present...” (MP Ryu), and “It is public sentiments that decide whether or not criminals’ rights to employment should be more valued than protecting the public from SVC. The public fear of SVC is serious, which can thus justify the limitation of employment of criminals... Public interests are superior to criminals’ rights to employment...” (Bill no. 2010 – 10290).

As such, public sentiments formed around the misperceptions and media-fuelled emotion of the public are privileged as a main reference for the legislation of punitive punishment for SVC in SK. By extension, public sentiments even appear to exist in the consciousness of SK politicians as absolutely correct or virtuous in and of themselves. However, it is interesting to note that the Korean word ‘법감정’ is a relatively recent label. According to Choo (2014: 62), the label of and political discourses around 법감정 first emerged in the mid-2000s. This means that 법감정 has not long regulated and informed the development of legislation and criminal justice policies, but emerged as a new penal rationality in the mid-2000s, at a time when SVC began to get into public consciousness in SK.¹³⁴

It is clear that SK politicians are very responsive to the perceptions, emotions, and attitudes of the public regarding punishment for SVC. This ‘responsiveness’ might be genuinely interpreted as democratic, or otherwise rhetorically and disingenuously mobilised as

¹³⁴ Although 법감정 is not the subject of this thesis, it would be social scientifically significant to explore why the new label ‘법감정’ was given at that particular time and, specifically, what new social settings, contexts, and connotations have been brought about by 법감정 in relation to punishment.

democratic by different groups of people. Nonetheless, it can be dangerous to prioritise the supposed views of the public only because this represents what is thought to be ‘the will of the people’. It is not desirable at all to introduce laws, institutions, and policies merely to be seen to be responding to public emotion and to draw support from them in exchange, rather than basing them on serious discussions of normative justifiability and thorough analyses of effectiveness. The sentiments of the public, and ‘the majority’ represented by common sense are, by themselves, neither right nor wrong. Utilitarian thinking is not always right, either.

In this chapter, I analysed the bills proposed for SVC and the minutes of discussions and debates on SVC at the National Assembly. Based on these analyses, I presented the perceptions of SK politicians of SVC and the CJS, and the populist responses of politicians to the public/media. To summarise, politicians perceive that the characteristics of SVC are distinct to those of other kinds of crime and that existing levels of punishment for SVC are too lenient. These perceptions are then reified as punitive penal policies by the legislative activities of politicians. However, the process of legislation is based on a form of populist politics. It is apparent in the bills and minutes analysed in this chapter that SK politicians invoke ‘public sentiments’ as the most important reference and justification for the legislation of those punitive policies for SVC.

MP Lee, Chair of the Special Committee for SVC,

“... I already asked the judiciary to consider the public sentiments in sentencing, and today I am asking it again to the Minister of Justice...”

(Sept 2012, at the 311th National Assembly of the Republic of Korea)”

Chapter Five

The Value of Children

“The sales volume of child safety alarms has increased by 24 percent in just 3 weeks... a 70 percent’s increase, comparing to the last year’s...”, “I am going to buy this for my 7-year-old daughter... Is it easy for children to use?” (from a newspaper article, titled ‘Worries about SVC... Growing popularity of personal alarms for child protection...’, published in October 2009).¹³⁵

As shown in the two preceding chapters, the media/public discourses of SVC in SK are extremely punitive, and populist legislation has consistently been made specifically for SVC since the mid-2000s. In other words, penal populism in SK has operated clearly around SVC, but has not been apparent in other areas of criminal behaviour.

This specific form of penal populism in SK appears rather unusual for two reasons. First, from a comparative international perspective, punitive penal policies and measures were introduced not only to curb SVC but also other types of criminal behaviours – for example, sexual crimes against adults, youth crime, persistent criminals, and even incivilities (Pratt, 2007) - in societies where penal populism or punitiveness exist, including America, Britain, and New Zealand. Second, in the context of SK, children are statistically least likely to be victimised in comparison with adults, the elderly, and impaired people.¹³⁶¹³⁷ Why, then, and how have crimes against ‘children’ been recognised as an emerging social problem in recent decades in SK?

The purpose of this chapter is to explain the specific nature of penal populism in SK, in response to this question. My argument is that the specificity of penal populism in SK was shaped in the contexts of the value of children increasing dramatically (as we saw in the previous chapter) and where, simultaneously, children are increasingly exposed to strangers, who are translated as ubiquitous risks in society. What is it, then, that has given children such a high value in Korean society? As will be explained in detail, rapid economic growth since the 1970s has brought about significant social changes in SK. In particular, industrialisation,

¹³⁵ <https://www.yna.co.kr/view/AKR20091007088700003>

¹³⁶ The proportion of children in the victim population was 0.4 percent while that of adults was 99.6 percent annually between 2004 and 2013 (KIC, 2014).

¹³⁷ According to Statistics Korea (2016), the elderly, aged over 61 – 8.1 percent - are significantly more likely to be criminally offended than children, aged below 19 – 0.62 percent.

urbanisation, and changes to the structure of the family, and employment and labour are directly associated with the increased value of children in Korean society, with increasing anxiety about their safety and well-being.

Economic growth

The origin of this new value given to children begins with the period of dramatic economic growth and with the process of industrialisation that began under the government of Park Chung Hee between the 1960s and 1980s. The success of the rapid industrialisation and modernisation of SK was based on the model of the ‘developmental state’, which was heavily dependent on the exports of major SK corporates such as Samsung, Hyundai, and Posco. The volume of SK exports of goods and services (USD) increased from 103 million in 1960 to 659,615 million in 2017.¹³⁸

Because of this industrialisation, the economy of SK advanced remarkably in the 1980s in particular – the average growth rates of GDP per capita in SK in the 1980s were the highest in the world.¹³⁹ With the exception of a serious financial crisis in 1997, the upward economic trend in SK has also continued since the 1990s. SK is now the 11th largest economy¹⁴⁰ and Seoul is the 4th largest metropolitan economy in the world.¹⁴¹

The following indicators will show the economic advancement that SK, which was once one of the world’s most underdeveloped societies, has made over the past six decades. As shown in Figure 5.1., the nominal GDP (USD) of SK markedly increased between 1960 and 2017. It was just about 4,000 million in 1960, but by 2017 had grown to 1,530,750 million.

¹³⁸ World Bank - <https://data.worldbank.org/indicator/NE.EXP.GNFS.CD?locations=KR&view=chart>.

¹³⁹ World Bank - <https://data.worldbank.org/indicator/NY.GDP.PCAP.KD.ZG/>

¹⁴⁰ International Monetary Fund - www.imf.org

¹⁴¹ Brookings - <https://www.brookings.edu/research/global-metro-monitor/>

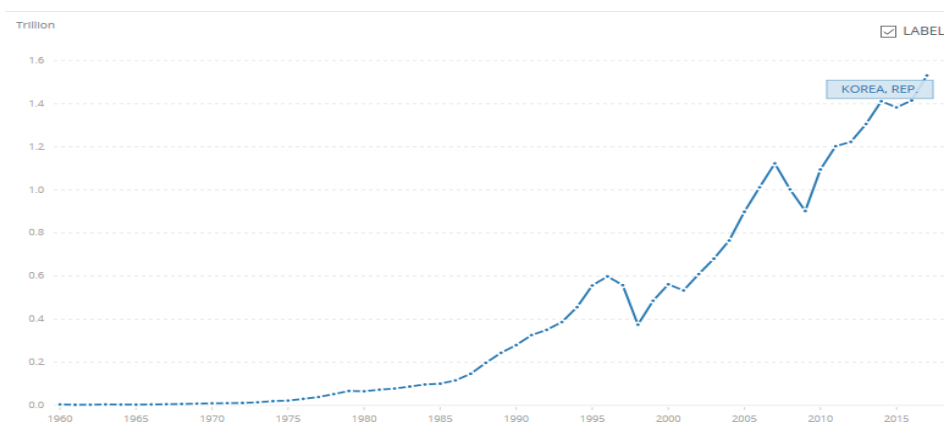


Figure 5.1. Growth of Nominal GDP of SK from 1960 to 2017¹⁴²⁾

Clearly, Figure 5.1. is indicative of the surprisingly fast growth of the economy of SK. However, the nominal GDP is limited in representing the general standard of living in a country, since the absolute volume of national production is positively correlated with the size of the population of a country. Hence, the trend of GDP per capita of SK during the same period will be presented below.

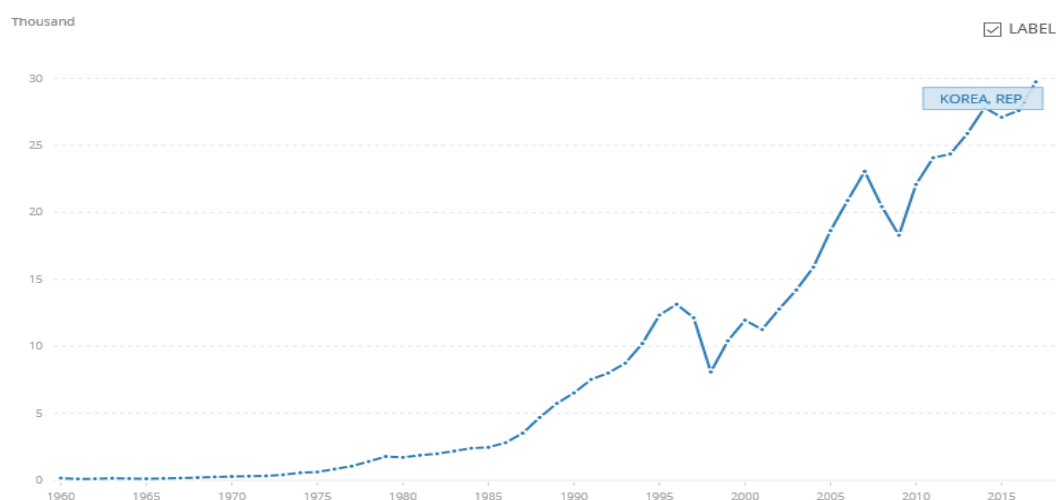


Figure 5.2. Growth of GDP per capita of SK between 1960 and 2017¹⁴³⁾

Similar to the growth of the nominal GDP, the GDP per capita of SK (USD) shows an increasing trend during the same period. In 1960 the average annual production of a South Korean (USD 158) was extremely small, but by 2017 had grown to around 30,000 (USD). In addition, the growth of the average annual income of South Koreans is also indicative of the

¹⁴² World Bank - <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=KR&view=chart>

¹⁴³ World Bank - <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=KR&view=chart>

country's economic success. According to the World Bank, the GNI per capita of SK (USD) was just over 8,000 in 1990, which then reached approximately 39,000 in 2017.¹⁴⁴

Although the current level of GDP and GNI per capita of SK is not the highest from an international perspective, its tremendous domestic growth represents a significant change of lifestyle for South Koreans. The economic progress of SK also indicates very clearly that there have been concomitant, drastic social changes in SK over the past 50 years, which were necessary to enable this remarkable economic growth and in turn had important implications for the value given to children.

Social change

The social changes brought about by industrialisation and economic growth in the second half of the 20th century in SK were transformative for family life especially, as well as for the material comfort of the people. The following three photos are representative of the everyday life of the majority of South Koreans in the 1950s. The photos below confirm the economic changes since the 1950s, and also provide a richer context for the social changes than the graphs of national GDP and per capita income.



Figure 5.3. Poverty in the 1950s¹⁴⁵

¹⁴⁴ World Bank -

https://data.worldbank.org/indicator/NY.GNP.PCAP.PP.CD?locations=KR&most_recent_year_desc=true&view=chart

¹⁴⁵ <https://news.naver.com/main/read.nhn?oid=088&aid=0000399140>

Figure 5.3. shows the poverty that South Koreans experienced in the 1950s, shortly after the Korean War (1950-1953). A young girl is preparing to boil plant roots for her family. It was common for people in SK to use plant roots as a food source, to survive the abject poverty and starvation at that time. It was also common for children of the family to become involved at an early age with the subsistence farming that sustained family life, as we see in Figure 5.3.



Figure 5.4. No housing in the 1950s¹⁴⁶

Figure 5.4. portrays the devastated country as a consequence of the Korean War. Much of the housing stock in SK were destroyed during the war, but the government was unable to provide housing, due to the scarcity of resources. People had to build their own makeshift shelters, putting broken pieces of wood and cardboard together.



Figure 5.5. No water supply in the 1950s¹⁴⁷

¹⁴⁶ <https://blog.naver.com/akswp1224/50111965177>

¹⁴⁷ <https://blog.naver.com/akswp1224/50111965177>

Figure 5.5. captures people washing their clothes and children in a stream. There was a limited supply of water and little by way of hygiene and sanitation for many SK people at that time. All three photos confirm that living conditions in SK in the 1950s were extremely poor, having deteriorated as an immediate consequence of the war.

Now, there are two photos presented below, depicting the 2010s' South Korea.



Figure 5.6. Seoul in the 2010s – day¹⁴⁸



Figure 5.7. Seoul in the 2010s – night¹⁴⁹

Figure 5.6. and Figure 5.7. show the South Korean capital by day and by night in the 2010s. The sad hovels and subsistence level livelihood of the 1950s have long since disappeared. Instead, Seoul now has a skyline that is characteristic of other particularly advanced, wealthy societies. These are, on the surface, illustrative of the rapid material and economic success that SK has achieved since the 1950s. However, these can also be understood, at a more fundamental level, as suggesting profound socio-cultural changes that occurred concurrently with the economic progress in SK.

Figure 5.8. and Figure 5.9. below show the change in the structure of family in SK during the same period.

¹⁴⁸

<https://m.post.naver.com/viewer/postView.nhn?volumeNo=11522449&memberNo=40071865&vType=VERTICAL>

¹⁴⁹ <https://blog.naver.com/akswp1224/50111965177>



Figure 5.8. Family in the 1950s¹⁵⁰



Figure 5.9. Family in the 2010s¹⁵¹

Figure 5.8. is a family photo from the 1950s. There are 20 members of this family, consisting of at least three generations, including five children. The photo was taken against the backdrop of a traditional Korean house where all family members either lived together or very close to one another in the same village.

Figure 5.9. provides a portrayal of a typical family in present day SK. In contrast to the extended family of the past, its current form is modern, nuclear and typically consists of a heterosexual couple and (usually) one child – also defined as a normal family. There is only one child in the photo, an indication of the fact that SK has the lowest fertility rates internationally – 0.98 in 2018.¹⁵² Figure 5.9. was taken in a child-friendly professional studio, where child-protective lightings, and clothes and props for family, etc. are provided. These two photos not only highlight the different structure and size of the family between the past and the present but also reflect, in particular, the care and attention shown to the child, who is at the centre of Figure 5.9. as well as the changes brought about in the aspects of economy, culture,

¹⁵⁰

http://hansung.ac.kr/web/freeox/505959?p_p_id=EXT_BBS&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=1&_EXT_BBS_struts_action=%2Fext%2Fbbs%2Fview_message&_EXT_BBS_sCategory=&_EXT_BBS_sKeyType=&_EXT_BBS_sKeyword=&_EXT_BBS_curPage=5&_EXT_BBS_messageId=337869

¹⁵¹

<https://m.post.naver.com/viewer/postView.nhn?volumeNo=16955698&memberNo=7656104&vType=VERTICAL>

¹⁵² CNN - <https://edition.cnn.com/2019/08/29/asia/south-korea-fertility-intl-hnk-trnd/index.html>

and lifestyle in SK.

Indeed, changes to various aspects of Korean society that occurred during the second half and, in particular, the last quarter of the 20th century are described as structural or transformative in numerous articles (Kim KH et al., 1982; Choo KY, 1986; Jeong CS, 1986; Park CK, 1998; Lim HC & Chung IJ, 1999; Shin KY, 2006; Hwang JH et al., 2015; YI HJ, 2016; Chang KS, 2018).

Firstly, the industrial structure of SK has been transformed since the 1960s. SK had traditionally been a subsistent agricultural society but transited to a manufacturing-based industrial society between the 1960s and 1990s. SK has since then moved further towards a post-industrial society, with a fast growth service industry. According to Statistics Korea, the proportion of workers involved in the manufacturing and service industries in the working population increased from 37 percent to 82 percent between 1963 and 1990, growing to 95 percent by 2017 (Lee DJ, 2018: 18).

Industrialisation of SK was designed as a project and led by the military government of Park from 1962 to 1979. The primary goal was to cultivate the manufacturing industry. In the 1960s the government focused on labour-intensive industries such as fibre and textile. In the 1970s it was heavy industries such as steel, chemical, machinery, and shipbuilding. The heavy chemical industry was speedily expanded until the early 1980s, to the extent that it comprised 51 percent of the entire SK industry and 60 percent of the total domestic export (Economic Planning Board, 1982: 126).



Figure 5.10. Car parade



Figure 5.11. Car manufacturing



Figure 5.12. TV manufacturing¹⁵³

153

<http://www.cybercarmuseum.or.kr/history/history.php?category=%ED%95%9C%EA%B5%AD%EC%A7%80%EC%97%A0&history=201103>

<https://www.google.com/search?biw=1366&bih=619&tbm=isch&sa=1&ei=eboiXYG8LZvdrQH->

Figures 5.10., 5.11., and 5.12. above show the growth of the manufacturing industry in the 1960s and 1970s in SK. People are enjoying a car parade, in celebration of the success of domestic car manufacturing in the early 1960s (Figure 5.10.). However, the fact that there should be a car parade with so many interested onlookers indicates that car ownership at that time was still quite rare.¹⁵⁴ A Hyundai car manufacturing factory (Figure 5.11.) and Samsung colour TV factory (Figure 5.12.) in the 1970s are appearing in the photos.



Figure 5.13. Manufacturing complex¹⁵⁵

Figure 5.13 shows a manufacturing complex of Hyundai Heavy Industries in the 1980s. Some millions of workers, nationally, were hired in this kind of industrial complexes of major SK corporates.

In contrast to the expansion of the manufacturing industry, the agricultural population sharply decreased from 63 percent to 17 percent between 1963 and 1990, which continued to diminish to below five percent by 2017.¹⁵⁶ The zero-sum between the manufacturing industry and agriculture entailed large scale urbanisation in SK, where several cities became massively enlarged. While the proportion of the urban population grew from 37 percent to 92.2 percent between 1960 and 2005, the population of the rest of the country outside of Seoul and its satellite cities all decreased significantly (Economic Planning Board).

ipGABA&q=70%EB%85%84%EB%8C%80+%EA%B3%B5%EC%9E%A5&oq=70%EB%85%84%EB%8C%80+%EA%B3%B5%EC%9E%A5&gs_l=img.3...0.13389.19664..20116...0.0..0.247.2871.1j6j8.....0....1..gws-wiz-img.....0..0i24.jGTxIiJQT_8#imgsrc=YRyTv94GZiRLgM:

¹⁵⁴ The number of people who owned a car in SK was only 30,800 in the 1960s, which increased 338 times by 1997 - 14.1 million (Lee JK & Han JS, 2001: 53).

¹⁵⁵ <https://www.asiae.co.kr/article/2014082813392448550>

¹⁵⁶ Statistics Korea - <http://kostat.go.kr/>

The exclusive growth of major cities such as Seoul and Busan in particular was caused by the expansion of the manufacturing industry and the migration of the rural population. According to Seol DH (1992: 149-150), the major cause of the growth of the urban population was the influx of the rural population - 70.2 percent between 1965 and 1970, and an average of 50 percent through the 1970s. Also, Choi JH (2010) statistically demonstrated the correlation between urban expansion and the number of people involved in the manufacturing industry during the period of industrialisation in SK – $r=0.66$.

That is, young people in rural areas migrated to those cities where the opportunity of (manufacturing-based) employment was expanded. Indeed, 86.7 percent of those involved in the manufacturing industry was employed in Seoul and Busan in the late 1980s (Economic Planning Board, 1989), thus enlarging the size of the urban population and, simultaneously, reducing that of the rural population (Nam YW & Lee IY, 2002; Nam YW & Choi JH, 2004; Choi JH, 2010). While breaking up the extended family that survived on subsistence agriculture, the urban expansion also brought about new problems such as overcrowding and lack of housing. In response, the government planned to build apartment complexes and public transport - buses and underground railways in Seoul in particular - to enable people to enjoy greater mobility later (Choi JH, 2010: 93).



Figure 5.14. A weekend in the 1970s¹⁵⁷

Figure 5.14. portrays a weekend in Seoul in the 1970s. The population in Seoul grew rapidly in the 1970s, 50 percent of which were rural migrants. Hundreds of people are watching the bridge, perhaps not understanding why it had just been constructed – to disperse the population of Seoul.

¹⁵⁷ http://swan.ewha.ac.kr/lecture_3_s_korean_society_60_70_1.pdf

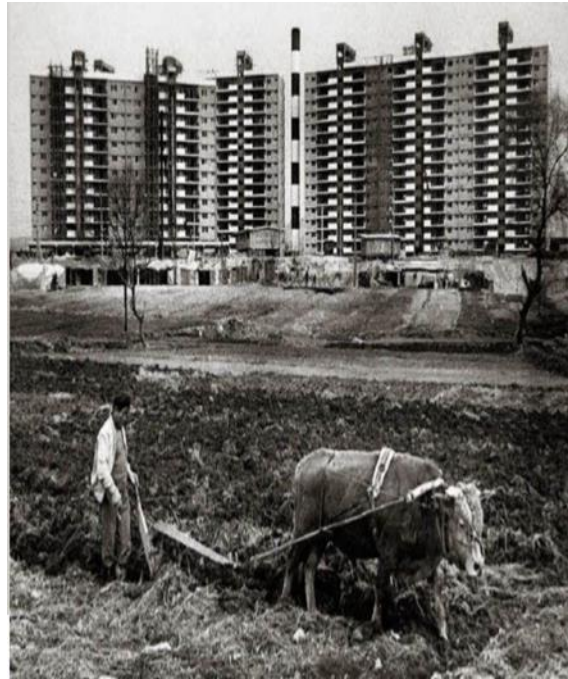


Figure 5.15. Seoul in the 1970s¹⁵⁸

Figure 5.15. shows an example of the government's broader plan to build large-scale apartment complexes in Seoul in the 1970s. In response to the sudden growth of the population and housing problems in Seoul, the government designated 'Gangnam' as a special district for apartment complexes, which is now the most developed and expensive area in SK.

Figure 5.15. is particularly interesting since it starkly contrasts the fall of rural areas with the rise of urban areas in the 1970s in this country. It, in addition, represents the geographical generational separation between the young and old and the subsequent breakup of the extended family and traditions associated with it. The co-existence of the two different zones of time and space implies the velocity of the structural transition of SK society.

The fast growth of the manufacturing industry and the concurrent expansion of the service industry has significantly affected employment patterns in SK. In particular, the participation of women in economic activities has steadily increased over the last five decades. The proportion of women in employment was 37 percent in 1963, which grew to 48.3 percent by 1995 (Korean Women's Development Institute, 1995). The increasing trend has since accelerated, where the employment rates of women in their 20s and 40s exceeded 70 percent

¹⁵⁸ http://swan.ewha.ac.kr/lecture_3_s_korean_society_60_70_1.pdf

in 2015.¹⁵⁹



Figure 5.16. Women in the 1950s



Figure 5.17. Women in the 1970s



Figure 5.18. Women in the 2000s¹⁶⁰.

The Figures above show the typical life of South Korean women in the 1950s (Figure 5.16.), 1970s (Figure 5.17), and 2000s (Figure 5.18). While women had long been expected to look after their family – children in particular – in the traditional Korean society, their participation in socio-economic activities has progressively increased through industrialisation and post-industrialisation.

It is reported that the employment rates of women significantly increased in a number of western advanced societies¹⁶¹ during the period when GDP increased from USD 10,000 to 20,000. A similar pattern was identified in SK (Ministry of Gender Equality and Family, 2004). It is also common amongst those western countries (and SK) that the national industry was largely based on the manufacturing and service industries and, at the same time, that education levels of women significantly increased during this period. These widened employment opportunities for women and thus increased the employment rates of women in SK.

Since the 1990s the service industry has also grown rapidly in SK. In 2017, 78.4 percent of the

¹⁵⁹ Statistics Korea -

http://kosis.kr/statHtml/statHtml.do?orgId=101&tblId=DT_1DA7001S&vw_cd=&list_id=&scrId=&seqNo=&lang_mode=ko&obj_var_id=&itm_id=&conn_path=E1

¹⁶⁰ http://www.kukminusa.com/news/view.php?gisa_id=0923831838

<http://www.newsm.com/news/articleView.html?idxno=6194>

http://news.chosun.com/site/data/html_dir/2015/03/09/2015030902225.html

¹⁶¹ These societies include Canada, England, Germany, Norway, the Netherlands, and the US, etc.

entire population of industry workers in SK were employed in the service industry (Lee DJ, 2018: 18). As regards the education levels of women, the entry rates of SK women into tertiary education continually and speedily increased over the past four decades (Kwag YS, 2005: 360). It was 25 percent in 1975, 34 percent in 1985, 50 percent in 1995, and 80 percent in 2005.¹⁶² In 2015, the number of women who received tertiary education (74.6 percent) was even higher than that of men (67.4 percent).¹⁶³ This represents a remarkable transformation in the lives and expectations of young women since the 1950s, as shown in the photos above.

In addition to the growth of women involved in the manufacturing and service industries, the number of professional women has also increased – from 15 percent in 1955 to 42 percent in 2013 (Chung YS & Kim IS, 1993; Jung SM, 2014). In 2018, having reached 50.6 percent, the proportion of women in the civil service at the executive branch of the SK government was higher than that of men (Statistics Korea and Ministry of Gender Equality and Family, 2018). Women now have careers to pursue rather than devoting themselves exclusively to childcare and household labour.

It is true that South Korea recovered from the traumatic experience of Japanese colonisation and the brutal civil war and, despite the lack of capital and resources, they industrialised successfully in three decades. However, as industrialisation was led by the military authoritarian government, the process was oppressive and exploitative (Lee WB, 2005; Roh JK, 2005; Shin KY, 2006; Kim SY, 2015; Kim DO, 2016). As mentioned earlier, the industrialisation of SK was dependent mostly on the export of domestic products. The government sought to maximise the efficiency of production and, simultaneously, minimise the overall costs of production in order to supply their products to foreign markets at competitive prices (Shin KY, 2006; Kim DO, 2016). They found an easy solution; the exploitation of labour. Workers were forced to work long hours with extremely low wages. Nonetheless, they could not openly talk or complain about their rights due to the state's oppression of labour movements.

¹⁶² The original sources Kwag YS (2005) analysed were provided by Korean Educational Development Institute.

¹⁶³

http://news.khan.co.kr/kh_news/khan_art_view.html?artid=201503082150375#csidx6d5d55da875d076a224ddf612ae710a

Figure 5.19. Factory workers in the 1970s¹⁶⁴



Figure 5.19. shows labourers in a sewing factory in the 1970s in SK. They worked for 15 hours every day without proper ventilation.

The government systematically denied the rights of labourers through legislation, passing the ‘Special Act on Labour Union and Labour Dispute of Foreign Investment Companies’ in 1970 and the ‘Special Act on National Security’ in 1971. They also amended existing labour laws in 1973 and 1974, through which labour unions were replaced by labour-management councils, and thus the Federation of Korea Trade Unions was debilitated (Lee WB, 2005; Roh JK, 2005; Shin KY, 2006). In the context of the export-dependent industrialisation and the government’s exclusive support for corporates, labourers were sacrificed on the margins. They became disciplined by laws, institutions, physical violence, and romantic nationalism, whereby long working hours and low wages were normalised amongst South Koreans. They worked for 2,200 hours per year on average until the late 2000s, which was 450 hours longer than that of other OECD countries. In 2018, under the government of President Moon, Article 51 of the Labor Standards Act¹⁶⁵ was amended, to reduce working hours and enforce a new weekly maximum of 52 hours per week. However, the working hours of SK still remain at the highest level internationally in 2018.¹⁶⁶ Working very long hours away from the family has now become an entrenched feature of Korean life.

As such, SK has rapidly been disembedded from tradition, a subsistence agricultural society,

¹⁶⁴

http://contents.history.go.kr/mobile/ti/view.do?tabId=02&code=ti_ty_060_040&subjectId=0&levelId=ti_033_0100#self

¹⁶⁵ Korea Legislation Research Institute - https://elaw.klri.re.kr/kor_service/lawView.do?hseq=46242&lang=ENG

¹⁶⁶ OECD - <https://stats.oecd.org/index.aspx?DataSetCode=ANHRS>

characterised by the physical proximity between homes and lands, and a community life based on family, relatives, and neighbours. SK has now become urban, individualised, and anonymous, with new configurations of everyday life such as the dual-income family, long working and commuting hours, and apartment living. How SVC is produced in this newly moulded day-to-day context will be explained later.

Increased value of children

“Armani, Burberry, Givenchy, Gucci, etc., are now open at the Lotte Department Store. These luxurious clothes shops are only for children.” ... “Parents raise their children like a prince or princess. While parents prefer cost-effective products for themselves, they buy the most luxurious clothes for their children.” ... (from a newspaper article, titled ‘Givenchy, Fendi... Luxurious clothes for kids’, published in September 2019).¹⁶⁷

Centrally positioned within the mechanism of penal populism in SK, the social obsession with child protection is closely associated with socio-cultural value of children. Children have always had a high value in SK. This was due primarily to the traditional perception of ‘ideal children’ constructed under Confucian familialism. Traditionally, children were considered a precious family asset and thus the value of children has always been high. However, the value of children rose sharply as the number declined steeply over time. The increase of the value of children has particularly accelerated within the late modern social conditions in SK, which appeared from the mid-1990s onwards. That is, the parent-child relationship has become increasingly solidified for parents in the era of so-called fluidity or precariousness, as will be discussed later.

According to Yao (2000), Confucianism has its origins in China, and was developed by the intellectual descendants of the Chinese philosopher Confucius (551–479 BC). It is variously considered to be a view of the world, a philosophy, a tradition, and a religion. The core value of Confucianism can be understood by the following description:

“An ideal society in Confucianism is referred to as datong 大同 (great unity) society, established on the basis of familialism and communitarianism. In the Confucian view of family, seniors are considered to be the guides for children as the cornerstone of family unity. The

¹⁶⁷ <http://news.heraldcorp.com/view.php?ud=20190904000403>

notion of xiao 孝(filial piety) is regarded as the foundation of family and society (Yi SG, 2016:55).”

Filial piety operates as a central value of Confucianism in pursuit of the wellbeing of the family and, further, the unity and harmony of society. While Confucianism is presumed to have been introduced to Korea between the 4th and 7th centuries AD, it is during the Chosun dynasty (1392-1910) that Confucian values were established as the regulating principle of society, from the public life of the government and ruling class to the mundane and private life of the people (Kim JS, 2005; Cheong SB, 2007).

The family is the foundation of society in Confucian thinking and hence familialism plays a crucial role in sustaining Confucianism. Korean studies on Confucianism demonstrate that familialism has long been established as a cultural imperative, persistently exerting its effects on Korean society (Han KS, 1999; Kang CD, 1996; Kim JS, 2005; Shin SJ, 1998). Familialism is generally defined as a value system which prioritises the solidarity, perpetuation, and common interests of a family. For centuries, this value system has governed the traditional Korean family relationships in general and the parent-child relationship in particular (Choi JS, 1997; Ock SW, 1998).

There are two pillars of familialism, which are mutually reinforcing; Hyo 孝 (filial piety) and Jesa 제사 (ancestral rite) (Cheong SB, 2007). Although Hyo is not legally binding, it works as a cultural imperative, practised by children through their entire life. Young children should respect their parents and live by their expectations. Once children have grown up, they are given a responsibility to look after their parents – particularly, retired parents -, and are expected to repay the love and care given to them. After parents die, children are obliged to continue to practise Hyo through Jesa, not to forget the sacrifice that their parents made for them and satisfy the soul of their ancestors (Lee DS, 2015).

In the Confucian culture, the fundamental belief of Hyo lies in the generational continuation of life (Kuk MH, 2005). Here, it should be emphasised that independence of children from their parents is not regarded as a social virtue but a deviation from the norm. The ideal type of parent-child relationship is thus one based on interdependence (Kwon HY, 2001; Cheong SB, 2007), in which Hyo is practised by children who live with their parents in the same house for life. Even as adults, children are also normatively required to acquiesce to the authority of their parents and in return are expected to inherit the wealth of the parents’ generation. As such, Hyo

is certainly a cultural imperative but can also be interpreted as a product of exchange or role expectations between parents and children (Kim JS, 2005; Lee DS, 2015).

In line with Hyo, Jesa constitutes an integral part of Confucian familialism. Jesa is a ritual to practise Hyo after parents have died, where the present generation consoles the soul of the previous generation. The underlying belief of Jesa is that the soul of an ancestor is revived and re-appears via the ritual of Jesa to see the continuation of the family and to bring prosperity to the next generation (Cheong SB, 2007). Jesa can thus be interpreted as a space of visualising Hyo and reinforcing familialism, where the succession of family is manifested. Through the Confucian ritual of Jesa, the vitality of the past generation is passed on to the present, and then, the future generations of the family (Kuk MH, 2005). Family succession is therefore of central importance under Confucian familialism, and the parent-child relationship is prioritised over all other relationships within a family including the relationship between husband and wife or siblings (Kuk MH, 2005).



Figure 5.20. Jesa¹⁶⁸

Figure 5.20 shows that a family – children and adults - is practising Jesa. There is a wide variety of food on the table, prepared for the souls of their ancestors. The kinds of food and the position of each dish on the table for Jesa should adhere to Confucius rules. Most South Koreans still practise Jesa in the 2010s, at least four times a year – New Year's Day, Korean Thanksgiving Day, and the days their parents died.

¹⁶⁸ National Archives of Korea -

<http://theme.archives.go.kr/viewer/common/archWebViewer.do?singleData=Y&archiveEventId=0051923373>



Figure 5.21. Ga-Rye

The book in Figure 5.21. is called Ga-Rye (Confucius Family Rituals), written by Zhu Xi (1130~1200) in the Song dynasty (China). The book was used as a guidance for family rituals during the Chosun era, providing detailed, practical instructions for Jesa, marriage rituals, death rituals, etc. The contemporary form of Jesa in SK still - not strictly but generally – follows the guidance provided in the book.¹⁶⁹

Within the traditional hierarchy of the parent-child relationship, children are perceived as weak and vulnerable, and at the same time, submissive and loyal to the parents' generation. As a source of family perpetuation, children are protected, disciplined, and invested in by parents, and should always be appreciative of the caring and authority of their parents. Once they become adults, however, they are turned into another subject who is supposed to take care of their old parents and achieve social success to ensure a high reputation for their family. Those who were once children now have to show their own children how to maintain the existing family order by practising Hyo and Jesa themselves, which is how the Confucian value of familialism is inherited and internalised by the next generation. In this circular process, the traditional status of children has been moulded as a functional actor who upholds the familial value and practice. Since the Chosun dynasty, where Confucianism began to take root in the mental framework of Korea, children have been constructed as valuable assets that ensure the succession of the family.

The high value placed on children under Confucian culture rose much higher within the

¹⁶⁹ Academy of Korean Studies -
yoksa.aks.ac.kr/jsp/ci/ImageView.jsp?ci10no=CI_00060&ci20no=CI20_35437-02

immense social changes in the latter half of the 20th century. First, the value of children increased as the number of children in the population during this period dropped rapidly.¹⁷⁰ According to Statistics Korea, for example, the proportion of children aged below 14 in the total population was 43.8 percent in 1967 which decreased to 13.1 percent by 2017.¹⁷¹ This huge reduction was caused primarily by decline of the birth rate.

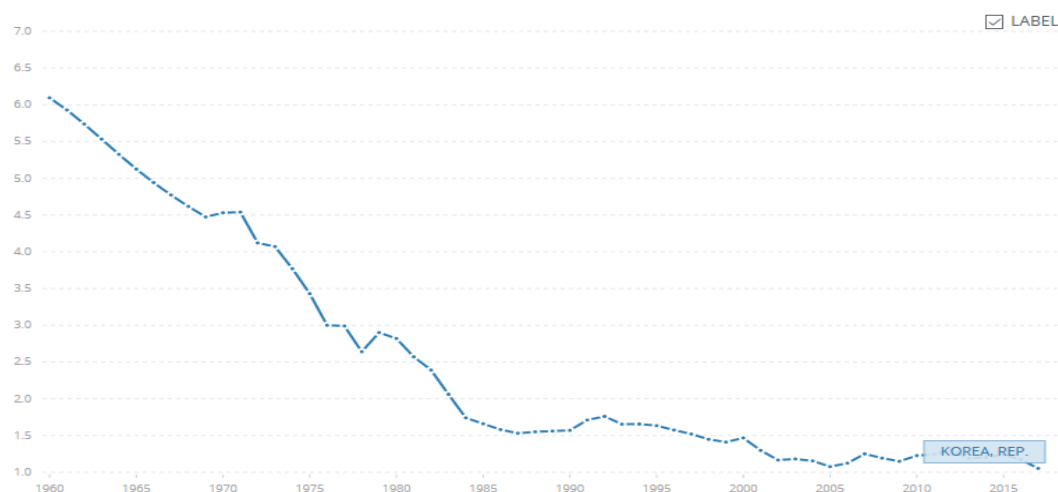


Figure 5.22. Decline of birth rates in SK between 1960 and 2017¹⁷²

Figure 5.22. shows the birth rates in SK between 1960 and 2017, which fell dramatically during this period, from 6.09 in 1960 to 1.05 in 2017. The birth rates in SK are at the lowest level amongst OECD countries and have threatened the reproduction of Korean society. In recognition of the seriousness of the problem, a large body of Korean research has focused on the causes of low fertility (Song DY, 2004; Chang HK et al., 2004; Sohn SY, 2005; Korean Institute for Health and Social Affairs, 2010; Korean Institute of Policy Evaluations, 2011; Park HY & Yeo YG, 2014; Woo HB, 2018).

Woo HB (2018) analysed the demographic policies of successive SK governments over the past 50 years. He maintains that the low fertility in SK was mainly caused by state-led birth control campaigns between the 1960s and the early 1990s. According to Woo, the authoritarian

¹⁷⁰ Pratt also pointed that, “Clearly, in any society, one of the factors that is going to determine the way in which children are valued is going to be related to their numbers in the population (2005: 267).”

¹⁷¹ Korean Statistical Information Service - http://kosis.kr/visual/populationKorea/PopulationByNumber/PopulationByNumberMain.do?mb=N&menuId=M_1_4&themaId=D01

¹⁷² World Bank - <https://data.worldbank.org/indicator/SP.DYN.TFRT.IN?locations=KR>

governments during that period sought to increase the productivity of SK to achieve economic progress through industrialisation. They launched one-child campaigns with the slogans of 'One-Child Family', 'One-Child Era', and 'Only one, the country is full' (Park HJ, 2019) so as to mobilise the female labour force by reducing the burden of childrearing. According to Woo HB (2018), the governments believed that since parents could provide undivided support for and investment in their only child, children without siblings could become as adults who are better prepared as potential industrial warriors - for national production.

McDonald (2001 and 2002) gave a cultural account of low birth rates in SK. He contends that gender inequality is an important factor affecting low fertility rates in SK. Patriarchal familialism has traditionally been sustained in Korean society, which generates gender inequality and oppression of women. He argues that while opportunities for education and employment for women have increasingly been extended and although the number of professional women is in fact growing, there are still cultural expectations that women take responsibility for childrearing and domestic labour. These cultural norms and expectations, inherent in familialism, discourage women from giving birth. This is particularly serious in the case of women possessing a high socio-economic status.

From an economic perspective, Song DY (2004) statistically demonstrated the relationship between economic conditions and various socio-demographic phenomena such as marriage, low fertility, and divorce. She argues that the economic crisis in 1997 in SK directly affected marriage rates, which then lowered birth rates. The number of marriages rapidly decreased for the five consecutive years of the 1997 crisis – from 434,911 in 1996 to 306,573 in 2002. This downturn in marriage was followed by the significant decline in the birth rate. According to Song DY (2004), because of the strong social stigma associated with illegitimacy in SK, it is extremely rare to find children born out of extra-marital relationships.

It should also be mentioned that the rate of abortion contributes significantly to low birth rates in SK. Park HY & Yeo YG (2014) analysed public health statistics, provided by the Ministry of Health and Welfare. They pointed out that abortion rates in SK are the highest internationally with 340,000 cases of abortion annually. In other words, three out of every seven fetuses in SK are aborted each year, substantially decreasing the birth rate.

As such, low fertility in SK is a product of the state's enterprise of marshalling the labour force of women for industrialisation, the improved social status of women and their resistance to patriarchy, the drop in marriage rates caused by the economic crisis in 1997, and the pursuit of

social liberation amongst individuals or deviation from the existing social morality. However, what is more important is the fact that low fertility rates have led to the decline in the number of children and hence increased the value of them in SK. This then helps to explain why penal populism in SK is concentrated so strongly around SVC even though such crimes are very rare.

It is understandable then that the current value attached to children, where since the early 2000s most families have only one child, is much higher than it was in the 1960s when a married couple had an average of six children. As children have become rare, precious entities, this has meant that the value of children has been heightened, which is illustrated in the investment that parents now make in their children. First, South Korean parents spend a great portion of the family budget on their child's education, and in fact spend more on education than any other items including food and groceries. Over the past two decades, for example, the monthly expenditure of individual households on child education increased more than three times; from USD 140 in 1998 to approximately USD 500 in 2014 (Korean Institute for Health and Social Affairs, 2015). The expenditure on private education for children accounted for 20 percent of all expenditure allocated for children per household in 1985, which rapidly accelerated to almost 80 percent by 2003 (Hong SW, 2009).

The prioritisation of domestic expenditure for children over other items, as well as its rapid increase, clearly indicates the heightened status of children. Moreover, considering that Confucian familialism is still influential and that private education is used as an effective source of social mobility in SK, the increase of investment in children – specifically, private education - can also be viewed as signifying the increased cultural value of children, who for decades have become a scarce resource for family perpetuation and success. Indeed, where the burdens arising from the expectations set around familialism that were shared by six children in the past are now endured by an only child, and where competition amongst individuals has become continually intensified amongst individuals with the buttressing of market rationalities, private education is consumed conveniently for the success, reputation, and honour of family. Individual parents in SK – even including those with limited access to economic, social, and cultural capital – are willing to sacrifice themselves to invest in (private) education for their children. In this respect, the value of children continues to escalate since children are constructed as special beings, who alone are expected to realise the culturally defined desires of their family and parents.

In addition, there has been an expansion of the market for child consumers, which also suggests

that the socio-cultural status of children has risen. Where once the market for children was restricted to clothes and toys it has now expanded to film, animation, electronic devices, child-friendly studios, and cafes for child customers only. According to Statistics Korea, the estimated economic value (USD) of the market for child consumers was 1,032 million in 2009, which grew to 2,064 million in 2015¹⁷³, then to 3,439 million in 2018.¹⁷⁴ Despite a steep drop in the number of children, the scale of the industry has grown significantly.¹⁷⁵

The reinforcement of the perception of priceless, invaluable child amongst South Korean parents would have been impossible without the late modern social conditions that have appeared since the 1990s. SK faced a devastating economic crisis in 1997. Initially, several major South Korean corporates such as KIA and HANBO went bankrupt. This serial bankruptcy had a critical, damaging impact on financial institutions and, then, the entire finance industry in SK (Ji JH, 2011; Baek JM, 2015). Simultaneously, as uncertainty about the Asian economy and the associated risks proliferated at that time, foreign investors swiftly withdrew their capital from the SK market. This caused a rapid drop in the value of the currency of SK, but the government was unable to cope with the crisis alone. In December 1997, as a last resort, the government decided to draw on a Fast Track Package from the International Monetary Fund ('IMF', hereafter). Through this agreement, the economic policies of SK were shaped and implemented in the direction determined by the IMF (Kang GS, 1999; Ji JH, 2011). Successive governments since then, regardless of political orientation, have actively adopted market-friendly policies, promoting deregulation and tax reduction for corporates, the privatisation of the public sector, and labour flexibility. At the same time, a residual welfare model was adopted, and social spending was substantially reduced (Cho YC, 2007; Yoon SW, 2009; Ji JH, 2011; Yoon MJ, 2015). The economic crisis of 1997 and the subsequent drastic shift to neoliberalism, which served to reinforce pre-existing working conditions including long working hours and low wages, has created extensive socio-economic insecurities and anxieties associated with the rise in unemployment and manifested in higher rates of divorce, and suicide.

¹⁷³ www.hankyung.com/economy/article/2018081952861

¹⁷⁴ www.mk.co.kr/news/business/view/2018/12/783461

¹⁷⁵ It is also interesting to note here that the frequency of the word 'child(ren)' used in Korean newspaper articles increased enormously over the last three decades – 511 in 1990, 5,497 in 2000, 42,181 in 2010, and 53,979 in 2018 (Korean Integrated News Database System - <https://www.kinds.or.kr/v2/news/search.do;Bigkinds=BAE9C3E4668277200D08DD660676C721>).

Unemployment rates in SK, for example, increased sharply as an immediate consequence of the financial crisis in 1997. As shown in Figure 5.23., it had been around 2.5 percent on average between 1990 and 1997, but it rose almost vertically to 7 percent in 1998.

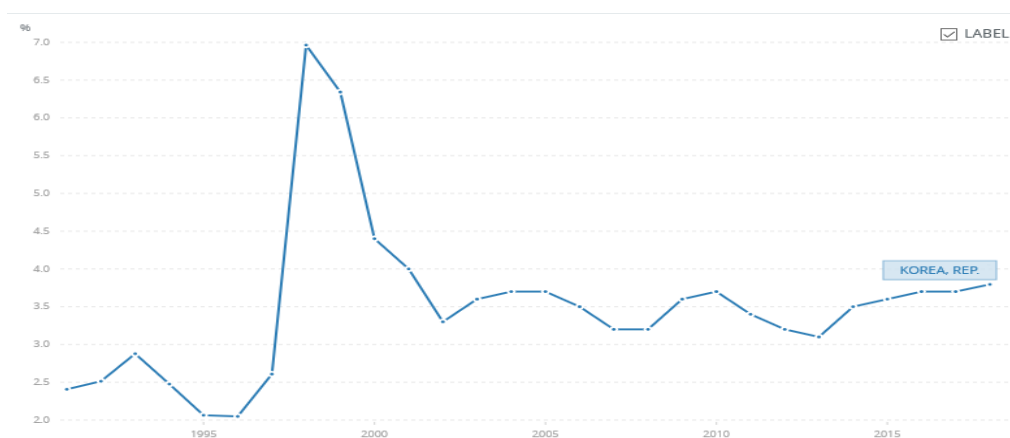


Figure 5.23.¹⁷⁶ Unemployment rates in SK between 1991 and 2018

In addition, divorce rates showed an unusual, sudden increase around that period. Following the 1997 crisis, divorce rose rapidly from 18.4 percent to 47.4 percent in just five years.¹⁷⁷ According to Statistics Korea, the suicide rates of South Korean males also increased by 48 percent between 1997 and 1998; from 18.1 to 26.7 (per 100,000). Moreover, by 2011 as neoliberalism became the dominant political and economic rationality in Korean society, the suicide rate grew even further to 43.3 (Moon DS & Chung HS, 2018). The suicide rate in SK has since remained the highest amongst OECD countries.¹⁷⁸ Certainly, late-modern insecurity and instability in SK, particularly regarding relationships, is not abstract but is specific and substantial.

Relationships in Korean society, including citizenship, business and employment, partnership, and marriage have become impermanent and fragile. These developments in everyday life are likely to have meant that the parent-child relationship has become even more solidified as an exception to the fluid relationships in late modern societies (Furedi, 2001; Pratt, 2005). While people live in the liquid world, where rejection and deprivation is a constant possibility (Bauman, 2000), they firmly believe at the same time that their relationship with children is

¹⁷⁶ World Bank - <https://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=KR&view=chart>

¹⁷⁷ Korean Statistical Information Service – www.kosis.kr

¹⁷⁸ <https://data.oecd.org/healthstat/suicide-rates.htm>

and should be inseparable and different from others'. Hence, the bond between parents and children is perceived as special and can never be broken (Furedi, 2001) and thus children are granted "more profound emotional and moral significance" (Pratt, 2005: 269). As such, the socio-cultural value attached to children under Confucian familialism in traditional Korean society has been elevated through the structural changes since the 1970s. In particular, the late modern social textures woven from the late 1990s onwards have augmented ties between parents and children.

'Dangerous' strangers

In conjunction with the increased value of children, the preoccupation of South Koreans with the general wellbeing and safety of children and, more specifically, protecting children from crimes, has been intensified in correspondence with the perception that children are at risk and in danger. This perception has been amplified by the context in which children have routinely become more exposed to strangers.

Firstly, the number of children enrolled in pre-school institutions is indicative of the degree of contact between children and strangers. Pre-schools in SK, regulated by the Child Care Act, operate for 12 hours on weekdays – from 7.30 to 19.30 – and eight hours on Saturday – from 7.30 to 15.30. The number of children enrolled in play centres in SK has increased by almost a million over the past two decades - from 556,957 in 1998 to 1,450,243 in 2017 (Ministry of Health and Welfare, 2018). During the same period, those enrolled in kindergartens have also escalated in number, from 545,263 to 694,631.¹⁷⁹ Considering the long term, declining trend of fertility rates in SK, the increasing recourse to extra-familial institutions for childcare is remarkable in significance.

It should also be mentioned that there are now 46 24-hour play centres in Seoul, with a maximum capacity of 110 children in each.¹⁸⁰ These 24-hour care facilities and, more generally, the long operating hours, as well as the provision of Saturday care, are not common in other societies. In New Zealand, for example, the standard operating times for these facilities are

¹⁷⁹ Statistics Korea -

kosis.kr/statHtml/statHtml.do?orgId=101&tblId=DT_1YL21211&vw_cd=MT_GTITLE01&list_id=104&seqNo=&lang_mode=ko&language=kor&obj_var_id=&itm_id=&conn_path=MT_GTITLE01

¹⁸⁰ Childcare Korea - <http://info.childcare.go.kr/info/pnis/search/NurseryNameSIL.jsp>

from 8.00 am to 5.30 pm and for weekdays only.¹⁸¹ Those in SK are obviously meeting market demands for these levels of care. They match the long working hours familiar to most Korean. Yet, at a time when children, because of their rarity and personal relationships, have become so valued, they nonetheless spend so much of their time in the company of strangers away from their parents.

The increased level of contact between children and strangers is reflective of the reality that there is no family member who is readily accessible for children. In particular, the availability of parents, as the primary carers of their own children, has become significantly reduced over recent decades in SK.¹⁸² While mothers were once entirely responsible for childcare and fathers solely involved in economic activities, this is no longer true in modern-day SK. Due to the heightened education levels of females, combined with the expansion of the manufacturing and service industries, more than seven out of ten women are now employed full time.

Along with the growth of dual-income families, it should also be considered that South Korean parents now spend significantly less time with their children. Long working hours, a by-product of labour exploitation throughout the process of industrialisation, have since been internalised amongst South Koreans as productive or ethical. In addition, due to the spatial mobility enhanced by public transport, initially developed by the government to solve urban problems such as housing and overpopulation in the 1970s, people now regularly spend much more time commuting on a daily basis. The amount of time that commuters in Seoul and its satellite cities spend on public transport is two hours per day, and that of people in Gyeonggi is two hours and 15 minutes commuting.¹⁸³ Given the excessively long working and commuting hours in SK, the growing reliance on childcare institutions is easily understandable.

Moreover, solo parents have also contributed to this phenomenon. According to the Ministry of Gender Equality and Family (2018), the number of solo parents with minor children in SK was 425,046 and their average monthly income was only 52 percent of that of most South

¹⁸¹ Ministry of Education, New Zealand - <https://www.education.govt.nz/early-childhood/>

¹⁸² The proportion of dual-income families in all households in SK reached 46.3 percent in 2018 (Statistics Korea) - http://kosis.kr/statHtml/statHtml.do?orgId=101&tblId=DT_1ES4F01S&vw_cd=MT_ZTITLE&list_id=B19_EQ1&seqNo=&lang_mode=ko&language=kor&obj_var_id=&itm_id=&conn_path=MT_ZTITLE

¹⁸³ <https://news.naver.com/main/read.nhn?mode=LSD&mid=sec&oid=001&aid=0010678387&sid1=001>

Koreans.¹⁸⁴ It is hard to imagine that solo parents, who are often economically unstable, can raise their children without relying on childcare places. Similarly, the number of divorces has quadrupled in the past four decades from 24,278 in 1981 to 106,032 in 2017.¹⁸⁵ Gender inequality generated by the Confucian patriarchy and the improved socio-economic status of women were found to be the two most important causes of divorce in SK (Byun WS et al., 2002; Gwak BH, 2002; Heo MH, 2002; Song DY, 2004).¹⁸⁶

In contrast, in traditional Korean society it was rare for children to be exposed to strangers no matter where their parents were. This is because grandparents, siblings, or neighbours could look after those children whose parents were not immediately available, owing to the agriculture-based community life, familialism, and high rates of childbirth. However, this is much less likely to happen today. While parents in SK still wish for their children to be looked after by their own family members – especially, grandparents¹⁸⁷ (Ministry of Health and Welfare, 2015) -, the reality is that only three out of ten married couples get childcare support from grandparents (Song HN, 2017). Due to generational separation, caused by rural migration and urbanisation driven by industrialisation since the 1970s and the low levels of childbirth, parents in SK no longer expect to receive support from grandparents or siblings.

In addition, as the main type of housing has changed, so too has the sense of community and neighbourhood. Until the late 1970s 80 percent of the population in Seoul lived in detached houses and only four percent lived in apartments.¹⁸⁸ In 2016, however, more than 60 percent of the population in SK lived in apartments, and in the case of Sejong city – the new, *de facto* administrative capital of SK - the proportion of apartment residences reached 80 percent.¹⁸⁹

¹⁸⁴ <https://www.asiae.co.kr/article/2019072718240846477>

¹⁸⁵ The number reached at its peak in 2003, which was 166,617.

Statistics Korea - <http://kostat.go.kr>

¹⁸⁶ Gwak BH (2002), based on her analysis of 43 years' divorce documents provided by Korea Legal Aid Center for Family Relations, found that despite the changes of the structure and size of South Korean families during the latter half of the 20th century, it is patriarchy that still regulates family relations and generates power imbalance between husbands and wives, which is the major cause of conjugal conflicts and disputes in SK.

¹⁸⁷ According to a survey conducted by the Ministry of Health and Welfare in 2015, 79.7 percent of married women most preferred grandparents for childcare (except themselves).

¹⁸⁸ Seoul Institute - <http://data.si.re.kr/node/88>

¹⁸⁹ Korean Statistical Information Service – www.kosis.kr

Numerous Korean studies show that privacy, isolation, and anonymity are key characteristics of apartment living (Kim DH et al., 2010; Shin HK et al., 2010; Kim HS & Suh JY, 2014; Moon GJ, 2014; Shin HK et al., 2017). Interestingly, apartment residents in SK are aware that they are deprived of social interactions and recognise it as a matter that should be improved (Kim DH et al., 2010). Amongst people residing in apartments, characterised by the absence of collective sense of community and low levels of trust, it is unrealistic to expect reciprocal childcare support. In the everyday context where parents, grandparents, siblings, and neighbours are not readily or routinely available for the care of children, and where a neoliberal residual welfare model has been in place since the 1990s, it has become unavoidable that strangers frequently have direct access to children.

As such, with the value attached to ‘priceless’ children escalating, and given their constant exposure to strangers, there is now a generalised perception that the safety of children is always under threat and fear of crime against children has become widespread in SK.

The recent growth of reported cases of child abuse is indicative of the fear and anxiety of parents regarding the safety of their children. The number of reported child abuse cases increased by more than 30,000 over the past 16 years; from 4,133 in 2001 to 34,169 in 2017. However, according to a report published by the Ministry of Health and Welfare, 90.5 percent of all the cases of reported child abuse in 2017 was later re-categorised as ‘suspicious’ cases, rather than actually committed.¹⁹⁰

In addition, the public perception of ‘dangerous strangers’ has been reified as CCTV has become more common in childcare facilities. The installation of CCTV in play centres was initially recommended by the City Council of Seoul in 2009, based upon their belief that child abuse can be prevented and eradicated by this mechanism (Kwon GB, 2011). However, the high-profile cases of SVC noted earlier magnified the anxiety of parents about child safety, which prompted the amendment of the Child Care Act in 2015. Since then, this Act has compelled every play centre in SK to install CCTV. In the case of kindergartens, despite the fact that the installation of CCTV is not mandated by law but recommended by the Ministry of Education, 78.7 percent of private kindergartens have installed CCTV voluntarily, so as not to lose those customers who fret about child safety (Kim TD & Lee SY, 2017).

The extraordinary increase of reported incidents of (suspicious) child abuse and the compulsory

¹⁹⁰ http://korea1391.go.kr/new/page/sts_report.php

and voluntary installation of CCTV in childcare institutions mirror the intense parental vigilance of strangers as potential perpetrators. However, considering the fact that 80 percent of all the incidents of child abuse were committed by parents in their own home, and less than five percent of cases were committed in childcare facilities (Ministry of Health and Welfare, 2015), the perception that children are most at risk from strangers is misplaced and ‘stranger-danger’ is clearly exaggerated.

No wonder, then, that the continual, unusual growth of SVC in SK – more precisely, the increase of reporting and estimation of it – is a reflection of the fear of crimes against children. While there has been a significant growth in the number of SVC – from 459 in 2001 to 1231 in 2016 – it is not what it appears. Instead, it should be understood at the epistemological level, as a product of changes of the socio-cultural sensibilities of South Koreans towards children and their safety. It has become one of the unanticipated consequences of modernisation and industrialisation in SK.

The increase of the phrases ‘아동/안전’ (*adong/anjeon*, ‘child(ren)/safety’ in English) and ‘아동/범죄’ (*adong/beomjoe*, ‘child(ren)/crime’ in English) used in newspapers also indicates the amplified attention and anxiety regarding children and their safety in this country. The phrase ‘child(ren)/safety’ appeared 18 times in all South Korean newspaper articles in 1990, and 179 times in 2000, 4,320 times in 2010, and 7,299 times in 2018. In the case of ‘child(ren)/crime’, it shows a similar, increasing pattern during the same period; 24 times in 1990, 191 times in 2000, 5,106 times in 2010, and 5,468 times in 2018.¹⁹¹

It is important to recognise that it was between 2000 and 2010 that the frequency of both phrases increased explosively in the media, aligned with the growth of the number of reported cases of SVC. This is to say that the increased value of children and the public obsession with their safety has strongly influenced the discursive practices/consciousness of the public, which are then quantitatively re-written as statistics. This means that a population of five-digit numbers of SVC offenders and child abusers was recently ‘produced’ at the societal level in SK.

Likewise, I assume that the ‘Sewol-ho’ accident has also influenced the shaping of and increased anxiety about children’s safety in SK. ‘Sewol-ho’ was a ferry that sunk on the 16th

¹⁹¹ Korean Integrated News Database System -
<https://www.kinds.or.kr/v2/news/search.do;Bigkinds=1B6792867102411A6ACFC0B7FBE0826A>

of April in 2014. 299 students on an excursion died and five were missing.¹⁹² The public was deeply saddened by the accident but also furious with the government for its negligence, claiming that the students could have been rescued if President Park Geun Hye had supplied a more serious and sufficient response at the initial stage. This accident led, eventually, to the impeachment of Park for negligence as well as 17 other crimes and she is now in prison.¹⁹³ This case is defined as an accident or incident or state crime, depending on one's perspective. Regardless of the legal and ethical accountabilities of those parties involved, I assume that the case, unintendedly, has strongly affected the sensibilities of South Koreans towards the safety of children.

It might be argued that penal populism in SK relates specifically to the cultural value of daughters rather than children - since almost all the SVC incidents in the 2000s were committed against girls, including the four cases described in Chapter Three. However, it is not easy to demonstrate this argument.

Firstly, even if the victims of the SVC cases were girls, the punitive policies legislated under the influence of penal populism in the 2000s are gender-neutral or gender-blind. This means that all those policies are applicable to sex offenders against *children* or *a person(s)* – other than exclusively applicable to sex offenders against girls.

Second, it is not clear whether the cultural value of daughters increased so significantly until the 2000s that it, exclusively, has shaped the punitive discourses and legislations in SK. According to Kim YM (2019), son preference amongst South Koreans still existed until the late 2000s – although it has significantly weakened from a long-term perspective. Based on the results of Korean General Social Survey provided by Statistics Korea, Kim YM (2019) showed that the proportion of South Korean parents who preferred a son to a daughter increased from 36.2 percent in 2004 to 42.3 percent in 2008. Kim YM (2019) also showed that during the same period the proportion of parents who preferred a daughter to a son increased, too – from 31.9 percent in 2004 to 40.8 percent in 2008. These statistics show that both son preference and daughter preference amongst South Koreans increased, and that the proportion of parents who preferred a son to a daughter was slightly higher until the late 2000s – when penal populism

¹⁹² <https://terms.naver.com/entry.nhn?docId=2119309&cid=43667&categoryId=43667>

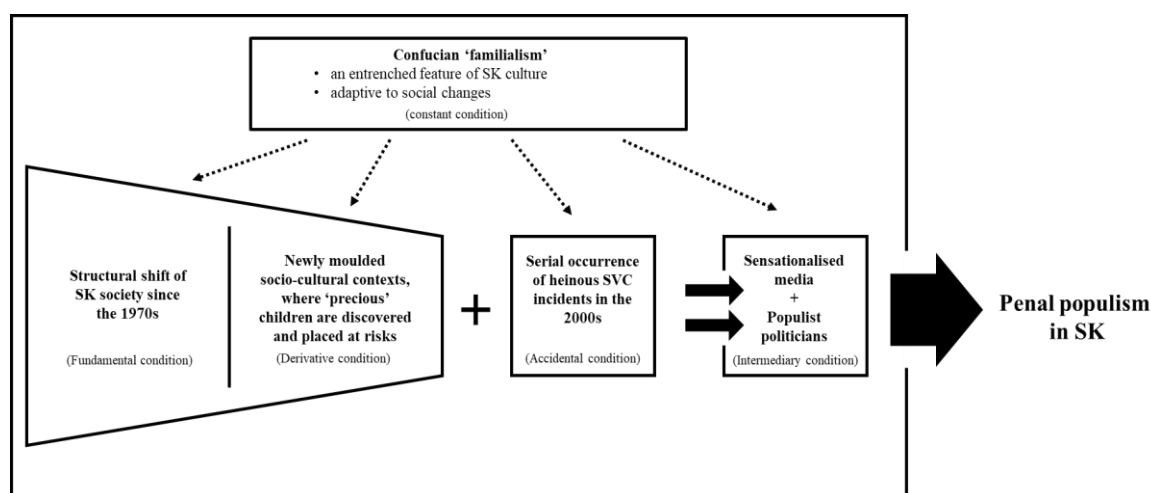
¹⁹³ JoongAng Ilbo - <https://news.joins.com/article/21483889>

was most pronounced in SK.

Therefore, it is uncertain whether the cultural value of daughters (or sons) is particularly more proximate to penal populism in SK. Nonetheless, the increase of the cultural value of *children* is highly relevant to the punitive development of punishment since the 2000s in this country, as explained throughout this thesis so far.

Lastly, I emphasise that the specificity of penal populism in SK cannot be sufficiently explained without understanding the traditional culture of Confucian familialism and, more importantly, the colossal social changes, which began as early as the 1960s and accelerated through the last quarter of the 20th century.

Figure 5. 24. Conditions for penal populism in SK



As presented in Figure 5.24., penal populism in SK, represented by the legislation of punitive penal policies for SVC, is born out of the following conditions, all of which are necessary for its development and consolidation. First, Confucian *familialism*, entrenched as a cultural norm, has provided the constant condition. Even if the influence of familialism is not as strong as it used to be, it has successfully adapted to social changes, thus still alive in the present SK. Second, the underlying, structural shift of South Korean society since the 1970s has provided the fundamental condition. Third, the structural shift has moulded the socio-cultural contexts where precious children are discovered and placed at risks - the derivative condition. Fourth, the serial occurrence of heinous SVC cases in the 2000s – described in Chapter Three - is the accidental or contingent condition. Fifth, sensationalised media reporting and populist politicians – demonstrated in Chapter Three and Four - have acted as the intermediary condition. The specific form of penal populism in SK has been shaped within these conditions.

Chapter Six

Declarative manifestations of penal populism in SK

The mechanism of penal populism in SK has been demonstrated and the form it has taken – specifically concentrated on SVC - has also been explained in the previous chapters. I will now return to the point of departure of my inquiry – mentioned in Introduction. To restate the departure, despite the fact that penal populism has strongly operated since the 2000s in SK, the imprisonment rate in this country rapidly decreased from 136 in 2000 to 97 in 2010.¹⁹⁴

This apparent contradiction between penal populism and the decreased imprisonment rate during the 2000s can be partially explained by the knowledge produced so far in this thesis. That is, despite the punitive policies legislated under the influence of penal populism in SK, its impact on overall imprisonment levels is limited, since the punitive policies have so far been exclusively reserved for SVC. As presented in Table 4.2. in Chapter Four, SVC consisted of only 0.03 percent of the total volume of crimes during the 2000s in SK.¹⁹⁵

However, this conclusion is partial, insufficient yet to provide a comprehensive understanding of the decreased imprisonment rate during the 2000s, as well as the effect of penal populism in SK. Hence, the purpose of this chapter is to seek to explain why, how, and in what contexts the apparent contradiction between penal populism and the sudden drop of the imprisonment rate occurred in the 2000s in SK.

The main arguments in this chapter are as follows:

First, the rapid decrease of the imprisonment rate in the 2000s in SK was primarily caused by the changed patterns of pardon, parole, and remand within the context of the criminal justice reforms driven by the two progressive governments between 1998 and 2007.

Second, ‘independence of the judiciary’ became institutionalised during the CJS reforms,¹⁹⁶ whereby the judiciary has been able to resist the impact of penal populism, which also

¹⁹⁴ International Centre for Prison Studies - <https://www.prisonstudies.org/>

¹⁹⁵ It is also possible to assume that the decrease of the imprisonment rate in the 2000s in SK was attributable to the decrease of the overall crime rates during the same period. However, the total number of crimes did not decrease but stabilised at approximately two million during the 2000s – which also can be found from Table 4.2. in Chapter Four.

¹⁹⁶ This is generally supported in the disciplines of criminology and criminal law in South Korea (Moon JW, 2005; Han SH, 2010; Kim MS, 2011; Ha TH, 2013; Chang YS, 2017; Han SK, 2018; Cho YS, 2018).

contributed to the decrease of the imprisonment rate in the 2000s in this country.

Pardon, parole, and remand

The reduction of the size of the prison population in the 2000s in SK was caused by the increase of the number of people who were granted pardon and parole, and the decrease of the number of people on remand. In SK, pardons are granted by president, and paroles are permitted by the Parole Committee first and then Minister of Justice. In the case of remand, judges decide whether or not to detain a suspect under investigation prior to conviction. Table 6.1. below shows the number of pardons and paroles granted under the six governments between 1988 and 2016 in SK.

Table 6.1. The number of pardon and parole given between 1988 and 2016¹⁹⁷

Year	President	Political Orientation	# of Pardon	# of Parole
1988–1992	Roh Tae Woo	Conservative	6,747	N/A
1993–1997	Kim Young Sam	Centre	38,750	18,296
1998 – 2002	Kim Dae Jung	Progressive	70,371	40,382
2003 – 2007	Roh Moo Hyun	Progressive	37,188	47,077
2008 – 2012	Lee Myung Bak	Conservative	12,966	38,145
2013 – 2016	Park Geun Hye	Conservative	16,783	24,115

It is clear that the number of people who were released from prison by pardon and parole under the two progressive governments (1998-2002/2003-2007), respectively, was far larger than that under any other individual government. In particular, the number of people who were pardoned during the term of President Kim Dae Jung amounted to approximately 70,000. Considering the fact that the number of prisoners per year on average during the 2000s in SK was approximately 50,000, the total number of people released under Kim Dae Jung and Roh Moo Hyun – 110,754 and 84,265, respectively – has a significant implication for the size of the entire prison population and the overall imprisonment rates in the 2000s in this country.

It is worth noting here that the statistics presented in Table 6.1 was originally produced by the Ministry of Justice, South Korea. However, the Ministry of Justice do not provide

¹⁹⁷ The data used in Table 6.1. were originally presented in White Paper on Crime (2005, 2010, and 2018, Ministry of Justice).

disaggregated data, but aggregate data only. Thus, the specific types of crime that individual pardonees or parolees committed are not publicly available. Nonetheless, White Paper 2003 (Ministry of Justice, 2003: 348-349) clearly states that “the number of parolees rapidly increased during the term of President Kim Dae Jung”, and that “some types of crime that were previously not eligible for parole became eligible by the government of Kim Dae Jung, such as drug-related offences, domestic violence, and organised crime”.

Although detailed information about individual parolees and pardonees is not available, Table 6.1. provides sufficient information, necessary in this specific context: that the number of parole and pardon granted under Kim Dae Jung was markedly larger than that given under any other presidents - which most affected the decrease of the imprisonment rate in the 2000s in SK.

In addition to pardon and parole, the number of people on remand gradually decreased during the 2000s, which also had a substantial impact on the imprisonment rate in SK. Table 6.2. below provides the number of prisoners in total, the number of convicted prisoners, and the number and proportion of those on remand annually between 1998 and 2008 in SK.

Table 6.2. The number of prisoners, convicts, and those on remand from 1998 to 2008 in SK¹⁹⁸

Year	Total	Convicted	Remand (%)
1998	67,883	36,645	31,238 (46.0)
1999	68,087	39,478	28,609 (42.0)
2000	62,959	38,647	24,312 (38.6)
2001	62,235	38,472	23,763 (38.1)
2002	61,084	38,173	22,911 (37.5)
2003	58,945	37,692	21,253 (36.0)
2004	57,184	36,546	20,638 (36.0)
2005	52,403	35,110	17,293 (33.0)
2006	46,721	31,905	14,816 (31.7)
2007	46,313	31,086	15,227 (32.8)
2008	46,684	32,316	14,368 (30.7)

¹⁹⁸ The data used in Table 6.2. were originally presented in Yearbook (2006 and 2012, Ministry of Justice). Regarding remand, there was no disaggregated data, but aggregate data only in these books, too.

It is noticeable that the total number of prisoners, the number of convicted prisoners, and the number and proportion of people on remand all gradually decreased – with marginal fluctuations – for the ten years of the two progressive governments. It is important to note that the decrease of the total number of prisoners was mainly caused by the drop of the number of people on *remand*, rather than that of convicted prisoners. That is, while the decrease of the number of convicted prisoners was less significant (in relative terms) – from approximately 36,000 in 1998 to 32,000 in 2008 -, the number of people on remand rapidly decreased from approximately 31,000 to 14,000 during the same period. In other words, the number of the latter group dropped by approximately 17,000, which is about one-thirds of the number of prisoners per year in SK.¹⁹⁹ As such, the changed patterns regarding pardon, parole, and remand were major factors that affected the decrease of the overall levels of imprisonment in the 2000s in SK, at a time when populist legislation flourished.

These changes in the prison population did not occur by accident but were ‘made’ by the governments in the 2000s. In particular, President Kim Dae Jung²⁰⁰ played a crucial role in the reform process. Prior to his presidency, he had been the political rival of President Park Chung Hee. Park and his governments viewed Kim Dae Jung as challenging their (military-based) power and authority and thus severely persecuted him. Indeed, Korean Central Intelligence Agency kidnapped Kim in 1973 by the order of President Park, and then again, the military government imprisoned Kim for six years for (fabricated) treason.²⁰¹ These personal experiences have reinforced his political orientations, beliefs, and commitment to peace, human rights, and democracy – President Kim Dae Jung was awarded the Nobel Peace Prize in 2000.²⁰² The exceptional, enormous number of people granted special pardons and paroles during his presidential term – over 110,000 approximately – can be interpreted as part of the realisation of his political belief. It should be emphasised here that ‘special pardon’ is one of the exclusive rights of president in SK. This is to say that special pardon can be granted at the discretion of president only - without formal agreement of the National Assembly -, which is

¹⁹⁹ Interestingly, the number of people on remand gradually increased to over 20,000 approximately for the next ten years under the conservative governments (Ministry of Justice, 2019).

²⁰⁰ The political orientations, policies, and governance of the government of Kim Dae Jung are described in Chapter One.

²⁰¹ Academy of Korean Studies - <http://www.aks.ac.kr>

²⁰² The Nobel Prize - <https://www.nobelprize.org/>

ensured by Article 9 of the Amnesty Act.²⁰³ Also, it was during the presidency of Kim Dae Jung – January 1999 - that Minister of Justice publicly announced that remand order should be made as little as possible (Choo JH, 2017). As shown above, this was effective in that the number of people on remand continued to rapidly decrease in the 2000s in SK.

The jury system and the Sentencing Commission

As there had been no mechanism to control the politicisation of the criminal justice system in the past – judges in particular -, it was highly important for the governments to ensure independence of the judiciary during the criminal justice reform in the 2000s. At the same time, there was a consensus amongst legal scholars and professionals in SK that accountability of the judiciary should also be ensured in parallel with their independence. Those legal experts insisted that there should be a mechanism to strike the balance between independence of the judiciary and their public accountability. In this context, they argued for the introduction of the jury system and the Sentencing Commission in particular (Park KW, 2009; Oh YK, 2009; Choi SY, 2011; Tak HS & Choi SH, 2011; Kim DS, 2012; Kim HK & Park KS, 2013; Hong SW, 2013; Kim BS, 2019).

In May 1999, the ‘Committee for Criminal Justice Reform’ was established as an advisory board of President Kim Dae Jung, which discussed the introduction of the jury system for the first time at the governmental level. However, in December 1999, the Committee concluded that the participation of the public in criminal trials as jurors is a grave matter which would have significant legal, political, and social impacts in SK, and thus this issue should be addressed from a medium to long-term perspective. Then, in 2004, the next government of Roh Moo Hyun stressed the importance of the criminal justice reform again and established the ‘Committee for the Reform of Criminal Justice Institutions’. The members of this committee further discussed regarding the introduction of the jury system in detail (Kim HK & Park KS, 2013; Choo JH, 2017).

Eventually, the Act on Citizens’ Participation in Criminal Trials²⁰⁴ (‘the Act’, hereafter) was legislated in 2007 to introduce (and regulate) the jury system, and the first jury trial was held

²⁰³ Korea Legislation Research Institute - https://elaw.klri.re.kr/kor_service/lawView.do?hseq=46755&lang=ENG

²⁰⁴ The full provisions of the Act can be found from the website of Korea Legal Research Institute - <https://elaw.klri.re.kr/>

in February 2008. In SK, jurors may deliver a guilty/not-guilty verdict *and* they may present their opinion on the extent and conditions of punishment of the person under trial – Article 46 of the Act.²⁰⁵

In fact, there was a concern amongst legal experts in SK that verdicts of the jury would be excessively tough, because they are not legally trained but chosen at random from the general public. This means that verdicts of jurors were expected to be emotionally driven, rather than based on legal reasoning, rationality, fact, and evidence (Kim HK & Park KS, 2013).²⁰⁶ However, this expectation has not held true in SK in reality.

The (supposed) punitive verdicts of the jury are impossible to penetrate the institutional rationality of the judiciary and thus their court judgments in SK. This is because verdicts and sentencing opinions of jurors are not legally binding but *may* be considered by judges as a suggestion – Article 6 of the Act.²⁰⁷ In other words, it is judges' choice whether to accept or reject verdicts and opinions of jurors. This arrangement signifies that 'independence' of the judiciary is taken more importantly than public accountability in SK, where the historical trauma still remains.

In parallel with the jury system, the Sentencing Commission ('the Commission', hereafter) was established in 2007, regulated by the Court Organization Act ('the Act', hereafter).²⁰⁸ The Commission consists of one chairperson and twelve members. Eight members of them are chosen from outside the judiciary, including law professors, journalists, and civil activists - Article 81 (3) of the Act. This composition of the Commission – the ratio of judges to non-judges - reflects its purpose, which is to ensure 'democratisation of sentencing'.

Similar to the jury system, the establishment of the Commission was a controversial issue at that time in that independence of the judiciary would be compromised by the Commission (Choi SY, 2011). This means that civil pressures can be transferred to the judiciary through the channel of the Commission and the Sentencing Guideline they provide ('the Guideline', hereafter), which compromises the independence of the judiciary and is against the Constitution.

²⁰⁵ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=46745&lang=ENG

²⁰⁶ This concern can also be found in other jurisdictions (Zimring et al., 1996).

²⁰⁷ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=46745&lang=ENG

²⁰⁸ The full provisions of this Act can be found from the website of Korea Legal Research Institute - <https://elaw.klri.re.kr>

However, there are barriers that protect judges from the potential of public pressures in SK.

First, after deliberated discussions and debates, the legislature decided to establish the Commission under the ‘Supreme Court of Korea’ – the judiciary (Choi SY, 2011). This is because the primary responsibility of the Commission is to prepare the Guideline, and it is the judiciary that has accumulated knowledge, experience, data, and materials necessary for the Guideline – according to the Committee for Law and Justice, the 263rd National Assembly (December 2006).²⁰⁹ In fact, the Guideline was prepared on the basis of the analysis of 44,015 judgments given between 2004 and 2007 (Choo JH, 2017). This meant that existing court judgments - where the rationality of the judiciary was deeply ingrained - were provided as a new set of criteria for sentencing in the future, in the name of ‘democratisation’ of sentencing. This, again, meant that the court judgments would not significantly change in terms of the extent and conditions of punishment in particular, in spite of the introduction of the Guideline. Indeed, approximately 80 percent of all court judgments have since been given in accordance with the Guideline (Park KW, 2009; Tak HS & Choi SH, 2011; Choi SY, 2011; Choo JH, 2017). Furthermore, the Guideline is not legally binding – Article 81 (7) of the Act.²¹⁰

Also, the Guideline appears to have restricted the effect of the jury system in SK. So far, verdicts and sentencing opinions of jurors have not been as punitive as predicted. According to Kim BS (2019), the verdicts and sentencing opinions of jurors and the court judgments of judges were virtually identical in the vast majority – 93.2 percent - of all the jury trials held between 2008 and 2017. However, this result should not necessarily be interpreted as indicating that jurors/the public in SK are not punitive *per se*. Rather, it appears that jurors were given relevant, specific information about the crime incidents, within the framework of the Guideline - representative of the judicial rationality -, thereby leading to the agreement between the judgements of the judges and those of the jurors.

To summarise, the Sentencing Commission was introduced under the judiciary, and the Sentencing Guideline was based on the existing judgments of judges themselves. Moreover, the Guideline is not legally binding but circumscribes the verdicts and sentencing opinions of the jury in SK.

²⁰⁹ National Assembly of South Korea - <http://likms.assembly.go.kr/bill/main.do>

²¹⁰ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=48257&lang=KOR

As such, although the jury system, the Commission, and the Guideline were all introduced for the purpose of judicial democratisation or democratisation of sentencing during the criminal justice reforms in the 2000s, these only have symbolic effects rather than substantial. Because of the historical experiences of the politicisation of the criminal justice system, independence of the judiciary was upheld as the highest value of the reforms in the 2000s. Judicial independence, indeed, became a dominant, overarching principle of the reforms, which regulated the specific institutional arrangements as explained above. Within these arrangements, the judiciary has been able to resist public and political pressures since the 2000s in SK.

It is noteworthy here that, unlike in Japan (see Johnson, 2002), prosecutors do not appear to have had a significant role in controlling imprisonment levels in SK. For example, Kim IH (2010) has shown in his research that prosecutors were not specifically related to the imprisonment patterns in the 2000s in SK. The statistics regarding ‘warrant of detention’ was crucial in Kim IH’s (2010) argument.

The proportion of the warrants of detention requested to judges by prosecutors only – separate from those requests made initially by the police – continued to increase from 5.8 percent in 1995 to 10.1 percent in 2008.²¹¹ This increase can hardly be interpreted as indicating the influence of prosecutors on the reduction of the imprisonment rates in the 2000s in SK. Rather, the proportion of the warrants of detention that were issued by the judiciary decreased from 84.2 percent in 1995 to 66.6 percent in 2008 (Kim IH, 2010: 70). In addition, the proportion of offenders who received a sentence of imprisonment at all criminal trials in SK gradually decreased from 18.6 percent in 2002 to 14.3 percent in 2012²¹² - while all the punitive penal policies were formulated and legislated during this period. These statistics support that the judiciary – rather than prosecutors – contributed to the decrease of the imprisonment levels in the 2000s, as a defence against penal populism in SK.

In this way, the specific effect of penal populism in SK has become only symbolically manifested, contrary to that of other societies, where imprisonment rates have significantly risen.

²¹¹ The original data were presented in Yearbook 2009, published by Supreme Prosecutor’s Office, South Korea.

²¹² The original data were presented in Yearbook of Justice (from 2002 to 2010), published by Supreme Court of Korea.

Conclusion

Summary

Existing Korean criminological literature has argued that punishment has been significantly toughened since around 2000 in SK. These studies refer to penal populism as the driving force of the punitive penal trend in this country. However, none of these works demonstrated whether or not penal populism operates in actuality, nor explained the recent punitive development in SK, based upon theoretical understandings of penal populism. Nonetheless, the shared assumption and insight regarding penal populism amongst criminologists in SK gave me an initial interest in this topic. Also, the unusual phenomenon, the co-existence of penal populism and the decrease of the imprisonment rate in the 2000s in SK, provided me with the specific point of departure for this thesis.

This thesis is about the development of punishment since the 2000s in SK. I explained the punitive penal trends by drawing upon Pratt's (2007) theory of penal populism. The two major tasks in this thesis were to demonstrate that penal populism has operated in SK and to explain the specificity of the form it has taken in this country.

For the purpose of demonstration, I analysed newspaper articles, social media, legislative bills, and minutes of the National Assembly, and read the discourses of the media, the public, and politicians regarding SVC. These analyses showed that the discourses of SVC in Korean society are explicitly punitive. The results also revealed that the punitive discourses of the media and public are mobilised and consumed by populist politicians as a justification for punitive legislation.

In terms of method, the analysis of social media I conducted in this thesis was not used (or was rarely used) in existing literature on penal populism, which is complementary to the analysis of traditional media such as TV news or newspaper articles. That is, while newspaper articles were analysed to interpret public perceptions regarding SVC - based on the so-called 'media effect' (Jewkes, 2011) -, I analysed social media to directly show the actual language that the SK public used.

As for the specific form of penal populism in SK, my focus was to explain why and how penal populism in this country has operated exclusively around sexual violence against *children*. In short, the problematisation of SVC in the 2000s in SK is a product of familialism, rooted in Confucianism, and, more importantly, the colossal social changes that occurred in the second

half of the 20th century in this country. In particular, the compressed process of industrialisation in the 1970s and the late modern social conditions since the late 1990s paved the way for the increase of the value of children as well as the ‘risks’ of crimes against children by ‘dangerous strangers’. In this context, several high-profile SVC incidents were committed in the 2000s. The ‘demonic’ offenders of these cases were manufactured and exploited by the media (and politicians later), magnifying the social obsession with the protection of children from crimes. This is how the punitive penal policies were formulated specifically around children in SK. ‘Priceless children’ are positioned at the very core of the mechanism of penal populism in SK.

However, despite the legislation of the punitive policies for SVC, the imprisonment rate in this country rapidly dropped in the 2000s. Considering the increase of both the number of crimes in total and that of SVC during this period, the decrease of the imprisonment rate was not caused by a decrease in the crime rate. Rather, the contradiction implies that imprisonment rates at that time were controlled by a certain mechanism, and that the effect of penal populism is declarative rather than functional in SK.

The decreased levels of imprisonment in the 2000s cannot be explained without reference to the national history of SK. The experiences of socio-political oppression and physical violence of South Koreans, exerted by means of the criminal justice system under authoritarian regimes in the past, created public aspirations for democracy, liberty, and human rights. And these aspirations led to the electoral success of the Democratic Party in 1998, which formed the first progressive government in the political history of SK. The progressive party then gained political power for ten years, from 1998 to 2007. During the two presidential terms, the governments reformed the criminal justice system, designed as part of their broad social reforms. The mentalities of the progressive governments, conceived from the historical trauma, were substantialised as the increase of the number of pardons and paroles granted, and the decrease in the number of remands in custody ordered during the criminal justice reforms. In juxtaposition to this, ‘judicial independence’ became a dominant principle of the reforms, which was to avoid repeating the history of the politicisation of the judiciary, as had happened in the era of dictatorships. Independence of the judiciary, as a goal and as a principle of the reforms, regulated the arrangements of institutions newly introduced for the purpose of ‘democratisation of sentencing’. Indeed, the effects of ‘democratic’ institutions such as the jury system, the Sentencing Commission, and the Sentencing Guideline have been restricted by the historical product, judicial independence.

The effect of penal populism in SK can thus be understood as a paradox of its shift to a democratic social order from authoritarianism since the late 1980s, where the trajectory of punishment has also begun to move from the explicit penal control of an entire society based on authoritarian sources to penal populism focusing more on specific categories of crime. At the same time, the governments and legal elites attempted to reform the criminal justice system, to get rid of the legacies of authoritarianism and to ‘democratise’ criminal justice - sentencing in particular. However, the democratic political principle of the separation of powers, especially independence of the judiciary, has come to have particular significance through the specific historical contexts of SK, which now controls the power and effect of penal populism.

As such, the specificity of penal populism in SK has been formed within its various local conditions, including the traditional culture and norms; the trajectory and characteristics of social changes; historical experiences and institutional arrangements; and public sentiments and sensibilities towards crime. This case study of penal populism in SK thus has theoretical implications for penal populism. First, explanations of penal populism cannot be reduced to a matter of the representative democratic system or choices of individual (populist) politicians. For example, the underlying structural shift of Korean society – transition to modern, and late modern society – and newly derived everyday contexts, where socio-economic insecurities and public anxiety of safety of children are generalised, are part of the necessary conditions for penal populism in SK. Second, the effects of penal populism, represented by rising imprisonment rates, are not inevitable in late modern societies, but are varying, depending on these local conditions and their contingencies in a particular society. This South Korean case clearly shows that there are a variety of determinants of the impact of penal populism, and that *history* precedes and has a formative effect on those determinants.

Reflection

While I was conducting this PhD research, I came to know that there might be some criticisms about penal populism studies from conference presentations and conversations with my colleagues and friends. I think these are worth mentioning here, briefly and informally, with my little reflection.

The criticism is, most of all, that penal populism theorists merely understand the world from the perspective of elitism or enlightenment. This criticism or, perhaps, misunderstanding can

also be applied to the stream of so-called ‘panic’ research – no matter whether the elitist or enlightenment perspective is *per se* acceptable or not.

First, researchers of penal populism can be criticised that they dismiss the actual consequences of crimes and the pains of crime victims – SVC, in this thesis. In other words, they define the degree of pains that victims ‘should’ feel, as well as the degree and kind of emotions and reactions of the public.

It is true that the consequences of victimisation of SVC can be extremely damaging. However, it is also important to remember the fact that while 70 percent of all SVC incidents identified in SK belong to the legal category of ‘indecent act’ which do not involve any (physical) injury, less than one percent have caused serious harms to the victims. What I am critical of is the fact that those cases consisting of one percent of SVC are (mis)representing all SVC incidents, and the fact that this misrepresentation justifies the punitive legislation in SK. Most importantly, I am critical of the (dominant) discourse that punitive punishment is the best solution to SVC problems, because it marginalises other discourses regarding restoration and reparation of victims, and prevention, rehabilitation, and resocialisation of offenders. I am concerned about this, rather than indifferent to or dismissive of the pains of victims.

Second, researchers of penal populism may also be criticised as arguing that the penal and political domains must be protected from the public, who are ‘essentially’ emotional and irrational. This criticism is, to me, a matter of the identity of the public, methodology, and ‘public criminology’.

The word ‘the public’ reminds me of Stuart Hall and the questions he had. Who are the public? Who are we specifically referring to the public? Do they exist as a collective, homogeneous, and historically indiscrete being? Do they have certain inherent characteristics?

Regarding the identity and characteristics of the public, the analysis of Kim BS (2019) – presented in Chapter Six - is interesting. The analysis showed that jurors and judges made the same judgements in terms of the extent of punishment in most jury trials that have been held so far in SK. This result seems contradictory to the analysis I conducted in Chapter Three that the public perceptions of crimes in SK are very punitive – but it is also in keeping with the general theme of international research on this matter showing that, when asked about particular cases, the public usually support the sentence actually given. Apparently, the collective, irrational public turned into individual, rational jurors. As mentioned above, the

Sentencing Guideline has affected the verdicts of jurors in SK.

Presumably, individuals who have specific information – not necessarily, knowledge – on a certain subject make a better judgement about the subject than those who do not have the same information. I am not talking about a particular group of bright people, but any individuals. This might have methodological implications for research of ‘public perception’ or ‘public opinion’.

Existing literature of penal populism – as well as this thesis – show that public discourses play a crucial role in the mechanism of penal populism. Perhaps we need to think more seriously about public perceptions, discourses, and opinions, which are referred to by policymakers – not even referred to but imagined in some cases. How have we so far measured and interpreted public perceptions of offenders and victims of crimes, and existing levels of sentencing and punishment, and fear of crime? Who have we surveyed? What specific information did those who were surveyed have? Is it not the case that we, being overly confident in advanced techniques of statistical analysis, have asked questions to people who are not ready to answer, as a reliable source of reference for policy formulation – at least, in SK?

This appears not only a matter of methods and methodologies but, eventually, a matter of communication, public dissemination of relevant information and knowledge, and public engagement of criminologists – which, for example, Currie (2007) or Loader & Sparks (2010) talk about. The public role of criminologists seem particularly important in the tumultuous realities in the late 2010s in SK.

The following trends represent the current landscape of Korean society: the on-going conflicts between South Korea and North Korea; the polarisation of politico-economic ideologies regarding national security and the free market economy in particular; the increase of the number of foreign immigrants, and public fear of and hostility towards immigrants and their crimes; the strong wave of the ‘Me Too’ movement, and the concurrent increase of the public awareness of sexual ‘violence’ and the problematisation of the existing gender system, and; the inundation of fake news, produced and circulated through social media platforms in particular.

Within these realities, South Koreans are becoming more vulnerable to dogmas, ideologically biased perspectives, baseless rumours, and even completely fabricated information. Considering this vulnerability, it appears to me that punitiveness will continue to exist in the near future. ‘Digital Prison’ is a clear example. The owners of the website called ‘Digital Prison’

have publicised personal information of high-profile sex offenders, including their photos. What is more problematic is, even *innocent* people are accused as a sex offender and their information is disclosed to the public via the website. One of those falsely accused and publicly humiliated – a university student - committed suicide recently.²¹³ Regardless of whether ‘Digital Prison’ is viewed as private/popular justice or vigilantism, it is indicative of a form of adaptation of punitiveness to the present media/IT environments in particular.

Nonetheless, the new environments, characterised by the diversification and democratisation of the media, are not necessarily harmful to society. These new features are, simultaneously, the possibility of the media to fight against the problems created by/via the media themselves. In this respect, criminologists are given more options to communicate with the public, and the public role of criminologists thus seems more important than it was.

A prerequisite for effective public communication of criminologists is, perhaps, to gain insight into their own society. To say, even if criminologists do talk to the public in good faith, there is no guarantee that the public accept their knowledge. There are, probably, conditions within which experts’ knowledge is more favourably accepted (or rejected) by the public. Public criminologists might need to investigate those conditions for successful knowledge transfer, based on profound insight into society, to be better able to communicate with the public. I will delve into this matter in SK contexts, as one of my research topics in the future.

Lastly, imprisonment rates are an important indicator of penal populism/punitiveness of a society, but effects of penal populism do not have to be read only in terms of imprisonment rates. As this thesis has shown, penal populism has strongly operated while imprisonment rates have decreased in SK. Is SK then a punitive or non-punitive society? Do imprisonment rates really represent the degree of punitiveness and the effect of penal populism in a society? Alongside imprisonment rates, legislation of disproportionately punitive policies might also be considered as an indicator of punitiveness/penal populism, no matter what specific form it takes, and no matter whether or not it has actual impacts on imprisonment rates.

This thesis demonstrated and explained how punitiveness has been institutionalised by the mechanism of penal populism since the 2000s in SK. In explaining the specificity of penal populism in SK, I showed: the structural changes between the 1960s and the 2000s at the macro level; the formation of penal policies and CJS institutions particularly during the 2000s at the

²¹³ <https://www.chosun.com/national/regional/yeongnam/2020/10/08/6RZA33BNAVCA7FZGBSWORUNV7A/>

meso level, and; the changed sentiments, discourses, and practices of South Koreans in day-to-day contexts at the micro level. The explanations of these changes that occurred at multiple layers of SK society, and the modes and trends of punishment that corresponded to the changing social contexts contribute to existing understandings of SK society, hopefully.

From a comparative perspective, the unique features of penal populism in SK lie firstly in its making. While representative democracy, market economy – neoliberalism in particular –, and late modernity are found to have existed almost universally in societies where penal populism has operated – including SK-, Confucian familialism, and the by-products of the specific process of industrialisation under authoritarianism and the shift towards substantive democracy distinguish SK from other societies. In addition, the effect of penal populism in this country is also more exceptional than common. The specific national history of military dictatorship and politicisation of the CJS formed the strong public desires for human rights, democracy, and judicial independence. These public desires were later realised by two of the main actors – presidents and judges – as the sudden, significant drop of imprisonment rate through the CJS reforms from 1998 to 2007. The symbolic effect of penal populism, and the process and contexts where the effect was restrained are specific to SK rather than universal. The specificity of penal populism in SK can be added to theories of punishment and society.

From a longer-term perspective, it can be generally said that the criminal justice system and punishment in SK has developed in humane and democratic ways since 1987 (Han IS, 2007; Son DK, 2009). Also, it appears that there have been other relatively small-scale, less identifiable penal trends since around 2000 in SK (Lee HJ, 2013; Kim IJ & Jung KS, 2014). Nonetheless, it is penal populism that represents the predominant trend or the new mode of punishment that has emerged since the 2000s in this country.

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