

## Slowing at Sunset: Administrative Procedures and the Pace of Reform in Korea

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*Overhaul of administrative procedures is an important part of most democratic transitions, and procedural regularization and transparency are often seen as steps toward the consolidation of democracy. Administrative procedures affect policy decisions, but whether particular procedural reforms facilitate or hinder democratic responsiveness depends on the details of the procedure and the political environment. In this article, we examine a particular procedural reform: the adoption of a sunset provision in Korea as part of an omnibus administrative procedures package at the end of Kim Young Sam's presidency. A sunset provision might be seen as clearly promoting democratic responsiveness by requiring the winner of the most recent election to explicitly decide whether to keep or drop old rules and regulations. Alternatively, it might be seen as limiting a democratically elected leader's ability to change policy in accordance with his mandate, by requiring expenditure of effort and resources just to maintain a status quo. We argue that the second interpretation applies to the Korean case. We use a spatial model and evidence from regulatory decisionmaking to argue that Kim Young Sam favored the sunset provision because it would constrain the policy decisions of future presidents. Our model offers an explanation for why Kim Young Sam would propose a sunset provision that limited the life of his own regulations. **KEYWORDS:** administrative procedures, sunset law, Korean politics, democratization, bureaucratic reform*

REFORM OF ADMINISTRATIVE PROCEDURES IS OFTEN SEEN AS PART OF THE consolidation of a democratic transition. Procedural reforms promote transparency and accountability. They establish limits on the power of the state. They are often key to enfranchising new constituencies—those whose interests had been excluded from government decisions in the prior nondemocratic regime. For these reasons, both governmental actors within countries and outside organizations such as the Organisation for

Economic Co-operation and Development (OECD) often view overhaul of administrative procedures as an event that accelerates the process of democratization.

But procedural reform can slow the process of reforming policy in response to democratic forces. The same administrative procedures that promote transparency and accountability can slow the ability of democratically elected leaders to change policies in ways that reflect electoral mandates. Administrative procedures can affect policy choices by enfranchising particular constituencies and by allowing or requiring participation by various groups. This broader participation creates opportunities for policy change to be blocked or significantly slowed. Similarly, procedures create transparency and accountability by requiring officials to document and justify decisions. The time and resources required to document procedural compliance again slows policy change, making otherwise desirable changes and reforms no longer worth the effort.<sup>1</sup>

The potential for procedural reform to slow policy reform is present in all countries, but it is particularly important in new democracies. New democracies find themselves with status quo policies that were established by prior nondemocratic regimes and thus far away from the preferences of popular majorities. Slowing the process of policy reform may slow the government's ability to implement democratic policy mandates,<sup>2</sup> potentially offsetting the positive effects of broader participation and greater accountability.

In this article, we focus on a particular procedural reform in a particular context: the sunset provision adopted in Korea in 1997. We argue that this procedure is best understood as a deliberate and successful attempt to slow the process of policy change.

Sunset rules stipulate that regulations expire at some fixed date after they are promulgated, in contrast to "normal" administrative processes, in which rules and regulations remain in effect unless action is taken to repeal or change them.<sup>3</sup> At first blush, a sunset provision might seem to be a straightforward example of a procedural reform that would accelerate, rather than slow, policy reform. Particularly in the context of a recent democratic transition, a sunset provision would seem to be an effective way to dismantle the regulatory state created by the prior authoritarian regime.

The facts of the Korean case do not support this seemingly straightforward explanation, however. The Korean sunset provision was part of broad set of procedural reforms crafted by Kim Young Sam (hereafter, KYS),<sup>4</sup> the first civilian president since 1961. These reforms were adopted at the end of KYS's term, after quite a bit of the old regulatory regime had been dismantled. Korean presidents are constitutionally limited to a single

five-year term, so KYS knew that he would be out of office months after the procedural reform package was enacted. Why would a lame duck president support a rule that would seem to limit the life of the regulations passed in his own term?

Our argument is that the sunset provision reflected KYS's desire to constrain his successors from creating a large regulatory state of any kind. By deflecting scarce time and effort toward evaluating and renewing old regulations, the sunset limits the amount of new regulation that can be accomplished by a president who wishes to increase the size of the administrative state. At the time the sunset provision was enacted, KYS could not, of course, have known with certainty who the next president would be. He faced a significant likelihood, nonetheless, that his successor would be his rival, Kim Dae-jung (KDJ), whose policy preferences implied a larger state and higher levels of regulation. Indeed, KDJ did win the 1997 election and, as we show, a new regulatory state took shape during his administration. We argue that KDJ's efforts to develop an administrative state responsive to newly enfranchised interests were constrained by the sunset provision.

We proceed as follows. In the first section we review the political history of administrative reform in newly democratic Korea, focusing on the details of the sunset provision contained in the Basic Act on Administrative Regulations (the Korean APA or KAPA) of 1997. Next, we develop a general model of a regulatory rule-making process, with and without a sunset rule, demonstrating how a sunset provision can slow the pace of reform. We then apply the model to the specific circumstance of the passage of KAPA at the end of Kim Young Sam's presidency. In the final section, we present evidence on the use of the sunset procedure and the renewal process.

### **The Adoption of Regulatory Sunset in Korea**

Korea's state-led economic development strategy, begun in the 1960s, yielded impressive rates of economic growth. The military government implemented this strategy via a regulatory regime that favored the interests of industrial conglomerates, or *chaebol*, over those of the middle class<sup>5</sup> (Amsden 1989; Wade 1990; Haggard 1990; Haggard and Kaufman 1995). Both Presidents Park Chung Hee and Chun Doo Hwan generated support from rural vote "machines" financed by political contributions from the chaebol. Middle-class dissatisfaction with the prochaebol policy priorities of the military regimes played a big part in the prodemocracy movement.<sup>6</sup> Excessive government regulation was widely agreed to be a

limiting factor for Korea's ability to compete in international markets and emerged as a growing cause of trade frictions (Regulatory Reform Committee 2004). Regulatory reform was high on the agenda of newly democratic Korea in the 1990s.

Kim Young Sam was inaugurated on February 25, 1993, and very early in his administration established several deregulatory committees, including the Presidential Commission on Administrative Reform (PCAR). Procedural requirements for promulgating regulations were ratcheted up throughout KYS's term, with major laws on administrative procedures enacted in 1994 and 1997. First, the National Assembly passed the Basic Law on Administrative Regulations and Civil Affairs Act (hereafter KAPA I) on January 1, 1994. KAPA I and the subsequent Prime Minister Order (April 7, 1994) and Presidential Enforcement Decree<sup>7</sup> (December 31, 1996), which implemented KAPA I, set the guidelines for a new regulatory process—one that focused on the legal limits of regulation and the prescreening of all proposed regulations. Key provisions included advance public notice and comment, informal public hearings, and a twenty-member Regulatory Review Committee (RRC) responsible for confirmation, monitoring, and evaluation of agency rules. In May 1994, KYS established the Joint Review Council of Administrative Regulation, operating under the Ministry of Government Administration to review and resolve regulatory disputes among ministries.

Near the end of President Kim's five-year term, on August 22, 1997, the National Assembly passed another comprehensive act, known as the Basic Act on Administrative Regulations (hereafter KAPA II). KAPA II was far more extensive than the 1994 KAPA I and included the following main provisions: (1) the adoption of the rule that all regulations must be promulgated under an authorizing statute; (2) the establishment of a civilian-led Regulatory Reform Committee<sup>8</sup> under the president; (3) the adoption of a policy whereby the creation of new regulations or the strengthening of existing ones required a mandatory regulatory impact analysis, the introduction of a registration system, and a *sunset law* for all existing and new regulations; and (4) the establishment of a Comprehensive Regulatory Improvement Plan for existing regulations.

The work of drafting KAPA II was done by the KYS administration, reflecting the expertise and experience of four years of governing. It passed the National Assembly with no opposition (Chun 1998; Lee and Han 1999). The details of the sunset provision are delineated in Article 8, "Specification of Durations and Regulations," of KAPA II. Specifically, Article 8.1 states that if central administrative agencies "intend to establish or strengthen [existing] regulations,<sup>9</sup> they shall specify the duration of

regulations in relevant acts and subordinate statutes which have no clear reason to continuously exist.” Additionally, Article 8.2 states, “The duration of regulations shall be set within the minimum period to achieve the objectives of regulations, and their periods shall in principle not exceed five years.” Moreover, the law stipulates that in order for all regulations to be extended beyond the five-year limit, bureaucrats must submit an extension request one year prior to expiration. Unless the regulation is extended, it will expire. Finally, agencies must first notify the public and allow for comments prior to submitting such a request to the Regulatory Review Committee.

The timing of the sunset rule in KYS’s administration is puzzling. Because KAPA II passed so late in his term, it seems unlikely that it was aimed primarily at dismantling the military government’s regulatory regime. And indeed, as we discuss subsequently, KYS had already made a great deal of progress in moving regulatory policy away from the old *prochaebol* status quo. Moreover, the president’s ability to take action to effectively remove large groups of regulations *en masse* existed pre-KAPA. Indeed, KYS had done precisely this to get rid of many old regulations from predemocratic regimes.

The KAPA sunset provision does not really allow the executive branch to do anything it could not already do. Rather, it takes away the executive’s ability to effortlessly keep existing regulations in place. Why would KYS choose to adopt a procedure that would have the effect of limiting the life of his own regulations? With this empirical context in mind, we now turn our attention to the broader theoretical question: Under what conditions will a president favor a sunset rule?

### **Rule Making and Resource Constraints: With and Without Sunset**

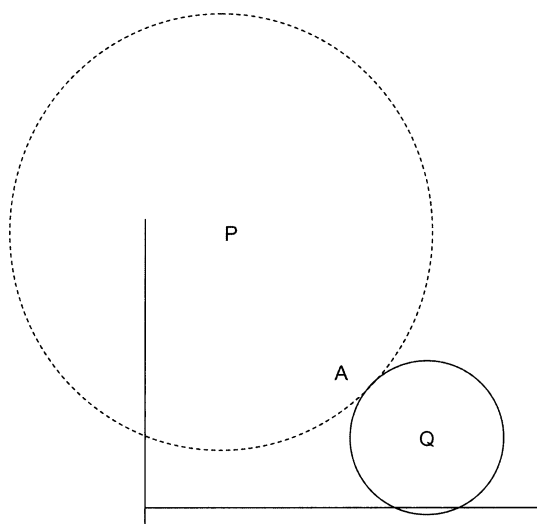
Does a sunset rule matter at all? Wouldn’t any president simply renew regulations that he likes and repeal or amend those that he does not? One might think regulatory decisions will simply and straightforwardly reflect the president’s preferences over the set of legally available choices. Obviously, the reversion point does not seem to matter for executive branch decisions in the way that it does for decisions made through a legislative process governed by a voting agenda and the need to form majority coalitions.<sup>10</sup> In what sense would a sunset provision affect a president’s ability to implement his ideal regulatory policy?

Our answer to this question hinges on the assumption that executive branch resources are limited. Writing a regulation that accomplishes its

intended goal is costly in terms of time and expertise. The president may not be able to set his ideal regulatory policy because he lacks the bureaucratic resources (manpower, policy-specific expertise) to do so. If resource constraints prevent a president from changing policy as much as he would like, then he will have to prioritize some regulatory changes over others. Some regulations that would be changed in the absence of resource constraints will now be left unaltered. In the presence of resource constraints, the reversion point becomes important.<sup>11</sup>

Figure 1 illustrates the effect of resource constraints in a spatial model with two policy dimensions. Policy on each dimension is determined by a large number of individual regulations. Repealing or changing any individual regulation will move the regulatory status quo  $Q$  a small distance along one of the dimensions. We are not interested here in how many individual regulations are needed to move policy a given distance; this presumably varies as some regulations make large changes to the status quo while others make small ones. Rather we focus on the *resources* needed to change policy a given amount. We assume that the quantity of resources needed to change policy a given amount (in any

**Figure 1** President's Policy Choices



*Note:* Without sunset, the president's choices are constrained to be close to status quo policy. The best available policy is A.

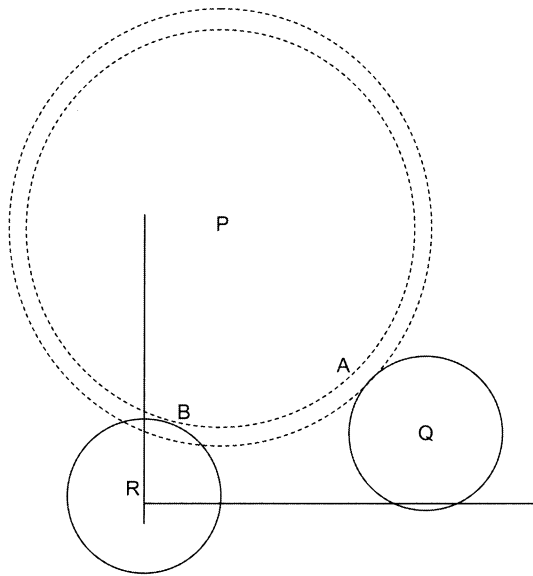
direction) is proportional to the magnitude of the change. This is obviously an oversimplification, but it allows us to keep focus on how sunset affects the pace of reform.

These simplifying assumptions allow us to depict the set of regulatory policies available to the president with and without a sunset rule. First, consider the “normal” regulatory process, without a sunset rule. In Figure 1, the president’s ideal level of policy is point  $P$ , and the regulatory status quo is  $Q$ . An unconstrained president would issue regulations to bring policy to his ideal point  $P$ . But if resources constrain him from issuing as many regulations as he would like, he will only be able to move policy some fixed distance (or less) from  $Q$ . The set of policies available to the president are shown in the diagram by a circle centered at  $Q$ , with a radius given by the level of the constraint (more resources means a larger radius). The president’s best attainable outcome, given this constraint, is point  $A$ , where one of his indifference curves (the dotted circle centered at his ideal point,  $P$ ) is tangent to the choice set. In all our diagrams throughout, we depict indifference curves with dotted lines and choice sets with solid lines.

A sunset requirement changes the impact of resource constraints. Without a sunset provision, resource constraints keep executive branch policies close to the status quo. Without sunset, some aspects of the status quo may remain in effect simply because limited administrative resources are better spent elsewhere. In this sense, resource constraints bias regulatory policy toward current status quo policy.

The sunset provision removes this bias toward maintaining past decisions. With sunset, action is needed to *maintain* the status quo. Continuing to think about the impact of resource constraints, the sunset provision arguably biases in another direction, toward the policy corresponding to the absence of regulations. Note that this is not the same as the absence of government, or even the absence of a regulatory state. Even in the (extremely implausible) case in which the sun was allowed to set on all regulations, much state activity is legislatively mandated, and implemented without regulatory decisions. Nonetheless, the sunset reversion point (the policy that would obtain in the absence of any executive branch activity) implies a low level of government activity on all policy dimensions. We refer to this point as the sunset reversion point and represent it as the origin in our spatial model.

Figure 2 depicts one aspect of the bias that can be created by resource constraints under sunset. The regulatory status quo,  $Q$ , and the optimal constrained choice without sunset,  $A$ , are noted for comparison. With sunset, the reversionary point is the origin, labeled  $R$ , and resource

**Figure 2 President's Choices with Sunset**

*Note:* With sunset, the president's choices are constrained to be close to sunset reversion policy, *R*. The best available policy is now *B*.

constraints imply that the president's policy choices must lie in the circle centered at *R*. As before, the president's best choice is the policy where his choice set is tangent to an indifference curve (in this case one closer to his ideal point than without sunset.) The best choice under sunset is point *B*, and it happens to be better for this president than point *A*, his best choice without sunset.<sup>12</sup>

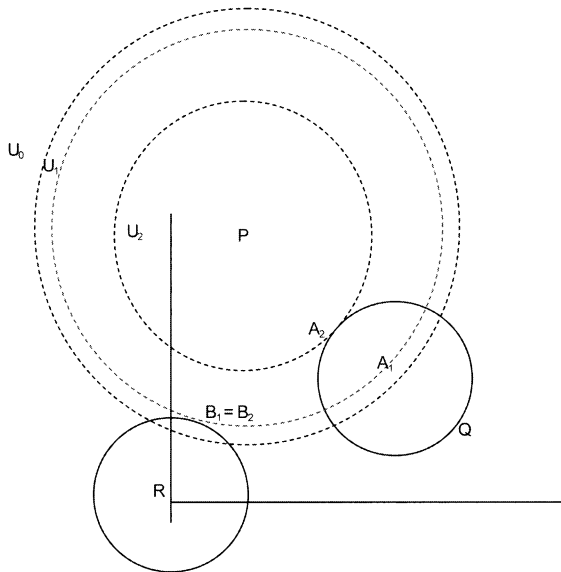
Figure 2 thus illustrates a case where short-term policy preferences lead a president to prefer a sunset provision. Resource constraints prevent a president from promulgating his ideal regulatory policy, so the short-term question becomes whether he does better by deploying his resources to incrementally change the existing status quo or rather to incrementally build up from the sunset reversion point? In Figure 2, the president is better off in the short term with sunset. More generally, if we think of the status quo as reflecting policy before a democratic transition and the president's ideal point as reflecting the preferences of a democratic electorate, the short-term effect of a sunset rule is to accelerate the reform process. Figure 2 shows how, given resource constraints, the sunset rule can make policy respond more to electorally induced preferences.



But what about long-term considerations? Suppose that the president cares not only about policy today but also about policy under his successor, and suppose that he expects his successor's ideal point to be located near his own. Figure 3 depicts the current president's optimal choices with and without sunset; these points are labeled  $A_1$  and  $B_1$ , where the subscripts indicate that these are the policies chosen in period number 1 by president number 1. Without sunset, the future president's regulatory options will be defined relative to the policy chosen by the current president. That is, without sunset, president 2's choice set is centered at president 1's policy choice. In this case, president 2's best policy is point  $A_2$ . With sunset, the future president's choice set is the same as the current president's; and his best policy choice,  $B_2$ , is the same as the current president's. Note that the diagram also labels the utility value associated with each relevant indifference curve ( $U_0 < U_1 < U_2$ ).

Figure 3 illustrates an intertemporal trade-off created by sunset. The president gets somewhat higher utility during his term with sunset ( $U_1 > U_0$ ) but much lower utility in his successor's term ( $U_1 < U_2$ ). In this scenario,

**Figure 3 Long-Term Consequences of Sunset**



*Note:* With sunset, the future president's choice set is the same as the current president's ( $B_1 = B_2$ ). Without sunset, the current president's policy choice ( $A_1$ ) determines the future president's choice set.

in which the president's successor shares his preferences, sunset prevents the accumulation of progress across terms. The current president will favor the sunset provision if the short-term gains ( $U_1 - U_0$ ) outweigh the long-term costs ( $U_2 - U_1$ , appropriately discounted).

This example illustrates how sunset can slow policy reform. Even though the short-run impact of a sunset provision accelerates the responsiveness of policy to electoral mandates, the long-term effect is to stall this responsiveness, as politicians have to repromulgate existing policies, effectively reinventing the wheel. Under sunset, democratically elected presidents cannot build on each other's achievements, and the process through which executive branch policy reflects the preferences of the electorate stalls well short of where it would be in the absence of sunset.

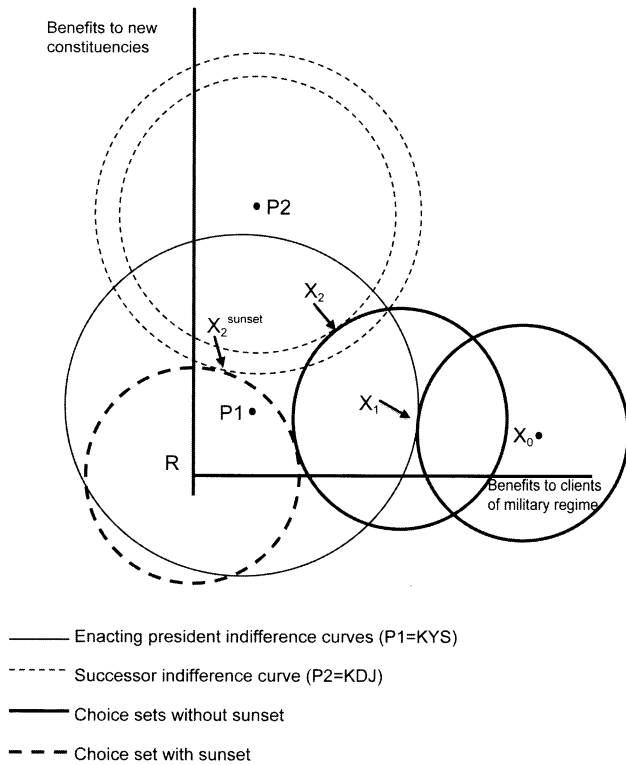
One can imagine other configurations of ideal points in which the long-term effects of sunset reinforce (rather than offset) the short-term considerations. But over time, sunset will slow the process of reform under most plausible conditions. By preventing the accumulation of policy change over time, sunset keeps regulatory policy from drifting too far from the sunset reversion. A reasonable interpretation would be that sunset constrains the size of the regulatory state in cases where there is democratic pressure for greater state regulation.

Interpreting a sunset provision in the context of resource constraints draws our attention to its long-term impact, suggesting a plausible reason why a president would support a sunset provision at the end of his term. Yes, the sunset provision KYS supported in KAPA II limited the life of the regulations promulgated during his own term. But it may nonetheless have furthered his long-term policy goals by constraining his successor's policy options differently from how they would have been constrained in the absence of the sunset provision. We turn our attention now to the question of how well the abstract model applies to Korea in 1997.

### **Slowing or Accelerating Democracy in Korea?**

Figures 4a and 4b suggest a configuration of policy dimensions and ideal points that broadly apply to Korea and may well apply to other newly democratic settings. First, the key policy dimensions are defined in terms of groups of beneficiaries: the predemocratic clientele groups and post-democratic clientele groups. In Korea, the primary client groups of the predemocratic military governments were big business, especially the chaebol (conglomerates). The horizontal axis in Figure 4a thus represents regulations designed to protect and promote existing big business. The groups behind the democracy movement—those most likely to gain

Figure 4a Sunset Provision Favored by Current President

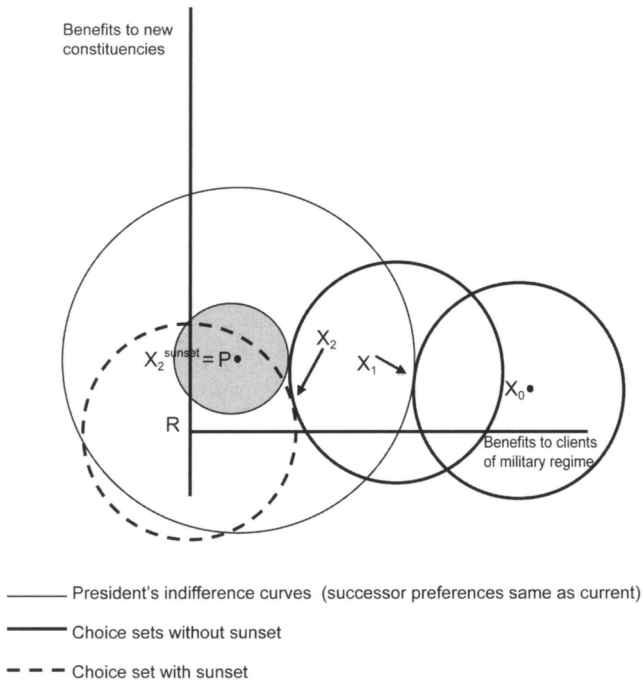


Note: This sunset provision is favored by the current president (P1) because it constrains a more radical successor (P2).

from democratic government—would include labor, consumers, and environmental interests. The vertical axis in Figure 4a represents the various types of social regulation (health, environment, safety) that are likely to serve these newly enfranchised interests.

When KYS assumed office, the regulatory status quo, denoted as  $X_0$  in Figure 4a, still strongly favored the clients of the old regime. Reflecting the cumulative impact of regulations promulgated by military governments from 1961 to 1987,  $X_0$  implies high benefits to big business and little regulatory concern for other groups in society. KYS, as one of the two primary leaders of the democracy movement, preferred much less regulation in support of the chaebol and somewhat more social,

**Figure 4b Effect of a Sunset Provision on Future Policy**



*Note:* President KYS ( $P$ ) would do better with sunset even if his successor shared his same preferences. This diagram depicts the effect of a sunset provision on future policy, assuming that the current president expects his successor's policy preferences to be close to his own.

environmental, and proconsumer regulation. KYS's ideal point (labeled  $P1$ ) thus represents a notable decrease in benefits to the clients of the military regime and a very modest increase in benefit to new constituencies.

The diagram also depicts the ideal point of a potential successor president,  $P2$ , whose ideal point is intended to represent the preferences of KDJ, who did in fact succeed KYS. Because KDJ was associated with a more radical enfranchisement of new constituencies, his ideal point is well above that of KYS.<sup>13</sup> For example, in the area of health care, KYS promised to increase developments in health and welfare by creating a Committee on Social Welfare Policy and Plan for Social Welfare in the Twenty-first Century (Haggard and Kaufman 1995). KDJ went further with his policy of "productive welfare," which sought to establish extensive

social safety networks for workers affected by the Asian economic crisis. KDJ's 1999 Productive Welfare Initiative and 1999 National Livelihood Protection Law are considered important steps in the rise of the Korean welfare state (Moon and Yang 2002).

Similarly, in the area of labor policy, KYS promised some expansions of labor rights—but stopped short of promising many of the key political freedoms to labor unions that KDJ pursued in his 1998 revision of labor laws in 1998—and also promised to establish a tripartite commission (labor-employers-government) to oversee labor relations (Kim 2002). In environmental policy, KYS promised higher standards, particularly better tap water. KDJ went much further in his promises and emphasis regarding health and labor policies than KYS had (Kim and Oh 1997; Korea 1999).

It is important to note that KYS would not have had a clear expectation that KDJ would be the next president at the time KAPA II was being drafted in late 1996 and early 1997. There was a great deal of uncertainty about the December 1997 presidential election. A national election opinion poll conducted by Gallup Korea and *Chosun Ilbo* in March 1997 showed that popular support for the “second” party (National Congress for New Politics, or NCNP) was essentially equivalent to that for KYS's party (New Korea Party, or NKP). The NKP led the NCNP by a mere .2 percentage points (16.6 percent to 16.4 percent), a statistical dead heat, with a majority of respondents (57 percent) expressing no opinion at all. As the election drew nearer, the NKP (renamed the Grand National Party, or GNP, during this period) found itself dealing with severe criticism and a crumbling support base following the Asian financial crisis, as well as with internal party feuding among potential presidential candidates. By summer, KDJ was the front-runner in the polls (Park 1998). Conflict with the NKP/GNP ultimately led to a split when provincial governor Rhee In-je bolted from the GNP to run as a presidential candidate, dividing the GNP vote with its official nominee Lee Hoi Chang. The split in the GNP and an alliance between KDJ and United Liberal Democrats' Kim Jong-pil ultimately contributed to KDJ's win. KDJ received 40 percent of the vote, followed by Lee Hoi Chang with 39 percent and Rhee In-je with 19 percent. Other candidates received a total of about 2 percent.

Clearly in this volatile electoral environment, KYS could not have known who his successor would be. But he could have realistically narrowed the options to either KDJ or some member of his own party. In terms of Figure 4a, the reasonable possibilities for the ideal point of KYS's successor would be either a point near  $P_2$  (as actually occurred)

or at a point nearer to  $P1$ —that is, nearer to KYS's own preferences. We consider the latter possibility separately in Figure 4(b).

In Figure 4a, the preferences of the second president are depicted as events actually unfolded; the bold circles indicate resource-constrained choice sets. The set of regulatory policies available to the first civilian president, KYS, is denoted by the solid black circle centered at  $X_0$ . The best policy that KYS can choose (without a sunset provision) is  $X1$ , the point where one of his indifference curves (the thin, solid circle centered at his ideal point,  $P1$ ) is tangent to his choice set.

Because KAPA was adopted so close to the end of KYS's term, its primary impact would be through the effect it would have on his successor's policy decisions. Without a sunset procedure, the next president's choice set would be those within a given radius where the first president brought policy—that is, the bold solid circle centered at  $X1$ . With sunset, the choice set is the bold dashed circle centered at the sunset reversion point. Assuming a successor like KDJ who sought to more aggressively provide benefits to newly empowered constituencies—that is, a successor with an ideal point near  $P2$ —policy at the end of the second president's term will be at  $X_2$  without sunset and at  $X_2^{\text{sunset}}$  with. The dashed thin circles are  $P2$ 's indifference curves;  $X_2$  and  $X_2^{\text{sunset}}$  are the points where the respective choice sets are tangent to the highest achievable indifference curve.

From the point of view of KYS ( $P1$ ), the second president's policy choice is clearly better with the sunset provision than without. From the point of view of democratic responsiveness, however, one could argue that the outcome without sunset,  $X2$ , is more legitimate—that is, closer to the ideal point of the most recently elected president.

The argument of Figure 4a is thus that KYS's seemingly puzzling decision to pass a sunset rule that would shorten the life of his own regulations was driven by the desire to slow the response of regulatory policy to the demands of the election winners, whose policy goals might be more radical than his own. The sunset provision meant that KDJ (and other future presidents) would have to spend some resources renewing (or otherwise rewriting) existing regulations. The opportunity costs of these renewal efforts would be further regulations in the "new social" areas such as environmental and health policies.

But, as previously argued, at the time that KAPA II was being drafted and passed, a scenario in which the next president would be from KYS's own party was also quite plausible and should have figured into any predictions about the future policy consequences of a sunset provision. Suppose, then, that KYS's successor had shared his policy preferences, so

that the second president's ideal point would have been the same as the first president's. Figure 4b depicts this scenario. Policy outcomes and choice sets are the same as in Figure 4a, but now KYS's successor's policy choices with sunset ( $X_{2,\text{sunset}}$ ) and without ( $X_2$ ) presume that the successor's ideal point is the same as the current president's. In this scenario, as in Figure 4a, KYS prefers the outcome with sunset. Indeed, as drawn, the policy outcome with sunset is at KYS's ideal point, though this is a consequence of our arbitrary assumption about the size of choice sets, not an empirical claim that we are trying to put forward. Nor is it our intention to argue that KYS thought that the NKP/GNP presidential nominee (who turned out to be Lee Hoi Chang) would have precisely his preferences. More plausibly, the NKP/GNP nominee's ideal point would have been somewhere between  $P1$  and  $P2$  in Figure 4a. Figure 4b is intended to be a limiting case, demonstrating that KYS would have found the policy consequences of sunset preferable for a range of potential successors.<sup>14</sup>

Figures 4a and 4b are meant to depict a plausible and internally consistent argument, based on reasonable assumptions about the general relationship of KYS's preferences to those of his likely successors. We cannot, of course, know the precise location of ideal points and feasible sets. We can, however, examine some data on regulatory activity during both the KYS and KDJ administrations and ask whether the observed patterns are consistent with the model and our argument that KYS supported sunset to constrain future presidents.

### **Patterns of Regulatory Reform Under KYS and KDJ**

Prior to the adoption of the sunset provision in the 1997 KAPA, KYS issued executive orders that abolished or weakened a significant number of existing regulations. Ju-sun Lee and Sun-ok Han (1999) studied the overall progress of regulatory reform under KYS.<sup>15</sup> They examined the fate of 3,111 industry-related regulations ("reform cases in economic regulations") that KYS inherited from the military regime. We summarize some of their relevant findings in Table 1. The most important point to note is that more than half (52.7 percent) of these regulations were classified by Lee and Han as "weakened or dropped," while only a small fraction (2.1 percent) were strengthened. This is consistent with Figures 4a and 4b, which show regulatory policy moving from  $X0$  to  $X1$  during KYS's administration.

Lee and Han also categorized the extent of the proposed reform action for each regulation that the KYS administration actually completed in each ministry. With the exception of the Ministry of Unification and

**Table 1 Regulatory Reform Under KYS**

Disposition	Number of Regulations	
Weakened or abolished	1,640	(52.7)
Substantively unchanged <sup>a</sup>	1,406	(45.2)
Strengthened	65	(2.1)
Total	3,111	(100)

*Source:* Adapted from Lee and Han 1999.

*Notes:* Percentages are in parentheses.

a. The “substantively unchanged” category breaks down as 4.8 percent unchanged, 30.2 percent procedurally simplified, 7.4 percent made more transparent, and 2.8 percent transferred to a different administrative unit.

the Financial Supervisory Committee, the numbers are well short of 100 percent completion. The implementation of weakened, dropped, and procedurally reformed regulations (all but the 2.1 percent strengthened) in the Ministry of Education and Human Resources was, for example, only 64 percent complete. Even ministries that would seem to be most strongly associated with the clients of the military regime, such as National Defense and Agriculture, had implementation percentages only in the low 80s. This is also consistent with Figures 4a and 4b, which show X1 (regulatory policy at the end of KYS’s term) to still have more regulations supporting clients of the old regime than KYS’s ideal level.

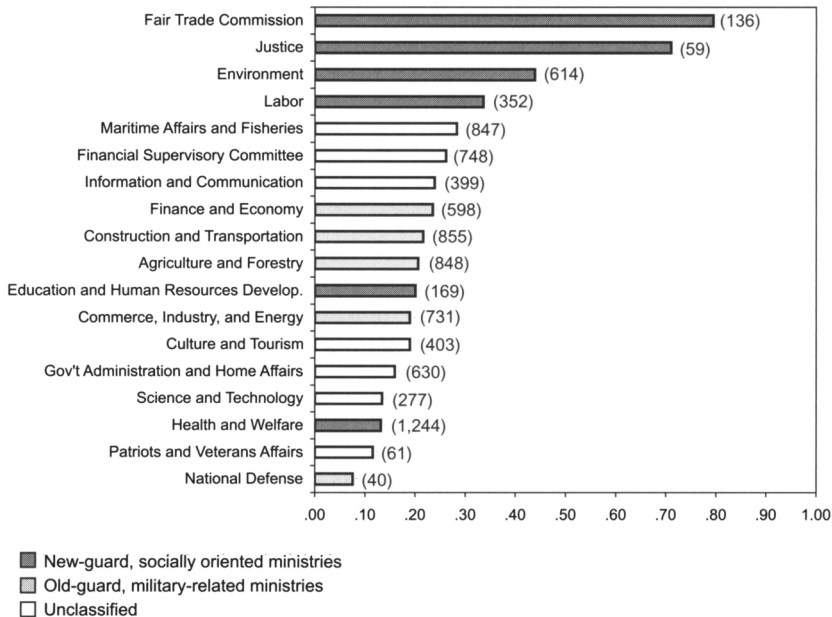
#### *Regulatory Reform During KDJ’s Presidency, 1998–2002*

The Regulatory Reform Committee, Republic of Korea, made available regulatory reform data for 1998–2002 for each ministry.<sup>16</sup> Following Lee and Han’s system, we grouped the regulatory change incidents into two broad categories: new or strengthened regulations and dropped or weakened regulations. We then grouped the ministries, to the extent possible, into two groups: (1) socially oriented ministries likely to deliver benefits to groups newly empowered by democratization (Fair Trade, Environment, Labor, Justice, Education and Human Resources, and Health), and (2) old-guard ministries most clearly associated with the clients of the military regime (Finance and Economy, Construction and Transportation, Agriculture and Forestry, Commerce, Industry and Energy, and National Defense.) Figure 5 displays the data on KDJ’s regulatory activity according to this categorization.<sup>17</sup>

Figure 5 shows new and strengthened regulations as a proportion of all regulations that were changed—that is, strengthened, weakened,



**Figure 5 Percentage of All Regulatory Changes Between 1998 and 2002 Entailing Added or Strengthened Regulations, by Ministry**



Notes: Actual numbers of regulations for each ministry are in parentheses. “Regulatory change” is defined as adding new, dropping existing, strengthening or weakening regulations. So “percentage weakened or dropped” is equal to one minus percentage added or strengthened.

added, or dropped. The raw numbers of regulations for each ministry from which the proportions are derived are noted in parentheses. Four of six “new-guard” ministries (shown in dark gray) have substantially higher proportions of new/strengthened regulations than any of the old-guard/military ministries (shown in light gray). This is consistent with Figure 4a, which depicts an increase in regulatory effort in these areas (the vertical dimension) by KDJ, leading policy to change from  $X_1$  to  $X_2$  sunset.

Table 2 consolidates the information from Figure 5, showing the number of new/strengthened and dropped/weakened regulations in each broad category. The larger number of new/strengthened regulations occurs in the new-guard category, and the larger number of dropped/weakened regulations occurs in the old-guard category. Again, this is consistent with our placement of KDJ’s ideal point in Figure 4a. Two further points should be noted. First, the very large number of dropped/weakened

**Table 2 Total Number of Regulations per Ministry, per Category**

Ministry Type	New/Strengthened Regulations	Dropped/Weakened Regulations	Percentage New or Strengthened
New-guard/socially oriented	754	1,840	29
Old-guard/military-oriented	638	2,433	21

*Notes:* New-guard ministries are Fair Trade, Environment, Labor, Health, Justice, and Human Resources. Old-guard are Finance and Economy, Construction and Transportation, Agriculture and Forestry, Commerce, Industry and Energy, and National Defense.

regulations in the old-guard category matches Figure 4a's depiction of regulatory policy at the end of KYS's term as still catering too much to the clients of the old regime in the eyes of both KYS and KDJ—that is, X1 is significantly to the right of both P1 and P2.

Second, Table 2 indicates a nontrivial number of dropped regulations in the new-guard/social category. This is not consistent with conventional wisdom—why do we see so much dropping of regulations in areas like environment and labor, areas in which KDJ clearly favored more regulation?<sup>18</sup> The large number of dropped/weakened regulations in this category is, however, consistent with our interpretation of the impact of the sunset provision. Specifically, some of the 345 dropped/weakened regulations in the environment category (Figure 5) may have been dropped not because the KDJ administration opposed them, but simply because KDJ did not support them enough to pay the opportunity costs of renewing them. Consistent with this interpretation, there is some discussion now among Korean bureaucrats and politicians about repealing the sunset provision, at least in some policy areas, precisely because its requirements consume administrative resources that could be better deployed addressing new regulatory issues.

The patterns of regulatory change under KYS and KDJ are not meant to be construed as tests that could formally falsify our argument. They are, however, consistent with our key claims that KYS supported the sunset provision to constrain future presidents whose policy agenda might involve more aggressive provision of benefits from social, environmental, and labor regulations.

Two important questions remain, however, both involving the role of the legislature. The argument summarized in Figures 4a and 4b ignores the National Assembly, presuming that KYS was unconstrained in his ability to get KAPA II, with the sunset provision, through the legislature.

First, is this reasonable? Second, if President KYS was able to impose the sunset provision, why was President KDJ not able to simply repeal it?

For most of his term, KYS worked with a legislature in which his party, the NKP, controlled a majority of seats. The situation lasted until the parliamentary election of April 1996, after which the NKP found itself with 139 of 229 seats—that is, eleven seats short of a majority. Very quickly, and apparently without much difficulty or doubt, the NKP pulled together a working majority with eight independents and three defectors from the small DP (Koh 1997.) There is no evidence that the process of forging this majority involved any policy concessions. The KYS administration thus drafted KAPA II and the sunset provision with reasonable confidence of support by a legislature whose majority largely shared his preferences for low levels of regulations of all types. Even opposition legislators felt they needed to support KAPA II, which was viewed by the public as a positive move for the nation's economy.<sup>19</sup>

KDJ's situation was quite different. Taking office in 1997, he faced a legislature in which his party, the NCNP, held only one-quarter of the seats. The NCNP formed a coalition with the right-wing United Liberal Democrats (ULD), led by Kim Jong-pil, but together these two parties were still well short of a majority. Tong Whan Park (1998, p. 9,) assessed KDJ's situation as severely limited by the strength of the NKP/GNP in the National Assembly: "Compared to Hannara Dang's [NKP/GNP] 165 seats in the National Assembly, DJ's NCNP is a minority party with only 78 seats. Even with the 43 held by JP's ULD, the DJP alliance controls only 121 seats. Thus, DJ has no choice but to work with the Hannara Dang. Short of attracting a sizable number of legislators from the other side of the aisle, his only tool will be the art of compromise with which to forge issue-based cooperation with the majority party." KDJ was clearly not in a position to repeal the sunset provision; doing so would have required the support of ULD and NKP/GNP legislators whose policy preferences were closer to KYS's.

A potential alternative explanation for Korea's adoption of a sunset provision is that it was symbolic gesture: KYS's anti-big government ideology (represented by the location of his ideal point in Figures 4a and 4b) led him to like the idea of a sunset provision without regard to its consequences. While we cannot refute (and would not necessarily disagree with) the claim that KYS found the sunset provision ideologically appealing at face value, we have shown that the consequences of the sunset provision were also in line with his policy preferences. Any symbolic attachment KYS felt toward a sunset provision would have been reinforced, not undermined, by its policy consequences.

### **Administrative Procedures and the Pace of Reform**

Our main argument has been that sunset provisions can slow the pace of democratic reform by preventing democratically elected presidents from building on their predecessors' policy achievements. The model we developed illustrated how the need to use bureaucratic capacity to renew existing policies diminishes the ability of a democratic leader to respond to electoral mandates. In situations like that in Korea, in which each democratically elected president has been successively more "proreform," the inability to accumulate policy reform over time has diminished the extent to which executive branch policymaking reflects the preferences expressed in the most recent election.

This interpretation of the sunset procedure suggested that the desire to slow the pace of reform may explain why KYS supported the sunset requirement in KAPA. We articulated the assumptions about KYS's and KDJ's preferences that would support this conjecture. Such assumptions are extremely difficult to verify empirically, and we do not claim to have done so. Our goal has been simply to clarify the assumptions behind a plausible conjecture as to why a president would favor a procedure that limited the life of his own regulations. We have shown that patterns of regulatory reform under KYS and KDJ are broadly consistent with our argument about the consequences of Korea's sunset provision. Large numbers of regulations were dropped or weakened in policy areas in which KDJ is known to want stronger regulation. This suggests that the sunset requirement forced KDJ to "reinvent the wheel" in some aspects of regulatory policy, preventing him from building on any progress made during the KYS administration.

How often do the leaders of new democracies find themselves in the position in which our model locates KYS? That is, how often is a president in a position to use a procedural reform to constrain the choices of the winners of future presidential elections?

In one sense, our model highlights the many ways in which the impact of the sunset provision is contingent on the details of Korea's democratic transition in the 1990's, particularly on the policy differences between KYS and KDJ. Sunset appealed to KYS because it created a reversion point close to his own preferences for a small overall level of government regulation. As successive presidential elections indicated popular support for higher levels of regulation with the victories of KDJ and Roh Moo-hyun, the sunset requirement, in our interpretation, kept the size of the regulatory state smaller than it would have been had these later presidents been able to implement policies closer to their ideals and those of the voters who supported them. It is not unreasonable to think

that this general configuration of preferences—an early president with more conservative views than his successors are likely to have—would occur in other new democracies as well.

But the broader point is that not that sunset provisions, or other administrative procedures, will necessarily hinder democratic responsiveness but simply that this is a possibility. Procedural reform is usually part of a democratic transition, and reform proposals are almost always pitched as increasing democratic responsiveness. Indeed, other studies of new democracies in East Asia (Baum 2005, 2007) have used similar spatial argument to identify way in which presidents have used procedural reform to accelerate the pace of democratic reform, largely by circumventing the influence of career bureaucrats whose policy preferences favored the predemocratic status quo. Indeed, Baum (2007) interprets other provisions of KYS's KAPA reforms as intended to accelerate the democratization process by moving policy away from the military government's status quo, and Baum (2005) argues that procedural reform in Taiwan was also crafted to promote policy change and the ability of the government to regulate in ways beneficial to democratic constituencies. Our goal in this article has been to demonstrate that procedural reform does not always promote the ability of democratic leaders to implement electoral mandate. The impact of procedural change depends both on the nature of the procedures and on the preferences of elected leaders who work within them.

In focusing on the sunset provision, we deliberately picked a procedure that on the surface seems highly unlikely to slow the pace of policy reform. That is, we focused on a procedure that seems least likely to support our overall argument that procedural reform can slow the pace of policy reform. Even though sunset provisions do not clearly favor the status quo in the way that many other procedural requirements do, they limit long-term accumulation of policy changes even when these changes are desirable in terms of electorally induced preferences of democratic leaders. The slowing effect of sunset is most acute when bureaucratic capacity is low, which is often the case in new democracies. We acknowledge the value of procedural reform in creating transparency and enfranchising previously marginalized groups. Nonetheless, deceleration of policy reform is a consequence that must be considered by those who advocate reforming procedures.

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1. The argument that administrative procedures are designed to enfranchise particular constituencies has mostly been made in the context of the United States (McCubbins and Schwartz 1984; McCubbins 1985; McCubbins, Noll, and Weingast 1987, 1989; Moe 1989). Baum (2007) offers evidence that this logic applies in the presidential systems of East Asia.

2. See de Figueiredo, Spiller, and Urbiztondo (1999) for an informational explanation of how administrative procedures can slow or inhibit policy change.

3. Sunset procedures come in a variety of forms. The Korean procedure we focus on here applies to regulations, not legislation—that is, to policy decisions promulgated through executive branch processes rather than through legislative processes. This focus allows us to ignore the substantial complications that arise from the need to form legislative majorities. It applies across the board to all regulations, in contrast to procedures that limit the life of only a single policy decision.

4. Kim Young Sam shares the same surname as his successor, Kim Dae-jung. To avoid confusion, we follow the common practice of referring to both by their initials, KYS and KDJ.

5. Prereform presidents Park Chung Hee and Chun Doo Hwan routinely rewarded officers from the Kyungsang province, which was a major part of their military selectorate. This policy led to the rise of personalistic regional parties in Korea.

6. In response to seventeen consecutive days of street demonstrations, former general Chun Doo Hwan and the ruling Democratic Justice Party (DJP) formally accepted public demands for democratic reforms in 1987 (Diamond and Shin 1999, 5). These reforms were incorporated into the DJP’s presidential candidate Roh Tae-woo’s June 29 Declaration of Democratic Reform. Details of these reforms are discussed in Paik (1994). Following Roh’s June 29 declaration, the National Assembly drafted and approved the new constitution on October 12, 1987. Formally, Korea began its transition to democracy on June 29, 1987.

7. This type of decree does not change the legislative status quo, as in some Latin American countries, and is similar to a legal instrument used by US presidents called an Executive Order.

8. The committee is composed of the prime minister and a private individual as joint chairs, a private sector representative, and some public officials. Its primary functions include screening, checking, and evaluating each ministry's regulatory reform effort.

9. For all existing regulations, including those promulgated under KYS's administration, a comprehensive review subjected regulations to varying expiration years as stipulated by the sunset provision (Song 2004). Furthermore, according to a member of the Presidential Committee of Regulatory Reforms, the specified expiration times were three or five years (author interview, Seoul, August 1999).

10. On the importance of the reversion point in decisions made by majority rule voting, see Romer and Rosenthal (1978), Shepsle (1979), and Shepsle and Weingast (1981).

11. Resources constraints loom large in interpretations of procedural reforms in Baum (2005) and Baum (2007). These studies of Taiwan and Korea focus on procedures that, in contrast to sunset, facilitate rather than retard policy reform and democratic responsiveness.

12. This example presumes that the cost of renewing an existing regulation is about the same as promulgating a new one, as indicated by the fact that the choice set with sunset (centered at *B*) has the same radius as the choice set without (centered at *A*). This would not always be the case. The relative costs of renewing old regulations versus promulgating new ones are determined in part by administrative procedures (the details of the sunset provision and the "normal" regulatory process by which new regulations are promulgated).

13. On some particular aspects of reform, especially civil rights, KYS and KDJ were almost certainly closer on the vertical dimension than depicted here. Note, however, that civil rights policy involves relatively little regulatory decisionmaking.

14. Figure 4b also addresses potential concerns about how different KDJ preferences were from KYS.

15. Exact data sources in Lee and Han (1999) are not cited, although based on their bibliography, their data most likely come from official government publications.

16. See [www.rrc.go.kr](http://www.rrc.go.kr). The statistics in this section represent the period from August 1998 through December 2002. Presidents in Korea are usually elected in November of the preceding year and take office in February. Hence, although Kim Dae-jung's presidency officially ended in February 2003, 2002 was chosen as a cutoff point due both to lack of reliable data and to the fact that January and February are commonly considered "transition months" for the new president.

17. Earlier drafts used a more detailed classification system treating the Ministry of Justice and the Ministry of Education and Human Resources Development as a third category, labeled "possibly new-guard." These ministries arguably fit into the "new-guard" category, but less clearly so than the others because while significant policy changes were proposed, high ministerial turnover rates led to

extreme instability and lack of implementation. See Baum (2011) for a similar classification scheme.

18. The highest number of dropped/weakened regulations actually occurs in the Ministry of Health and Welfare, but much of this is attributable to passage of the National Livelihood Protection Law (NLPL) in 1999. Until 1999, the government of Korea lacked a full-scale welfare act guaranteeing basic minimum living standards for all citizens. The NLPL not only guarantees minimum standards of living for lower-income citizens, but also supports future employment and provides productive social welfare services (see <http://blss.mohw.go.kr>). The KDJ administration considered this law to be one of its major achievements. It is possible that the high number of dropped health regulations in this area is due primarily to the NLPL, not affected by sunset.

19. Author interview with National Assembly staff member, Seoul, August 1999.

## References

- Amsden, Alice. 1989. *Asia's Next Giant: South Korea and Late Industrialization*. New York: Oxford University Press.
- Baum, Jeeyang Rhee. 2005. "Breaking Authoritarian Bonds: The Political Origins of Taiwan's Administrative Procedure Act." *Journal of East Asian Studies* 5, 3: 365–399.
- . 2007. "Presidents Have Problems Too: The Logic of Intra-branch Delegation in East Asian Democracies." *British Journal of Political Science* 37, 4: 659–684.
- . 2011. *Responsive Democracy: Increasing State Accountability in East Asia*. Ann Arbor: University of Michigan Press.
- Chun, Young-jae. 1998. "Regulatory Reform and Privatization of State-owned Companies." *Samsung Economic Research Institute* 69.
- de Figueiredo, Rui, Pablo Spiller, and Santiago Urbiztondo. 1999. "An Informational Perspective on Administrative Procedures." *Journal of Law, Economics, and Organization* 15, 11: 283–305.
- Diamond, Larry, and Do Chull Shin. 1999. "Introduction." In *Institutional Reform and Democratic Consolidation in Korea*, ed. Larry Diamond and Do Chull Shin, 1–42. Stanford: Hoover Institution Press.
- Haggard, Stephan. 1990. *Pathways from the Periphery: The Politics of Growth in the Newly Industrializing Countries*. Ithaca: Cornell University Press.
- Haggard, Stephan, and Robert Kaufman. 1995. *The Political Economy of Democratic Transitions*. Princeton: Princeton University Press.
- Kim, Boen-Oong, and Young-Suk Oh. 1997. *Environmental Administrative Law and Procedures*. Seoul: Daeyoung Press.
- Kim, Young Cheol. 2002. "The Politics of Labor Reform Under the Kim Dae-jung Government." In *Korea in Transition: Three Years Under Kim Dae-jung Government*, ed. Chung-In Moon and David I. Steinberg, 159–177. Seoul: Yonsei University Press.
- Koh, B. C. 1997. "South Korea in 1996: Internal Strains and External Challenges." *Asian Survey* 37, 1: 1–9.



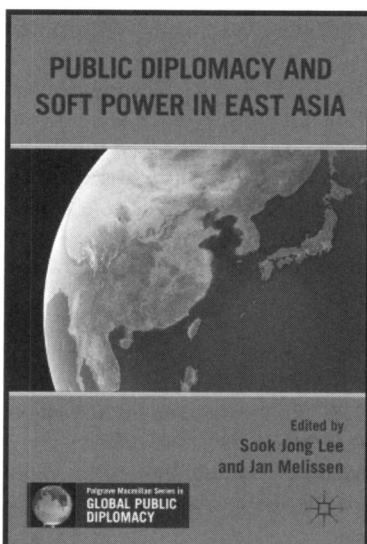
- Korea, Republic of. 1999. *Report on Regulation Reform in 1998 for Environment*. Seoul: Ministry of Environment.
- Lee, Ju-sun, and Sun-ok Han, eds. 1999. *Kim Young-sam Jeongbueui Gyujae Wanhwa Shiljuk Pyungga*. Seoul: Korea Economic Research Institute.
- McCubbins, Mathew. 1985. "Legislative Design of Regulatory Structure." *American Journal of Political Science* 29: 721–748.
- McCubbins, Mathew, Roger Noll, and Barry Weingast. 1987. "Administrative Procedures as Instruments of Political Control." *Journal of Law, Economics, and Organization* 3: 243–277.
- . 1989. "Structure and Process; Politics and Policy: Administrative Arrangements and the Political Control of Agencies." *Virginia Law Review* 75, 2: 431–482.
- McCubbins, Mathew, and Thomas Schwartz. 1984. "Congressional Oversight Overlooked: Police Patrols Versus Fire Alarms." *American Journal of Political Science* 28: 167–179.
- Moe, Terry. 1989. "The Politics of Bureaucratic Structure." In *Can the Government Govern?* ed. John Chubb and Paul Peterson. Washington, DC: Brookings Institution.
- Moon, Chung-In, and Jae-Jin Yang. 2002. "The Kim Dae-jung Government and the Productive Welfare Initiative: Ideals and Reality." In *Korea in Transition: Three Years Under Kim Dae-jung Government*, ed. Chung-In Moon and David I. Steinberg, 118–205. Seoul: Yonsei University Press.
- Paik, Young-Chul. 1994. "Political Reform and Democratic Consolidation." *Korea and World Affairs* 18: 730–748.
- Park, Tong Whan. 1998. "South Korea in 1997: Clearing the Last Hurdle to Political-Economic Maturation." *Asian Survey* 38, 1: 1–10.
- Regulatory Reform Committee. 2004. "History: Development of the Regulatory Reform Committee." Regulatory Reform Committee. Available at <http://www.rrc.go.kr> (accessed July 2005).
- Romer, Thomas, and Howard Rosenthal. 1978. "Political Resource Allocation, Controlled Agendas, and the Status Quo." *Public Choice* 33: 27–43.
- Shepsle, Kenneth. 1979. "Institutional Arrangements and Equilibrium and Multi-dimensional Voting Models." *American Journal of Political Science* 23: 27–59.
- Shepsle, Kenneth, and Barry Weingast. 1981. "Structure-induced Equilibrium and Legislative Choice." *Public Choice* 37: 503–519.
- Song, Yu-Chul. 2004. "Regulatory Reform and Governance." *Korea Institute for Public Administration Journal* 2. Available at [www.kipa.re.kr/wwwroot/ex2/intro1/page16-4.asp](http://www.kipa.re.kr/wwwroot/ex2/intro1/page16-4.asp).
- Wade, Robert. 1990. *Governing the Market: Economic Theory and the Role of Government in East Asian Industrialization*. Princeton: Princeton University Press.

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