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South Korea, the United States and Emergency Powers During the Korean Conflict 済州島4・3事件から朝鮮戦争における韓国、米国そして非常権限

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Summary

This essay is a comparative legal study of the use by the United States and South Korea of state of emergency powers before and during the Korean War. Beginning with the violent suppression of the Cheju Uprising in 1948, a succession of states of emergency was proclaimed in South Korea and the United States throughout the Korean conflict (1948-1953). The essay examines the context in which these emergency laws were conceived and their relationship to state-sponsored mass violence against the civilian population.

Keywords

Korean war, state of emergency, Cheju Uprising, Syngman Rhee, Harry Truman

From the Cheju Massacre to Korean War bombing raids, incidents of mass violence during the Korean Conflict (1948-1953) were often linked to the invocation of emergency powers as a legitimizing device by the state. The effects of these emergency laws were far-reaching, to the extent that even ordinary people were influenced by the rationale underlying them.

During a visit to Cheju Island a few years ago, I came across an elderly witness to the 1948 massacre carried out here by the South Korean military. In the course of our conversation, he described the terror that seized the island. People from mountain areas were herded down to the shoreline as the police set their villages, homes, and schools on fire. Innocent men were lined up and executed without trial if they looked like communist sympathizers. He explained: "Because we were under emergency martial law, the police remained free of any culpability. So they could kill anyone, countless innocent lives ...The law gave the police and military the right to shoot. The right to shoot!"[1] Although this particular witness was a bystander and no one from his family had been arrested or killed, almost every family in the village lost somebody. Sympathetic as he was to the victims, he did not question the law in place at the time and how it permitted the slaughter of innocent civilians. Many survivors of the Cheju massacre, however, refused to acknowledge the validity of the emergency law, instead contesting its legality. Accepting its rationale was akin to admitting that the police were morally guilty, but not guilty of violating the law.

As it turns out, there *is* room to question the logic of the state of emergency that so exacerbated political violence in Cheju and elsewhere. For decades afterwards, South Korean scholars disputed the legality of the Emergency Martial Law enforced in Cheju during the suppression campaign waged between October 17 and December 31, 1948, aimed at separatist and communist activists and their supporters, and examined its role in human rights violations.[2] While the Cheju Uprising began on April 3, 1948, most civilian casualties occurred during the "scorched earth" period between October 1948 and March 1949.

But the violence did not end there. Following the Cheju killings that resulted in an estimated 30,000 to 80,000 deaths, more than two million civilians were killed as a result of military violence in subsequent years, especially during the Korean War.[3] Scholars such as Bruce Cumings, John Merrill, Pak Myŏng-nim, and Heonik Kwon have identified the Cheju Uprising as a watershed in understanding the development of the Korean War.[4] In this essay, I define the six-year period from 1948-53 as a prolonged state of emergency in South Korea. Indeed, the constitutional crisis in the U.S. today could be traced back to the Korean War era. The states of emergency during this period profoundly affected the political culture of the two countries. South Korea remained a dictatorship for four decades thereafter and the U.S. became what David C. Unger called "a permanent emergency state"-increasingly preoccupied with national security, military development, universal containment, loyalty to the state, and ideological conformity.[5] These characteristics enable a comparative analysis of emergency powers in South Korea and the U.S. during the 1940s and 1950s.

This essay provides a critical overview of the successive emergency measures deployed during the six-year hot war phase of the Korean Conflict and their relationship to human rights flashpoints. Three major pronouncements are under consideration here: Syngman Rhee's declaration of a state of emergency during the Cheju Uprising in 1948 and the Korean War in July 1950, and Harry S. Truman's declaration in December 1950.[6] Each of these decisions involved mass human casualties-most notably the Cheju Massacre, executions of civilians and political prisoners, and the intense aerial bombardment carried out by the U.S. Air Force. In the aftermath of this state-sanctioned violence, the question of ultimate responsibility remained unanswered. Furthermore, there was a lingering impression that the bloodshed that ensued was somehow "legally justified" under the states of emergency imposed. This essay questions this logic by examining the use and abuse of emergency powers in South Korea and the United States in times of crisis. It also reflects on the legal and historical legacies of human rights catastrophes in modern democratic societies.[7]

The South Korean Emergency

Beginning with the Cheju Uprising in 1948, South Korea was in a continuing state of emergency for some three decades.[8] The emergency declared in Cheju was local and lasted for over a month, but it was the first of a dozen-with the longest being the Korean War. While each successive emergency entailed violence, the greatest destruction of human life was concentrated in the period between 1948 and 1953. Political leaders repeatedly used emergency powers to consolidate their authoritarian control. Despite its association with authoritarianism, however, the state of emergency has its origins in democratic processes.[9] Peter Dale Scott's discussion of the use and abuse of emergency powers in consolidating the U.S. security state within the democratic tradition offers a compelling example.[10] It is also worth noting that the violence in Cheju erupted at a moment when an election was to take place in South Korea (on May 10, 1948) and Cheju islanders rose up in opposition to the creation of a separate state in South Korea predicated on U.S. support.

Cheju prisoners await execution, 1948

To President Syngman Rhee, the uprising was not only a challenge to his leadership, but also marked a crisis of sovereignty in the emergent democratic state. If democracy is based on popular sovereignty, then the imposition of a state of emergency can overturn this political condition by reinstating authoritarian power. The concept of sovereignty remains contentious in the modern constitutional state. Legal theorists such as Schmitt, for instance, have argued that the authority to suspend the rule of law and "decide on the exception" is the mark of sovereignty.[11] Others have argued that an individual political figure can only suspend the law in exceptional circumstances-during national crises and disasters-and, to do so, one must assume that they enjoy a position above the law.

The question of "standing above the law" is a crucial one for understanding the successive states of emergency imposed in South Korea since 1948. The Cheju Massacre took place at a critical juncture at which multiple sovereign actors came together: the United States Army Military Government in Korea (hereafter, the Military Government), the Korean police, the imperial Japanese legacy, and Syngman Rhee. The question of who was ultimately responsible for the killings depends on the identity and role of the political actor in question. To begin with, the involvement of the Military Government is relevant to the fact that its occupation officially ended on August 15, 1948. U.S. security forces entered Korea on September 9, 1945 as "liberators," but remained in control in the peninsula well into the Korean War retaining an exclusive jurisdiction independent of the South Korean constitution. Furthermore, as early as February 1947 the occupation forces anticipated civil resistance in South Korea and moved to impose martial law whenever the situation called for it.[12] This rigid stance was, in part, due to the shock of the earlier strike and uprising in the southern city of Taegu, where the Military Government and the South Korean police clashed violently with protesters in October 1946. Despite ongoing debate over how deeply the Military Government was involved in quelling outbreaks of civil violence in Korea since the 1940s, there is no question but that its influence on Korean affairs was substantial.

U.S. military advisors overseeing South Korean police during the suppression of the Taegu Uprising, October 1946. (National Archives College Park, MD).

The Korean National Police, on the other hand, had a very different history. They were the product of the Japanese colonial administration. Even after liberation when the police were no longer entitled to the power of summary jurisdiction, they continued to use colonial methods of third-degree interrogation, torture, and search without authorization. According to a statement made by U.S. State Department officer Gregory Henderson in November 1950, "The Korean police has not only administered the law, it has itself been above it. No person or agency within Korea dares to report on it or publicly criticize or speak of the feelings that are so universal concerning it."[13] The fact that the police assumed a position above the law defined their function as the sovereign power in the civil sector. Similarly, a South Korean soldier once claimed, "In the martial law district, it is of no

use [to object] even if you are the president or an assemblyman."[14]

The revival of the Japanese Emperor's former sovereign power to declare a state of emergency in liberated Korea was deeply ironic. When emergency martial law was imposed in the autumn of 1948 in Cheju, Yŏsu, and Sunch'ŏn, the authorities discovered that there was actually no legal basis to support it. Even though South Korea already had a new constitution from July 1948, provisions relating to martial law were not promulgated or even drafted until a year later in November 1949.[15] Article 64 of the 1948 Constitution simply stated, "The President may proclaim martial law under the conditions as prescribed by law."[16] However, as scholars have frequently pointed out, there was no existing law prescribing such conditions, except the Meiji Constitution (1890-1947) from the colonial era-which also did not specify the conditions defining an emergency. Considering the fact that the Meiji Constitution was superceded in Japan in 1947 under the U.S. occupation, reviving it in postcolonial Korea as explained below was an anachronism that whipped up fierce controversy in the Korean National Assembly.

Following the first emergency decree issued in October 1948, the National Assembly debated the president's failure to inform and obtain agreement from the Assembly before declaring a state of emergency. In addition to questioning the legal basis of martial law, the Assembly was wary of recriminations against non-communist civilians in Cheju. The suspicion that the Japanese Emperor's decree was being invoked in the execution of the 1948 constitution led a handful of assemblymen to protest the "illegal" imposition of martial law.[17] To some, the Japanese law was more than just another colonial legacy. It was based on the premise that the Emperor was the lawgiving subject with sovereign powers to decide exceptions to the law. The recourse to the former Japanese law indicated that South Korea was caught up in a legal vacuum in 1948, when the Military Government withdrew without introducing comprehensive juridical reform. If the state of emergency could create an "anomic" space in rebellious parts of Korea by deactivating all legal determinations, the law used to forge that space was also an anomic law born out of a juridical limbo.[18] What remained to be questioned was not only the lawlessness resulting from the suspension of the law, but also the legal status of the juridical instrument used to suspend it.

This debate resurfaced in Korea in the 1990s, with a number of scholars disputing the legal authority of the Meiji Constitution. Legal scholars like Kim Sun-t'ae and Kim Ch'ang-rok contested its validity by pointing out the problems of a constitution rooted in the Emperor, who had absolute command over the military.[19] By contrast, South Korea did not have military autonomy when the first martial law measure was declared in 1948. They also argued that the Meiji Constitution had not been amended since 1889 and thus had led to the prosecution of individuals for crimes not specified in the law. Furthermore, the former Meiji Constitution was contrary to the Universal Declaration of Human Rights and to the American occupation authority's attempts to eliminate oppressive laws inherited from the colonial era. (Martial law was abolished in postwar Japan.) These later debates tended to emphasize the transitional role of the Military Government, which not only nullified the constitutional powers of the previous regime in 1945 and 1948, but also left a juridical limbo on its withdrawal in 1948. Whether the Military Government in fact made substantial changes to existing law and to what extent their innovations were put into practice, however, should be questioned.

Jurisprudence was the most neglected aspect of the American occupation and changes attempted during this period were neither

comprehensive nor effective. In the early days, the Military Government was confronted with the remnants of the Japanese legal structure inherited from colonial Korea, where approximately 85% of the judges, procurators, and members of the Bar Association had been Japanese. The end of colonialism left the remaining 15% of Japanese-trained Korean personnel to run the legal system under American supervision. Little effort was made to reform some of the obvious shortcomings of Japanese jurisdictional practices.[20] One of these was a pervasive disregard for habeas corpus, especially in relation to political offenses and the treatment of leftist dissidents. Despite the Military Government's belated attempt to introduce changes, according to Henderson there was not "a single case in two and one half years in which the habeas corpus [measure] has been implemented."[21] He attributed the problem to the Military Government's lack of attention to the South Korean judicial system in the sense that they "chose not to notice any lack of implementation of those parts of Korean law which the Occupation had introduced." He also noted that they failed to act in various cases of unwarranted political violence by the state.[22]

Informed observers of the American occupation were well aware of the draconian policies that were being enacted and many noted their continuing legacy in the later period, especially during the mass persecutions of South Korean leftists between 1948 and 1950. The realization that the occupation had resulted in an undemocratic outcome, however, did not necessarily evolve into a critical assessment of the U.S. failure to engineer a workable democracy in the peninsula. Instead, U.S. officials in Korea regularly resorted to the theory of Oriental despotism by claiming the impossibility of a "simon-pure democracy in any Oriental country."[23] This orientalist assumption masking the critical U.S. role in maintaining the Rhee dictatorship behind the theory that the East was incompatible with the precepts of modern democracy came to rationalize the rise of dictatorship and violence in postcolonial societies beyond Korea. In postcolonial Korea, this attitude condoned Syngman Rhee's authoritarianism, the police state he had created, and his record of systematic human rights abuses.[24] For instance, when it was reported that spears were being used in executions in Cheju, an American official remarked: "This brutality against humans even though rebels who were denied the right of due process of law [has] been forcefully brought to the attention of high Korean officials and [it was] pointed out that such action by mobs is contrary to American precepts of democracy."[25] However, while the occupation authorities denounced certain reported acts of state-sanctioned violence as un-American, they did little to facilitate practical interventions or prevent further violence. The theory of native despotism not only made the violence seem inevitable, but also helped to deflect attention from American support of the brutal suppression in Cheju and elsewhere.

Syngman Rhee based his power in the colonial juridical system-which the Military Government did not eradicate-when he declared a national state of emergency in 1948. Following a violent crackdown on the Cheju Uprising, Rhee issued the National Security Law in December 1948 followed by the introduction of martial law in November 1949; both measures laid the groundwork for the further suppression of political dissidents. By passing this legislation, Rhee sought to legitimize his government's use of violence and to avoid a repetition of the accusations of illegality he faced over the emergency laws used in South Chŏlla and Cheju in 1948. The National Security Law became the basis for the arrest of political "subversives," nationwide mobilizations and executions of political "converts" in the National Guidance Alliance, and the murders of citizens under police investigation (written off as "unnatural deaths"). Along with the new martial law measure, it was the most heavily

cited legal instrument for executions without trial during the first six months of the Korean War.[26]

The National Security Law and the introduction of martial law not only filled a temporary legal vacuum in 1948, but also turned the two following years into a quasi-state of emergency bordering on civil war. Between them, the two laws proscribed all forms of political subversion of the state and, as a resulted, empowered Rhee to the point that he could effectively annihilate his political enemies. The death sentence was frequently mandated in this legislation. Article 1 of the National Security Law read: "Those who organize or join an organization or work for an organization established for the purpose of assuming the title of the government or causing civil disturbance shall be punished as follows: 1. Death or life imprisonment for the chief instigators or organizers. 2. Death, life imprisonment or a minimum of 10 years in prison for leadership cadres. 3. A minimum of 3 years in prison for those who support such an organization after founding or joining it."[27] American advisors characterized Rhee's preoccupation with law and order as "fascist" and claimed to have intervened to moderate some of the excessively authoritarian aspects of the National Security Act that fell short of basic standards of human rights.[28] Regardless of what the advisors said, they continued to support Rhee politically and militarily. In the end, the punitive elements of the law were retained, threatening the ever-present possibility of violence against anyone engaged in civil disobedience.[29]

Truman (left) and Rhee

This possibility was translated into reality when the Korean War broke out on June 25, 1950 following the North Korean invasion of the south. The war brought into effect the emergency laws that had been on the statute books since 1948. Rhee declared a state of emergency on July 8, 1950 and did not withdraw it for three years, until July 23, 1953. Based on the provisions of the martial law measure drafted in 1949, the situation that pertained in June 1950 was determined to be a state of war and also a national emergency that justified the restoration of order by means of force. Unlike the Cheju Uprising, however, this time martial law applied to all provinces. South Korea was subject to the dictatorial power of the president now acting as commander-in-chief. In legal terms, Rhee had the power to arrest, detain, search and relocate, and take special measures with regard to the press and publishing houses, and the right of citizens to congregate and take collective action. He could also enforce a compulsory draft, mobilize labor, and appropriate or destroy private property.[30] While the emergency laws did not explicitly endorse violence against the civilian population, it nullified the right of habeas corpus. The outbreak of war saw the convergence of juridical and military power in

the hands of a single leader, who could also decide on any exceptions. Thus there was ample room for Rhee to use and abuse power for his own ends.

The negative effects of martial law became more visible as the war progressed and reports of civilian massacres trickled into public consciousness through eyewitness accounts and coverage in the international media. These reports put Rhee in a contradictory position. On July 7, 1950, he signed the Geneva Conventions–the day before he proclaimed the Emergency Martial Law.[31] Rhee pledged that he would guarantee the immunity of civilians and POWs: "We, the citizens of the Republic of Korea, will not model our conduct on the barbarism of the communists. Our action[s], in accordance with the Geneva Convention of 1949, will be proof not only of our high civilization but also of our gratitude to other people of the civilized world who are aiding [us] at this tragic time."[32] This high-sounding statement was invalidated in the very same month, when political prisoners, civilians suspected of being communists or registered in the thought reform organization known as the National Guidance Alliance, were killed in mass executions.[33] These atrocities lend weight to Lynn Hunt's thesis that, in a state of emergency, laws passed by a sovereign state tend to supersede moral standards based on international human rights instruments.[34] In the era of the Universal Declaration of Human Rights, signing the Geneva Conventions provided Rhee with the aura of legitimacy and legality, but in no way did it limit his power to enforce emergency legislation.

In the face of media criticism and rumors of civilian massacres, Rhee issued public statements to clarify the meaning of the Emergency Martial Law; in so doing he sought to control civilians in the same manner as soldiers are organized for military purposes. In a speech entitled "On the Enforcement of the Emergency Martial Law," he attempted to deflect criticism of his office by claiming that some military personnel were abusing the law, believing that it empowered them to harass and oppress the civilian population.[35] He asserted that the law had been designed to protect "good people (*yangmin*)"-a politically loaded term for non-communist civilians-by imposing stricter regulations against social disorder in wartime. In the document, Rhee sent an ambiguous message that neither admitted his own responsibility nor guaranteed the cessation of state-inspired violence, but was pervaded by the ethos of humanitarianism. While the speech acknowledging that the military and police were committing acts of violence-or, at least, were wielding excessive power over civilians in the name of the emergency-Rhee gave the impression that any violence was unintentional and resulted from the individual actions of soldiers, who, he asserted, were acting without military guidance or discipline.

During the conflict, military and police violence against the civilian population was often relegated to the category of private punishment or revenge measures, rather than attributed to state violence. Revenge violence is not an uncommon phenomenon, as the research on inter-communal or kinship violence would demonstrate.[36] But the term "private punishment" misrepresented the political nature of acts of violence. Three months into the Korean War, the National Assembly passed a "Bill on the Prohibition of Private Punishment," defining such punishment as "injury to another's life, person, freedom or property without judgment or legal process, on the ground that a traitor or a collaborator is punished" under the pretext of the emergency conditions.[37] Carrying the maximum penalty of death or life imprisonment, the bill was promoted as a self-consciously humanitarian gesture in accordance with the Geneva protocols. Opponents of the bill were anxious that it would become a shield for communists and undermine the morale of the army and the

police. They need not have feared since few were actually penalized for the commission of so-called "private" punishments.

We should also note that, at the onset of war, Rhee proclaimed a "Special Decree Concerning the Punishment of Crimes in the State of Emergency." Along with the other emergency measures, this decree laid the groundwork for legalized killings and deaths arising from the abuse of state power.[38] As an extension of the special decree, additional laws punishing acts of treason or collaboration with communists were passed in December 1950, a month which also marked a second wave of mass executions. Under these laws, offenders were dealt with through expedited trials or, in some cases, no trial at all.[39] To speak of "private punishment" without reference to these special laws would simply render the mass killings that were carried out during the war as the irrational acts of individual law enforcers, rather than as systematic expressions of an extreme form of politically motivated punishment. The emergency laws blurred the line between private and public forms of violence.

The American Emergency

Claims of unintended civilian casualties were commonplace in the post-Geneva Conventions warfare of the 20th century.[40] With the development of sophisticated military technology and weapons of mass destruction, it has often been argued that the destruction of the innocent is an inadvertent consequence of modern warfare. Euphemisms like "collateral damage" also downplay the question of motive and morality in causing civilian casualties. Since the Declaration of Human Rights in 1949, it has seemed both immoral and illegal to admit to the intentional targeting of civilians, even with recourse to just war theory. Civilian immunity, however, has seldom been a guiding principle of post-WWII warfare and the status of the civilian war dead has remained that of a "calculated casualty."

Civilians are often hostages to political conflict as passive victims of aerial bombings or ground attack, though some may become active participants in guerrilla warfare. As Richard S. Hartigan observed, "From 'massive retaliation' to 'counterinsurgency,' military and political planners have written off the civilian."[41] While his point of reference was the My Lai massacre during the Vietnam War, civilians were also seen as expendable during the Korean War. In the first week of the Korean War, when Harry S. Truman decided to commit U.S. forces to South Korea, his long-time adviser Clark M. Clifford addressed the issue of civilian casualties. In a letter that began with his praise for Truman's decision, Clifford wrote: "I am concerned about the present order which limits our aid to that area South of the 38th parallel. I understand the reason for such order but I am distressed that, in bombing towns and cities in South Korea, we are bombing friendly people and friendly areas."[42] This letter was written a month before the No Gun Ri massacre, in which American troops shot and bombed South Korean civilians. Documents unearthed at a later date permitting the killing of Korean civilians suggest that the killings were systemic.[43] At the heart of the No Gun Ri controversy lay the fact that not only had the soldiers killed friendly civilians, but the documents also revealed a demonstrable intentionality or, at least, awareness that conflicted with the contemporary ethos of humanitarianism.[44]

The debate over civilian immunity was the debate over liberal immunity in a different guise. The assumption that liberal democracies are less prone to target civilians is a longstanding myth. Incidents reported from some of the major battlefields of the past century have repeatedly contradicted this myth and revealed that democratic states are far from being able to claim moral superiority in their use of violence against civilians.[45] What continue to be matters for dispute are questions of motive and whether the means

justifies the end. Insofar as the use of states of emergency and other forms of legal exceptions are concerned, liberal democracies share much in common with authoritarian and totalitarian states.

Caught between law and necessity, the moral superiority of political liberalism throughout the 20th century was repeatedly challenged as the use of emergency powers gave liberal democracies an authoritarian character in the pursuit of wars across international borders. According to legal historian Jules Lobel: "The rise of the American empire began to muddy the boundaries dividing emergency and normal legal orders, war and peace, totalitarianism and the republic. With the extrusion of American power abroad, the limitations on presidential power, so carefully guarded by the early leaders of the republic, began to erode."[46] This erosion was also evident in the U.S. response to the Korean War, which elicited a Janus-like transformation of liberal constitutionalism in time of war.

On December 16, 1950-six months after Syngman Rhee had declared a state of emergency in Korea-President Truman declared a State of National Emergency in a panic response to the Chinese entry into the Korean War. Conceived as a rhetorical strategy to produce "very great psychological effects" on the American people and create a united front at home, that is, to crush opposition to the war, the political impact of Truman's declaration has not been studied closely.[47] It is interesting to note that at the time the Korean War broke out in June 1950, the U.S. was already under a state of emergency carried over from its recent wars in Europe and the Pacific. It wasn't until April 28, 1952 that the emergencies proclaimed on September 8, 1939 and May 27, 1941 were officially terminated.[48] For most of the Korean War, the U.S. was subject to three different, but overlapping, states of emergency. The one proclaimed by Truman in December 1950 was not to be repealed for over two decades. It served as the legal basis for John F. Kennedy's Cuban embargo in 1962 and was invoked in Lyndon B. Johnson's escalation of the Vietnam War in 1964.[49]

A CHRISTMAS APPEAL! NEW YORK'S NEEDIEST CASES, SECTION 2

The New York Times.

LATE CITY EDITION

PRESIDENT PROCLAIMS A NATIONAL EMERGENCY; AUTO PRICES ROLLED BACK; RAIL STRIKE ENDS; ALLIES GIVE UP HAMHUNG; WU REJECTS TRUCE

U.N. 'TRAP' ALLEGED

TURNING DOWN CEASE-FIRE PLAN

BEACHHEAD IS CUT

STRIKERS RETURN

Recent Auto Rises Canceled By First Price-Freeze Edict

TRUMAN SETS DRIVE

Paris and London Void Pacts In Arming Bonn, Soviet Says

U.S. Urges Defense Parley By All American Republics

RED CHINA'S ASSETS IN U.S. ARE FROZEN

DISASTER SERVICES PUT ON ALERT HERE

World News Summarized

Nyack Area Fears the Thruway Means Razing of 250 Buildings

Hanley to Get $10,000 State Job; Dewey Makes Good His Promise

Proclaiming that "Communist imperialism" threatened the world's people, Truman called upon the American people to help construct an "arsenal of freedom."

The American state of emergency was not accompanied by the imposition of martial law and it did not subject ordinary Americans to the same kind of political terror that Koreans experienced during their war. The war, after all, was 6,500 miles away. However, in the early 1950s, plans were formulated at the highest level to suspend habeas corpus and imprison around 12,000 American citizens suspected of disloyalty, should the need arise.[50]

The effect of the national emergency declared by Truman was to invoke a sense of imminent danger among the American people, mark the period as effectively a state of war, influence war strategies at the Pentagon, and shape the U.S. into a warfare state beginning with a large expansion of the military budget.[51]

Truman's emergency proclamation superseded President Rhee's in both scale and effect. While Rhee could assume sovereign power by subjecting South Koreans to emergency martial law measures, which remained in effect until the end of the war and gave him full control of the national police force, it was nonetheless a limited power, above all, one circumscribed by the Americans who had put him in office and whose military forces dominated.[52] As far as the conduct of the war was concerned, Rhee relegated his role as commander-in-chief to Douglas MacArthur, commander of the U.N. forces in Korea. MacArthur's own power in this role was, in a sense, also limited in that, in a state of national emergency, only the president could act as the commander-in-chief of the U.S. Army. Specifically, MacArthur lacked the authority to make major decisions, such as using the atom bomb against communist forces or crossing the Chinese border even though he was a powerful figure in waging the war. Truman's proclamation of a national emergency in December 1950 was, in part, a symbolic assertion of his sovereign powers over the Korean emergency. His declaration of a state of emergency placed the Korean people in a tangled web of political decision-making involving one general and two presidents, controlling both the internal and external dimensions of the war.

Truman's declaration of a state of emergency touched off a critical reexamination of American democracy among scholars and politicians, one that reverberated through the media. The U.S. was not a dictatorship and granting extraordinary powers to the president needed a compelling rationale. Historian Clinton Rossiter had previously formulated the idea of "constitutional dictatorship" which could be rationalized on grounds of military necessity. Reflecting on the challenges the U.S. faced during the Second World War, Rossiter advocated the need to "make any future dictatorship a constitutional one," arguing that, "no sacrifice is too great for our democracy."[53] Truman did not use the same language as Rossiter, but the rationale was the same- the necessity to protect democracy at home in a time of war-to justify the expansion of his presidential power.

Truman faced challenges in the Congress. Congressional representatives questioned Truman's motives for re-declaring the state of emergency. Some refused to go along with his "psychological" explanation. They doubted the necessity for a new emergency act that would supersede existing legislation, particularly in view of the passage of the Defense Production Act on September 8, 1950. This act allowed Truman to "force private industry to give priority to defense and homeland security contracts" and guaranteed "the prompt supply of adequate quantities of needed military and civilian goods" in the process of military expansion.[54] Truman proposed this act in September, but used the same reason to justify his declaration of the state of emergency in December of the same year. He insisted that the new state of emergency would give him the power to "help the Defense Department in negotiating contracts" and supporting the military.[55] In retrospect, the state of emergency in Korea was directly linked to the development of the American military-industrial complex, which, Bruce Cumings concludes, "came to define the sinews of American global power ever since."[56]

Some members of Congress wondered if the new emergency was a declaration of war, since they initially regarded the Korean War as a "civil war."[57] Truman defined the Korean situation as a moment of danger and "remarked

that he didn't want any more powers than he needed…Now we are in a new situation. We don't have much time. We are faced with the most terrible situation since Pearl Harbor. The President said he was not asking for power just because he wanted them, but because it was essential."[58] The evocation of the Pearl Harbor was typical national security rhetoric during the cold war.[59] Truman's emphasis on the exigencies of the situation in Korea also echoed Oliver Cromwell's dictum, "Necessity hath no law" as well as German scholar Carl Schmitt's assertion that "All law is 'situational law.'"[60] Both statements point to the fragility of juridical integrity in situations of crisis and anticipate the strengthening of the executive power.

In the U.S., the president's demand for unlimited power at the expense of the existing legal order has framed the democratic tradition of going to war since Abraham Lincoln. Lincoln's actions during the American Civil War were subsequently repeatedly invoked to justify a "constitutional dictatorship," as he was widely seen as a great democrat acting, albeit temporarily, as a great dictator.[61] When Republican Senator Robert A. Taft charged Truman with having no legal authority to dispatch troops to Korea, Truman produced a long list of historical precedents, culminating in Lincoln's declaration of a state of emergency and suspension of habeas corpus in 1861 without Congressional approval.[62] Despite his oath to defend the Constitution, Lincoln was the first president to break it by imposing an unprecedented scale of emergency rule across the nation and by pushing the limits of executive power. The extent of his powers was demonstrated in the authoritarian manner in which rebellion was suppressed and acts of treason dealt with. Like the Korean War, the American Civil War was marked by "arrest without warrant, detention without trial, release without punishment," and the thoroughgoing suspension of civil liberties.[63] As the leader of the nation, Lincoln rationalized the imprisonment of political suspects as a "precautionary" measure in a crisis situation.

Despite their likeness, the American Civil War and Korean War occurred at different time periods and geographical locations. While the former was a civil war that took place on American soil, the latter was an international civil war fought far from U.S. shores across the Pacific. Their differences were also marked by the development of new constitutional traditions in the U.S. since Lincoln did not "institutionalize and perpetuate" his emergency powers.[64] According to Unger, today's "America has slipped into a permanent, self-renewing state of emergency" largely in part due to Franklin D. Roosevelt, who laid the groundwork of the emergency state, and Harry S. Truman, who made it permanent.[65] Unger credited Roosevelt for making it possible for the president to engage in foreign wars without the congressional approval, supporting J. Edgar Hoover's nationwide surveillance system, and allowing the military-industrial complex dictate the national security affairs.[66] These developments were facilitated by U.S. participation in World War II in Europe and the Pacific, and had a direct impact on the daily lives of American citizens.

The Korean War came in the midst of the growing emergency state. Unlike the Civil War or WWII, however, the situation in Korea did not evoke an acute sense of danger among American citizens. For this reason, Truman had to come up with a "creative interpretation of danger" for the public to support his war effort in a foreign country.[67] He achieved this by blurring the boundaries between domestic and foreign affairs. He also adopted a rhetoric that heightened the sense of crisis among the American people through exaggerated perceptions of the menace posed by the outside world. On the eve of his declaration of a state of emergency, Truman asserted:

> Our homes, our Nation, all the things we believe in, are in great danger. This danger has been created by the rulers of the Soviet Union...The future of civilization depends on what we do-on what we do now...The danger we face exists not only in Korea...Because our freedom is in danger we are united in its defense...But remember that we are building our defenses in the democratic way, and not by the iron rule of dictatorship...Throughout the world our name stands for international justice and for a world based on the principle of law and order.[68]

The "politics of danger" was a traditional mechanism for consolidating presidential powers-powers that, according to one commentator, had "grown by leaps and bounds during crisis periods" since the age of Lincoln.[69] While Truman did not deviate from the standard rhetoric concerning wartime emergency, he amplified the sense of danger by invoking the Red Scare presented by the Soviet Union and by warning of the devastating impact of a military defeat on the American way of life. This was the basis for seeking the expansion of executive power.[70]

In the event, Truman was able to claim greater powers mainly as a result of constitutional ambiguities.[71] At the onset of the Korean War, legal commentator James Burns had pondered: "How can our Presidents act like dictators-and get away with it? The answer lies only in part in the Constitution, written or unwritten."[72] The "unwritten" law invoked by Burns referred to various historical precedents for the suspension of the Constitution since Lincoln. Burns's "written" law referred to hazy definitions of presidential powers during a state of emergency. The Truman administration defended its actions in Korea by noting that the "Constitution does not clearly and explicitly define the respective powers of the President and the Congress in the field of military and foreign affairs."[73] This notion was also consistent with the view that "treaties need not be explicit" with regard to overseas military deployments.[74] In the end, lack of clear legal definitions facilitated the expansion of presidential powers in the early 1950s.

Days before Truman's proclamation, the Congress debated its implications and many representatives and senators expressed concerns that the American people did not know what it meant or what was at stake.[75] In the end, the state of emergency was imposed. Ostensibly defensive assertions such as the "naked power of aggression heeds only naked power" quickly morphed into the more aggressive "fight for survival."[76] The proposed solutions to the crisis included expediting national mobilization, an expanded defense industry, extended military powers, the use of nuclear weapons, and the aggressive deployment of strategic air power, especially in the northern part of Korea. Many of these plans were delineated in NSC-68, NSC-100, and in a book-length draft of the "Emergency Powers Act" (1950) that opened with the comprehensive statement: "Recognizing that modern warfare requires a total mobilization of the nation's resources, and that its destructive force will not allow for delay, it is the purpose of this Act to provide for executive action requisite to that mobilization."[77] The attempt to coordinate this state of total mobilization led to the emergence of a proactive warfare state.[78] The various emergency acts passed by Congress during the Korean crisis facilitated the formation of this warfare state.

The other face American democracy hereafter was the warfare state.[79] The two would march forward hand in hand. A critical challenge was to find a balance between the welfare state and the warfare state. This balance was lost during

the Korean War. Despite the fact that Korea was described as a limited war, the conflict was fought both at home and abroad and weapons of mass destruction were used indiscriminately against enemy troops, cities, industrial plant, and civilians. The increased use of air power in Korea, for instance, exploited the possibility that civilians could be used as "hostages" to undermine enemy morale by instilling a collective sense of fear.[80] Truman's National Emergency not only prompted rapid militarization, but also produced major changes in warfare strategy, the choice of weaponry, and the treatment of civilians. The immediate outcome was the indiscriminate bombing of the civilian zones in North Korea that were wiped out during the winter of 1950. According to Bruce Cumings, "From early November 1950 onward, MacArthur ordered that a wasteland be created between the fighting front and the Chinese border, destroying from the air every 'installation, factory, city, and village' over thousands of square miles of North Korean territory."[81] While the decision to employ scorched-earth policy was MacArthur's, Truman allowed it to happen and went on to legitimize it by declaring the state of emergency in the following month.[82] Unlike Rhee's emergency that took place in wartime Korea, Truman's emergency happened in "peacetime" U.S., where its citizens remained unaffected by the horrific scenes of destruction and civilian suffering. This difference fostered U.S.'s perennial indifference to the disastrous effects of the emergencies used in foreign wars ever since.

Human Rights in Times of Emergency

The history of the 20th century is littered with cases in which emergency laws paved the way human rights catastrophes. In Germany, the emergency provisions of the Weimar Constitution were used to suppress the communist insurrection of 1920 as well as the civil resistance that followed.[83] From this context there emerged the various measures that served as the legal basis for the destruction of European Jewry. Liberal states like France and Britain deployed certain comparable measures in times of war to suppress insurrections throughout their empires. The French "state of siege" measure, on which South Korea's emergency laws were modeled, included an article specifically targeting resistance to its colonial rule in Algeria. Following decades of amendments since its inception in 1878, the state of siege law came into full effect during the Algerian War in 1954 including such emergency clauses as the establishment of "kill on sight zones."[84] The British were no exception to such measures-their use of martial law dated back to the 14th century and affected vast regions of the British Empire, stretching from Ireland to India to Africa. The imposition of martial law has involved a long tradition of brutality against resistance from below, ranging from domestic civil unrest to anti-colonial rebellions.[85] The use of martial law in the Boer War of 1899-1902 not only demonstrated the British authorities' use extreme forms of violence against noncombatants through the creation of concentration camps and massacres of incarcerated civilians, but it also resulted in the modernization of martial law provisions.[86] Constitutional changes following the Boer War led to an even more aggressive application of martial law during the Irish Rebellion of 1920 and prepared for the coming age of total war.

These examples confirm the correlation between emergency laws and the systematic destruction of human life. The historical development of these laws makes the violence that accompanies them seem more than accidental. The imposition of a state of emergency marks the moment at which the logic of violence embedded in the existing legal system finally unveils itself. As Schmitt puts it, "The rule proves nothing; the exception proves everything."[87] What appears as an unforeseen outbreak of violence or a freak incident is often premeditated in legal terms as part of the

state's attempt to rationalize the violence attendant on its own actions. Characteristically, the modern state also claims a "monopoly of the legitimate use of physical force within a given territory."[88] If the state reserves an exclusive right to use violence in its own defense, then emergency laws help to legitimize it. Because the violence originated by the state often involves extensive mobilization of the forces of law and order, few citizens question its rationale.

The point of the state of emergency is the use of legally sanctioned violence in the absence of customary law and its restraints. Most often, the victims are innocent civilians. Laws conceived as a means of "pacifying" political rebels end up being turned against the people at large. In Korea, the emergency laws were promulgated in response to the uprising in Cheju and were intended to establish the legality of state-sanctioned violence against a rebellious population. While the suppression of the Cheju Uprising marked the beginning of political violence that spilled over to the Korean War, it ended up being directed against an indeterminate enemy. For Korea, the period between 1948 and 1953 was both a relentless civil war-which blurred the traditional friend-enemy distinction-and an international war involving a coalition of forces fighting for hegemony in a bipolar world. In this case, instead of a clearly defined enemy, there are various shades of foe as well as various shades of friends-depending on one's political loyalties. The hypothetical figure of the partisan rebel effectively disappears into the undifferentiated masses, whose collective identity must be politicized in order to become recognizable to the state.

The human rights emergency witnessed in Korea in the aftermath of WWII demonstrated that the precariousness of the life of the masses did not end with the demise of Japanese colonialism, but continued under various political systems that incorporated both old and new means of destruction. The Korean War intensified the politicization of the civilian population. The process, however, was arbitrary and violent. The detailed classification of Koreans-into "good" citizens, civilians, subversives, collaborators, rebels, guerillas, and communists-that existed before and during the war was aimed at controlling the population. Those who failed to fit the idea of the good were considered to be dispensable. The state's willingness to act in this way was implicit in the process of political differentiation as well as in the introduction of draconian emergency laws during the Korean War. The fact that most civilians were firmly under the control of the state and that the state had disproportionate control over the means of destruction made them vulnerable to the misuse of wartime powers.

The emergency laws deployed during the Korean conflict lent an aura of legitimacy to state-directed violence. These measures not only helped the authorities carry out large-scale acts of violence, but also affected the popular historical perception of such violence. The victims of political persecution, especially communist supporters, were often thought of as deserving of their punishment. But they were more likely to have been criminalized through the law rather than through their alleged misdeeds. As I have demonstrated throughout this essay, emergency laws were all too prone to the manipulation of political leaders and political crises. During the Korean conflict, they were used to underpin an authoritarian presidency in South Korea and a war presidency in the U.S. What happened under their legal auspices was seldom questioned until recently, when stories of widespread civilian suffering were brought into the light. What I have written here is only a beginning: we need to reflect more deeply on the relationship between the law and state-directed violence in historical emergencies.

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References

Agamben, Giorgio. 2003. *State of Exception*, trans. Kevin Attell, Chicago: University of Chicago Press.

Armstrong, Charles K. 2010. The Destruction and Reconstruction of North Korea, 1950-1960. *The Asia-Pacific Journal*, Vol. 8, Issue 51 No 2, (December 20) or At Japan Focus.

Bradley, Mark Philip. 2009. The Ambiguities of Sovereignty: the United States and the Global Human Rights Cases of the 1940s and 1950s in *The State of Sovereignty: Territories, Laws, Populations*, eds. Douglas Howland and Luise White, Bloomington: Indiana University Press.

Capua, J. V. 1977. The Early History of Martial Law in England from the Fourteenth Century to the Petition of Right, *The Cambridge Law Journal* 36 (1): 152-173.

Casey, Steven. 2010. Selling the Korean War: Propaganda, Politics, and Public Opinion in *the United States, 1950-1953*, New York: Oxford University Press.

Cheju 4.3 Sakŏn Chinsang Kyumyŏng mit Hŭisaengja Myŏngye Hoebok Wiwŏnhoe. 2002. *Cheju 4.3 sakŏn charyojip* [Collected Materials on the Cheju April 3rd Incident], Seoul: Tosŏch'ulp'an Sŏnin.

Cheju 4.3 Sakŏn Chinsang Kyumyŏng mit Hŭisaengja Myŏngye Hoebok Wiwŏnhoe. 2003. *Cheju 4. 3 sakŏn chinsang chosa pogosŏ* [A Report into the Investigation of the Truth about the Cheju April 3rd Incident], Sŏul: Cheju 4.3 Sakŏn Chinsang Kyumyŏng Mit Hŭisaengja Myŏngye Hoebok Wiwŏnhoe.

Conway-Lanz, Sahr. 2005. Beyond No Gun Ri: Refugees and the United States Military in the Korean War, *Diplomatic History* 29 (1): 50-51.

----------. 2006. Collateral Damage: Americans, Noncombatant Immunity, and Atrocity after World War II, New York: Routledge.

Cosgrove, Richard A. 1980. The Boer War and the Modernization of British Martial Law. *Military Affairs* 44 (3): 124-127.

Cumings, Bruce. 1981. The Origins of the Korean War: Liberation and the Emergence of *Separate Regimes*, 1945-1947, Princeton: Princeton University Press.

----------. 2001. Occurrence at Nogŭn-ri Bridge: An Inquiry into the History and Memory of a Civil War. *Critical Asian Studies* 33 (4): 509-526.

----------. 2002. The Origins of the Korean War, Volume 2: The Roaring of the Cataract,

1947-1950, Seoul: Yuksabipyungsa.

----------. 2004. American Airpower and

Nuclear Strategy in Northeast Asia since 1945 in War and State Terrorism: The United States, Japan, & the Asia-Pacific in the Long Twentieth Century, eds. Mark Selden & Alvin Y. So, eds. Oxford: Rowman & Littlefield Publishers.

----------. 2010. *The Korean War: A History.* New York: Modern Library.

Downes, Alexander. 2008. *Targeting Civilians in War,* Ithaca: Cornell University Press.

Feldman, William. 2005. Theories of Emergency Powers: A Comparative Analysis of American Martial Law and the French State of Siege. *Cornell International Law Journal* 38 (3): 1021-1048.

Han, In-sŏp. 2000. Han'guk chŏnjaeng gwa hyŏngsabŏp: puyŏkja ch'ŏbŏl mit minganin haksal kwa kwallyŏn tŏen pŏpjŏk munje rŭl chungsim ŭro [The Korean War and Criminal Law: With a Focus on Legal Problems concerning the Punishment of Traitors and the Massacre of Civilians], *Sŏul Taehakkyo Pŏphak* 41 (2): 135-179.

Hanley, Charles J. and Martha Mendoza. 2007. The Massacre at No Gun Ri: Army Letter Reveals U.S. Intent, *The Asia-Pacific Journal* (April 15), (accessed May 19, 2010).

Hartigan, Richard Shelly. 1982. *The Forgotten Victim: A History of the Civilian,* Chicago: Precedent Publishing.

Hogan, Michael J. 1998. A Cross of Iron: Harry S. Truman and the Origins of the National Security State, 1945-1954, New York: Cambridge University Press.

Hunt, Lynn. 2007. *Inventing Human Rights*, New York: W.W. Norton & Company, Inc.

Kim Ch'ang-nok. 1998. 1948-yŏn Hŏnbŏp che 100-jo: 4.3 kyeŏmnyŏng ŭl t'onghae pon ilje pomnyŏng ŭi hyoryŏk [Article 100 of the 1948 Constitution: The Persistence of the Japanese Constitution through the April 3rd Martial Law Decree], *Pŏphak Yŏn'gu* 39 (1): 477-493.

Kim Dong-choon. 2010. The Truth and Reconciliation Commission of Korea: Uncovering the Hidden Korean War, *The Asia-Pacific Journal*, 9-5-10 (March 1).

Kim Hak-jae. 2011. Han'guk chŏnjaenggi taet'ongryŏng kingŭp myŏngryŏng kwa yeŏe sangt'ae ŭi pŏpjehwa [The Legalization of the Presidential Emergency Order and the State of Exception during the Korean War Era] in *Sahŏe wa Yŏksa* 91: 217-254.

Kim Ki-jin. 2002. *Kkŭnnaji anŭn chŏnjaeng, Kungmin Podo Yŏnmaeng: Pusan, Kyŏngnam chiyŏk* [The Unfinished War: The National Guidance Alliance, Pusan, South Kyŏngsang Region], Sŏul-si: Yŏksa Pip'yŏngsa.

Kim Sun-t'ae. 1999. Cheju 4.3 tangsi kyeŏm ŭi pulbŏpsŏng [The Illegal Use of Martial Law at the time of the Cheju Uprising of April 3rd] in *Cheju 4.3 yŏn'gu*, ed. Yŏksa munje yŏn'guso, Seoul: Yŏksa Pip'yŏngsa: 147-177.

Kim, Taewoo. 2012. War Against an Ambiguous Enemy. *Critical Asian Studies* 44 (2): 205-226.

Klieman, A. S. 1979. Preparing for the Hour of Need: Emergency Powers in the United States. *The Review of Politics* 41 (2): 235-255.

Kwon, Heonik. 2010. *The Other Cold War*, New York: Columbia University Press.

Lobel, Jules. 1989. Emergency Power and the Decline of Liberalism. *The Yale Law Journal* 98 (7): 1385-1433.

Meade, E. Grant. 1951. *American Military Government in Korea*, New York: King's Crown Press.

Merrill, John. 1989. *Korea: The Peninsular Origins of the War*, Newark: University of Delaware Press.

Ninkovich, Frank. 1999. *The Wilsonian Century: U.S. Foreign Policy since 1900,* Chicago: University of Chicago Press.

Pak, Ch'an-sŭng. 2010. *Maŭl ro kan Han'guk chŏnjaeng* [The Korean War that Went to the Village], P'aju-si: Tolbegae.

Pak, Myŏng-nim. 1996. *Han'guk chŏnjaeng ŭi palbal kwa kiwŏn I, II* [The Outbreak and Origins of the Korean War, Vols. 1-2]. Sŏul: Nanam Ch'ulp'an.

Phillimore, G. G. 1900. Martial Law in Rebellion. *Journal of the Society of Comparative Legislation*: 45-72.

Power, Samantha. 2002. "A Problem from Hell": America and the Age of Genocide, New York: A New Republic Book.

Radin, Max. 1942. Martial Law and the State of Siege. *California Law Review* 30 (6): 634-647.

Rossiter, Clinton L. 1948. Constitutional Dictatorship: Crisis Government in the Modern Democracies, Princeton: Princeton University Press.

Schmitt, Carl. 2005. *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab, Chicago: University of Chicago Press.

Scott, Peter Dale. 2013. America's Unchecked Security State: Part I: The Toxic Legacy of J. Edgar Hoover's Illegal Powers, *The Asia-Pacific Journal*, 11-17-2 (April 29).

Sŏ, Chung-sŏk. 2005. *Yi Sŭng-man ŭi chŏngch'i ideollogi* [Syngman Rhee's Political

Ideology], Sŏul-si: Yŏksa Pip'yŏng-sa.

Sŏnwoo, Chongwŏn. 1992. *Sasang kŏmsa* [Ideology Prosecutor], Sŏul: Kyemyŏngsa.

Suh, Hee-Kyung. 2010. Atrocities Before and During the Korean War: Mass Civilian Killings by South Korean and U.S. Forces. *Critical Asian Studies* 42 (4): 553-558.

Townshend, Charles. 1982. Martial Law: Legal and Administrative Problems of Civil Emergency in Britain and the Empire, 1800-1940. *The Historical Journal* 25 (1):167-195.

Unger David C. 2012. The Emergency State: America's Pursuit of Absolute Security at All Costs, New York: The Penguin Press.

Watkins, Frederick Mundell. 1939. The Failure of Constitutional Emergency Powers under the German Republic, Cambridge: Harvard University Press.

Weber, Max. 1958. Politics as a Vocation in *From Max Weber: Essays in Sociology*, ed. H.H. Gerth, trans. C. Wright Mills, New York: Oxford University Press.

Yi, Sang-ch'ŏl. 2001. Kyeŏmpŏp e kwanhan munjejŏm Koch'al [An Inquiry into Problems Concerning Martial Law]. *Anam Pŏphak* 12 (0): 29-56.

Yŏksa Munje Yŏn'guso. 1999. *Cheju 4.3 yŏn'gu* [Cheju, April 3rd: A Study], Sŏul-si: Yŏksa Pip'yŏngsa.

Yoo, John. 2006. War by Other Means: An Insider's Account of the War on Terror, New York: Atlantic Monthly Press.

Wasserstrom, Lynn Hunt, and Marilyn B. Young, Lanham: Rowman & Littlefield Publishers.

Notes

[1] Interview with Kim Tae-jin, Cheju Island, 25 April 2007.

[2] Kim Ch'ang-nok 1998, 477-493; Kim Sun-t'ae 1999, 147-177; Suh Hee-Kyung 2010, 573 & 582.

[3] Cumings 2010, 35 and 121.

[4] Merrill 1989; Cumings 2002; Pak 1996; Kwon 2010, 103.

[5] David C. Unger 2012, 52.

[6] According to Kim Hak-jae's discussion of Kim Tŭk-jung's study (2009), there was a "flood" of emergency presidential orders between June 1950 and February 1953 in South Korea. See Kim Hak-jae 2011, 229-230. I would also like to note that the first state of emergency was declared during the Yŏsu-Sunch'ŏn Mutiny in 1948, which was caused by South Korean soldiers' refusal to participate in the suppression of the uprising in Cheju.

[7] For studies of the relationship between democracy and human rights violations, see Power 2002; Downes 2008.

[8] Following the initial declaration in Cheju in October 17, 1948, states of emergency were declared 11 times in South Korea between 1948 and 1980: the Yŏsu-Sunch'ŏn Mutiny (1948), the Korean War (1950-1953), the April 19th student uprising (1960), Park Chung-hee's military coup d'etat (1961, 1962), the June 3rd crisis (1964), Park's "Restoration" (*Yushin*) (1972), and the Pusan Crisis (1979, 1980). See Yi Sang-ch'ŏl 2001, 32.

[9] Agamben 2003, 5.

[10] Peter Dale Scott 2013.

[11] Schmitt 2005, 5 and 36-47.

[12] From HQ USAFIK Office of the Commanding General, February 25, 1947, Alert Plan (ALPLAN), Box 12, RG 554, NACP, MD.

[13] Gregory Henderson, "A Memorandum Concerning United States' Political Objectives in Korea," November 30, 1950, Foreign Service Posts of the Department of State, 1948-55, Box 1, RG 84, NACP, MD. See also Cumings 1981, 135-178. Henderson cited the policy of non-intervention in the affairs of a sovereign state as the reason for U.S. inaction in the face of police brutality and the flouting of habeas corpus. To say that the South Korean government's "right to" abuse the lives of its citizens was a way of exercising national sovereignty was misleading to say the least. If anything, this was another way of expressing US support for the regime.

[14] Cheju 4.3 sakŏn chinsang chosa pogosŏ chaksŏng kihŏektan 2002 (vol. 4), 130.

[15] The original draft of the martial law writ was published in Cheju 4.3 sakŏn chinsang chosa pogosŏ chaksŏng kihŏektan 2002 (vol. 6), 103-107.

[16] "Full Text of the Constitution," *Chosŏn Ilbo*, July 17, 1948.

[17] From the stenographic records of the National Assembly held between October 30 and November 2, 1948. Cheju 4.3 sakŏn chinsang chosa pogosŏ chaksŏng kihŏektan 2002 (vol. 4), 99-103.

[18] Agamben 2003, 50-51.

[19] Kim Ch'ang-nok 1998, 483-485; Kim Sun-t'ae 1999, 147-177.

[20] Meade 1951, 133. This problem is all too evident in the memoirs of rightist lawyers and prosecutors like O Je-do and Sŏnwoo Chongwŏn, whose careers were rooted in the colonial era. See Sŏnwoo 1992, 26-40.

[21] Gregory Henderson, "A Memorandum Concerning United States' Political Objectives in Korea," Box 1, RG 84, NACP, MD.

[22] Letter from Henderson to Niles, April 29, 1950, Box 1, RG 84, NACP, MD.

[23] Henderson, "A Memorandum Concerning United States' Political Objectives in Korea,"

November 30, 1950, Box 1, RG 84, NACP, MD.

[24] Message from Joseph Jacobs, April 28, 1948, Decimal File 895: Files 00/3-348 to 00/7-2248, Reel no. 2, LM 80, RG 59, NACP, MD.

[25] Radio Messages (1948), 26 February-5 March 1949, Box 203, RG 554, NACP, MD.

[26] See the following reports from Ambassador John Muccio: December 16, 1949, Reel no. 6, LM 80, RG 59; December 13, 1949, Decimal Files 895, File 00/11-1249 to 01/1-2246, Reel no. 4, LM 80, RG 59; December 21, 1950, Reel no. 8, LM 81, RG 59, NACP, MD.

[27] Similar sanctions were applied to individuals who collaborated with anti-state organizations in subsequent articles. See the 1949 amendment in Cheju 4.3 sakŏn chinsang chosa pogosŏ chaksŏng kihŏektan 2002 (vol. 2), 109-112.

[28] Henderson, "A Memorandum Concerning United States' Political Objectives in Korea," November 30, 1950, Box 1, RG 84, NACP, MD. The historian Sŏ Chung-sŏk also characterized Rhee's leadership as "Korean-style fascism." See Sŏ 2005.

[29] Syngman Rhee, "Address by Dr. Syngman Rhee: At the Opening Session of the Korean Congress," May 31, 1948, HQ XXIV Corps, Box 306, RG 554, NACP, MD. Kim Hak-je also mentions that the emergency laws emphasized "punishment".

[30] See Article 69 of the Martial Law in Cheju 4.3 sakŏn chinsang chosa pogosŏ chaksŏng kihŏektan 2002 (vol. 6),103-107.

[31] Army Staff C/S, U.S., GHQ FEC (Public Information), Amy Chief of Information Unclassified Decimal File, 1949-1950, 000.1-000.7, Box 4, RG 319, NACP, MD; Some sources date it as 23 July, 1950. See Army AG Command Reports, 1949-54, UNC/FEC GHQ: Staff Section Reports, Box 346, RG 407, NACP, MD.

[32] July 13, 1950, UNC/FEC GHQ: Staff Section Reports, Army AG Command Reports, 1949-54, Box 346, RG 407, NACP, MD.

[33] See Kim Ki-jin's oral history research on the massacres of members of the National Guidance Alliance in Kim 2002; Cumings's discussion of the massacre of prisoners in Taejon on July 2-6, 1950 in Cumings 2010, 175-178; Kim Dong-choon, "The Truth and Reconciliation Commission of Korea: Uncovering the Hidden Korean War," *The Asia-Pacific Journal*, 9-5-10, March 1, 2010.

[34] Hunt 2007, 181-186.

[35] "Pisang kyeŏmryŏng silsi e taehayŏ" ["On the Enforcement of the Emergency Martial Law"], *Taet'ongryŏng pisŏsil chŏnyong wŏn'go* [Restricted Manuscript for the Presidential Secretariat] (pp. 1-7), National Archives of Korea, Seoul.

[36] Pak Ch'an-sŭng 2010.

[37] Foreign Service Posts of the Department of State Korea, September 22, 1950, Box 1, RG 84, NACP, MD.

[38] Han In-sŏp 2000.

[39] Rhee also rationalized expedited trials on the grounds of a shortage of judges and the rapid increase in crime rates during the state of emergency. See Yi Sŭng-man [Syngman Rhee], December 1, 1950, "Kukhoe ŭi ŭigyŏllo hwakjŏng toen puyŏk haengwi t'ŭkp'yŏl ch'ŏribŏp ŭl ie kongp'o handa" ["I Hereby Announce Special Decrees on the Handling of Acts of Collaboration through the Decision of the National Assembly"], National Archives of Korea, Seoul; Yi Sŭng-man, January 30, 1951, "Kukhoe ŭi ŭigyŏllo kyŏljŏng toen pisang sat'ae ha ŭi pŏmjoe ch'ŏbŏl e kwanhan t'ŭkp'yŏl choch'iryŏng jung kaejŏng pŏmryul kongp'o ŭi kŏn" [The Case of Legal Revision of the Special

Actions Taken to Punish Crimes Under the State of Emergency through the Decision of the National Assembly," National Archives of Korea, Seoul.

[40] Conway-Lanz 2005, 50-51; Cumings 2006.

[41] Hartigan 1982, 2 and 6.

[42] June 29, 1950. Clark M. Clifford's letter to Boss. PSF: Korean War File, 1946-1953, General Data to Wake Island: Talks [1 of 2] Box 206, Truman Papers, HST, Independence MO.

[43] Charles J. Hanley and Martha Mendoza 2007.

[44] Conway-Lanz 2006, 184-224.

[45] Downes 2008.

[46] Lobel 1989, 1398.

[47] Attlee Meeting – December 1950, Foreign Affairs; Subject File; PSF; Student Research File (B File), Korean War: Response to Communist China's Intervention, 44A, Box 1 of 2, Papers of Harry S. Truman, Harry S. Truman Library (HST), Independence, MO. On the "psychological effects," see Klieman 1979, 246.

[48] Truman's proclamation of the "Termination of the National Emergencies Proclaimed on September 8, 1939, and May 27, 1941" was officially dated April 28, 1952, when the Treaty of Peace with Japan became effective, Papers of Harry S. Truman Official File #2974 & 2990, Misc. pro, Box No. 1744, HST, MO.

[49] Lobel 1989, 1401-1410; Unger 2012, 122. Johnson invoked the Truman Doctrine to persuade the Congress to support the Tonkin Gulf Resolution in 1964.

[50] Among recently declassified Cold War documents is a letter from J. Edgar Hoover to Truman proposing the detention of potentially dangerous individuals in emergency situations. The aim was to "immediately protect the country against treason, espionage and sabotage" by apprehending individuals who might pose a threat to internal security. By the time of the Korean War, the FBI had compiled the names, identities, and activities of 12,000 U.S. citizens into an index forwarded to the Department of Justice. See "Hoover's Letter to Truman's Special Consultant" dated July 7, 1950 in *The New York Times*, December 22, 2007; Tim Weiner, "Hoover Planned Mass Jailing in 1950," *The New York Times*, December 23, 2007. See Peter Dale Scott 2013. http://japanfocus.org/-Peter_Dale-Scott/3932

[51] Hogan 1998.

[52] SCAP, Office of the Chief of Staff, Subject File, 1945-1952, Box 3, RG 554, NACP, MD. In 1952, the Headquarters of UN Command worried that "Problems will be [forthcoming] if President Rhee refuses to lift the Martial Law and continues to misuse the power over National Police for his own good."

[53] Rossiter 1948, 314.

[54] Daniel H. Else, "Defense Production Act: Purpose and Scope," *Congressional Research Service* RS20587 (May 14, 2009), pp. 1.

[55] "Meeting of the President with Congressional leaders in the Cabinet Room," 10:00 AM Wednesday, December 13, 1950, Student Research File (B-File), HST, Independence, MO.

[56] Bruce Cumings, *The Korean War: A History* (NY: Modern Library, 2010), 210.

[57] On June 25, 1950, a telegram from "Kirk" to Truman read: "Soviets probably calculating that we will be inclined to allow 'neutralization' of Korean civil war..." PSF: Korean War File, 1946-1953, General Data to Wake Island: Talks [1 of 2] Box 206, Truman Papers, HST, Independence MO.

[58] B-File: Folder 3-2: from a conclusive

summary of "Meeting of the President with Congressional leaders in the Cabinet," December 13, 1950, Truman Papers, HST, Independence, MO.

[59] Robert McMahon, *Cold War: A Very Short Introduction* (Oxford: Oxford University Press, 2003), 7.

[60] Oliver Cromwell's speech to Parliament on Sept. 12, 1654 read in part: "Necessity hath no law. Feigned necessities, imaginary necessities, are the greatest cozenage men can put upon the Providence of God, and make pretences to break known rules by." Radin 1942, 640; the quotation is also found in Lobel 1989, 1386. In line with the Cromwellian view, Scottish jurist and historian Sir James Mackintosh considered that "Martial Law [is a] necessity: that Martial law put in force against rebels and enemies was only a more regular and convenient mode of exercising the right to kill in war, a right originating in self-defence and limited to those cases where such killing is necessary as a means of insuring that end...." See Phillimore 1900, 53; Schmitt 2005, 13.

[61] Rossiter 1948, 224.

[62] Senator Taft's inquiry on January 5, 1951 in the Senate. Harry S. Truman Administration: Subject File: Korea, December, 1950-February 1951, Folder on Korea – Presidential power to send troops abroad, 1951, Box 73, Papers of George M. Elsey, HST, Independence, MO. See also Klieman 1979, 239.

[63] Rossiter 1948, 235-236.

[64] Unger 2012, 22.

[65] Unger 2012, 2 and 27.

[66] Unger 2012, 28-29.

[67] Ninkovich 1999, 48-49. Steven Casey's cultural analysis of Korean War propaganda demonstrates the extent to which the Truman administration tried to "wrap its Korean intervention in the cloak of legitimacy provided by the UN." See Casey 2010, 8.

[68] December 15, 1950, File: The Korean War: The United States Response to Communist China's Intervention [1 of 17] (1-3), Harry S. Truman Library Student Research File (B File), Korean War: Response to Communist China's Intervention: 44A, Box 1 of 2, Truman Papers, HST, Independence, MO.

[69] James MacGregor Burns, "Is the Presidency too Powerful?" in *The New York Times*, July 16, 1950.

[70] According to Taft, "The President simply usurped authority, in violation of the laws and the Constitution, when he sent troops to Korea to carry out the resolution of the United Nations in an undeclared war... Without authority he involved us in the Korean War." Harry S. Truman Administration: Subject File: Korea, December 1950-February 1951, Folder: Presidential Power to Send Troops Abroad, 1951, Box 73, Elsey Papers, HST, Independence, MO.

[71] See Bradley 2009.

[72] Burns, *The New York Times* (July 16, 1950).

[73] Harry S. Truman Administration: Subject File: Korea, December 1950-February 1951, Folder: Presidential Power to Send Troops Abroad, 1951, Box 73, Elsey Papers, HST, Independence, MO.

[74] Ibid.

[75] HST, B-File: Folder 3-2: from a conclusive summary of "Meeting of the President with Congressional leaders in the Cabinet," December 13, 1950, Truman Papers, HST, Independence, MO.

[76] NSC-100, "Recommended Policies and Actions in Light of the Grave World Situation,"

January 11, 1951. United States, Department of State, Department of State Publication 8975, *Foreign Relations of the United States, 1951*. Volume I, National Security Affairs; Foreign Economic Policy (Washington, DC: U.S. Government Printing Office, 1979), pp. 7-18.

[77] The initial draft was written in July, 1950 by the "Executive Office of the President National Security Resources Board, Washington 25, D.C." Harry S. Truman Administration: Subject File, Box 71, Elsey Papers, HST, Independence, MO.

[78] Hogan 1998, 27.

[79] Hogan 1998, 462.

[80] Recent publications on the air war in Korea include Taewoo Kim 2012, 205-226; Armstrong 2010; Cumings 2010, 147-162.

[81] Cumings 2004, 74; Taewoo Kim 2012, 482-490.

[82] Unger 2012, 79; Kim 2012, 490.

[83] Watkins 1939, 11 and 25-35; Rossiter 1948, 33-73; Hilberg 1961, 3-7.

[84] Feldman 2005, 1026n and 1031-1032.

[85] Capua 1977, 167-168; Townshend 1982, 168 and 171.

[86] Cosgrove 1980, 124-127.

[87] Schmitt 2005, 15.

[88] Weber 1958, 78.