

# PRESIDENTIAL PARDONS IN SOUTH KOREA: ANALYSIS OF QUANTITATIVE AND QUALITATIVE TRENDS

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*Presidential pardons have caused much controversy in South Korea over the past decade. In particular, many have criticized the abusive practice of special pardons, which allows the president to grant clemency without having to go through any formal legal or political process. Many scholars have argued that legal reforms are necessary to prevent power abuse. This paper points to changing trends in the use of clemency power by recent South Korean presidents. By analyzing both quantitative and qualitative aspects of amnesty grants over time, major changes can be observed. First, it is found that the number of special pardons has declined significantly. Second, it is observed that controversial pardons have become scarcer over time. Finally, it is suggested that a growing negative public sentiment towards corruption and favoritism have influenced a more cautious approach to pardoning among recent presidents.*

Characterized by Paul Larkin as “the human version of mercy,”<sup>1</sup> clemency power has stirred much debate in South Korea. The pardon power is plenary and thereby makes it possible for South Korean presidents to grant amnesty to criminal convicts without going through any formal legal or political procedures. As such, the pardon power is vulnerable to arbitrary and abusive practice. In academic literature, the abuse of special pardons by recent South Korean presidents has been extensively criticized, and various proposals for reform have been suggested. Some authors suggest revisions to the constitution,<sup>2</sup> others suggest the introduction of a review

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1 Paul Larkin, Jr., “Revitalizing the Clemency Process,” *Harvard Journal of Law and Public Policy* 39, no. 3 (2015): 843.

2 Hye-jung Choi, Se-young Lee, and Kyu-nam Kim, “Going Back on Another Election Pledge, Pres. Park Pardons Corporate Heavyweights,” *The Hankyoreh*, August 14, 2015, accessed March 23, 2017, [http://www.hani.co.kr/arti/english\\_edition/e\\_national/704479.html](http://www.hani.co.kr/arti/english_edition/e_national/704479.html).

committee,<sup>3</sup> and some propose a combination of both.<sup>4</sup> On the other hand, many American scholars argue that reform could potentially threaten the plenary power of presidential pardons by jeopardizing its role as a check on the judicial system and as a prerogative of mercy.<sup>5</sup> It is also argued that the political process, including factors such as re-election, public opinion, and advice from judicial branches, is sufficient to serve as a check on the pardon power.

A review of the literature on clemency power in South Korea shows that scholars are mainly concerned with the power abuse that comes with the presidential plenary power. What appears to be missing from the analysis of special pardons in South Korea is a comprehensive examination of both the quantitative and qualitative trends in clemency grants over time. Is the number of amnesty grants similar across recent Korean presidents, or has the pardon rate changed over time? Is the nature of pardons changing, or is there a persistent pattern in the characteristics of amnesty recipients and the underscoring rationale for clemency in South Korea? By conducting an analysis of the number of pardons granted by recent Korean presidents, this paper observes a significant decline in both the total number of clemency grants and the specific rate of presidential pardons. However, it is also observed that former President Park Geun-hye reversed the declining trend by granting more pardons than her two predecessors. Also, by analyzing the qualitative aspects of these pardons, this paper observes a tendency towards less controversial use of the pardon power. The number of clemencies granted to personal acquaintances of the president, corrupt politicians, and

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- 3 Chan-Hui Jeon, "A Study on the Limitation and Improvements of the Presidential Pardon Power," *Law & Policy Review* 21, no. 2 (2015): 353–78 [in Korean]; Dong-Ryun Kim, "Study on the Present Condition of Pardon Power and Legislative Policy," *Public Land Law Review* 61 (2013): 257–85 [in Korean]; Seung-Ho Lee, "A Brief for the Reform of Pardon System in South Korea," *Korean Journal of Criminology* 25, no. 1 (2013): 117–50 [in Korean].
- 4 Jong-Dok Kim, "A Study on the Control of Amnesty Right Exercise and Amendment Direction of the Korean Amnesty Act," *Law Review* 59 (2015): 205–29 [in Korean]; Moon-Hyun Koh, "A Way to Control Presidential Pardoning Power through Real State Analysis on Exercise of It," *Korean Comparative Public Law Association Review* 11, no. 2 (2010): 3–31 [in Korean]; Chae-Gyu Moon, "The Study on the Reform of Pardon System in South Korea," *Korean Journal of Criminology* 27, no. 3 (2015): 81–107 [in Korean]; Chan-Geol Park, "A Study on the Appropriate Management of Amnesty System," *Correction Review* 51 (2011): 253–79 [in Korean].
- 5 Jeffrey Crouch, "The Law: Presidential Misuse of the Pardon Power," *Presidential Studies Quarterly* 38, no. 4 (2008): 722–34; Harold J. Krent, "Conditioning the President's Conditional Pardon Power," *California Law Review* 89, no. 6 (2001): 1665–720; Jared Stallard, "Abuse of the Pardon Power: A Legal and Economic Perspective," *DePaul Business & Commercial Law Journal* 1, no. 103 (2002): 103–33; Mark Strasser, "The Limits of the Clemency Power on Pardons, Retributivists, and the United States Constitution," *Brandeis Law Journal* 41 (2002): 85–154.

high-profile businessmen have decreased steadily. Meanwhile, the quoted rationale for granting pardons shows little change, with most arguments referring to public welfare, such as economic growth and national unity.

## Presidential Pardons

### *The Origin of Presidential Pardons*

The idea of executive clemency has existed for thousands of years. Traces of the pardon tradition can be found in both ancient Roman law and more recent English law.<sup>6</sup> Today, there are only a handful of countries in the world that have not constitutionalized executive clemency.<sup>7</sup> Many modern democracies, such as South Korea and the United States, have borrowed the fundamentals of their clemency structure from the British legal tradition. In medieval England, the king's power to execute clemency was essentially unlimited and justified on the grounds of "mercy" and "justice."<sup>8</sup> Similarly, most modern practices of presidential pardons are also plenary and justified on grounds such as mercy, justice, and public welfare.

### *Presidential Pardons in South Korea*

The Republic of Korea (hereinafter South Korea or Korea) was established in 1948. The country's first constitution was promulgated in the same year and was last revised when South Korea became a democracy in 1987. Article 79 in the Korean Constitution states that there are two types of pardons that can be executed by the president.<sup>9</sup> First, general pardons can be granted to convicts with approval from the National Assembly. Second, the president can execute special pardons without parliamentary consent. Special pardons are the focus of study in this paper and will henceforth be referred to as presidential pardons or special pardons. In Korea, the formal responsibility of proposing a list of pardons lies with the Ministry of Justice.<sup>10</sup>

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6 Larkin, "Revitalizing the Clemency Process," 833–916.

7 Andrew Nowak, "Comparative Executive Clemency: The Constitutional Pardon Power and the Prerogative of Mercy in Global Perspective," *University of Michigan Journal of Law Reform* 49, no. 4 (2015): 817–51.

8 Paul J. Haase, "'Oh My Darling Clemency': Existing or Possible Limitations on the Use of the Presidential Pardon Power," *American Criminal Law Review* 39, no. 3 (2002): 1287–1308.

9 Republic of Korea Const. Ch. IV. Sec. 1. Art. 79.

10 Simon Mundy, "Lee Criticized Over S Korean Pardons," *The Financial Times*, January 29, 2013, accessed November 27, 2016, <https://www.ft.com/content/b7f788e4-69c2-11e2-8d07->

In the case of general pardons, the president can only carry through the process with approval from the National Assembly. On the other hand, special pardons are plenary and thus not subject to any political or legal control mechanisms. Pardons can be granted to individuals who are facing trial, are currently imprisoned, or who have been released.<sup>11</sup>

## Quantitative Trends

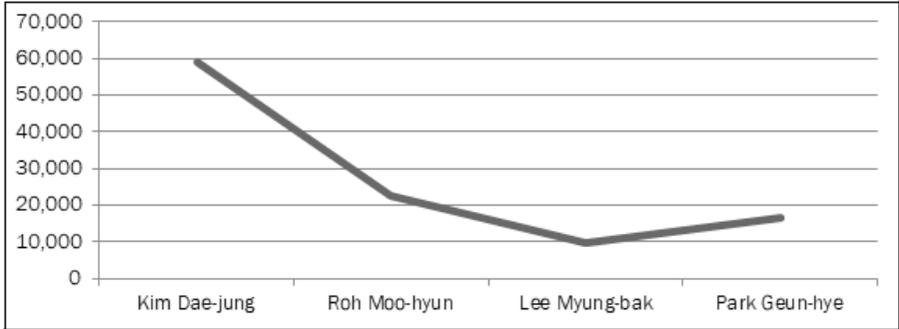
The number of presidential pardons has decreased significantly over the past twenty years in South Korea.<sup>12</sup> Kim Dae-jung (1998–2003) granted 58,930 pardons, Roh Moo-hyun (2003–2008) granted 22,733 pardons, Lee Myung-bak (2008–2013) granted 9,794 pardons, and Park Geun-hye (2013–2017) granted 16,704 pardons.<sup>13</sup> The number of presidential pardons has decreased by almost 70 percent over the past decade, despite a recent increase by President Park, who granted on average 65 percent more pardons than her predecessor Lee. Park Geun-hye was officially impeached in early 2017, and her term was therefore cut short to four years. This is one year shorter than the regular five-year term. Yet, by calculating the annual average from the total number of pardons granted by each president, major trends become evident. On the one hand, President Park granted, on average, almost twice the number of pardons than her predecessor Lee Myung-bak. On the other hand, she granted around one third of the number of pardons that Kim Dae-jung granted over a decade ago.

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- 11 Si-Soo Park, "Will Jailed Tycoons Get Pardon?" *The Korea Times*, September 26, 2014, accessed November 27, 2016, [http://www.koreatimes.co.kr/www/news/biz/2017/03/123\\_165294.html](http://www.koreatimes.co.kr/www/news/biz/2017/03/123_165294.html).
- 12 To the author's knowledge, official data from South Korea are only available from 1997 and onwards. This might be explained due to the country's short history of democracy, which begun in 1987. Ui-chol Kim, Geir Helgesen, and Byung-man Ahn, "Democracy, Trust, and Political Efficacy: Comparative Analysis of Danish and Korean Political Culture," *Applied Psychology: An International Review* 51, no. 2 (2002): 318–53.
- 13 Statistics Korea, "Historical Trends in the Execution of Clemency Power," Statistics Korea, accessed November 5, 2016, [http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx\\_cd=1726](http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=1726) [in Korean].

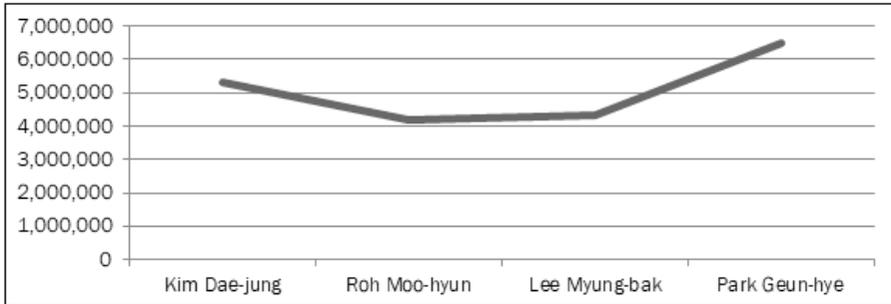
FIGURE 1 Special Pardons (1999–2016)



Source: Statistics Korea, “Historical Trends in the Execution of Clemency Power.”

The number of special pardons largely reflects general clemency trends. In the official government statistics provided by Statistics Korea, the number of special pardons make up the majority of total pardons granted.<sup>14</sup> However, some discrepancies should be noted. Additional reports show that the actual number of total clemencies granted by Korean presidents is far higher than shown above, due to a tradition of pardoning traffic offenders. This tradition first started with the Kim Young-sam government in 1995. Since then, millions of traffic violators have been granted clemency. Kim Dae-jung excused 5.3 million traffic offenders, Roh Moo-hyun excused 4.2 million, Lee Myung-bak excused 4.3 million, and Park Geun-hye excused 6.5 million by her fourth year in 2016.

14 Statistics Korea, “Historical Trends in the Execution of Clemency Power.”

**FIGURE 2** Traffic Pardons (1995–2016)

Source: Statistics Korea, “Historical Trends in the Execution of Clemency Power.”

The number of pardons is significantly higher when special clemency grants for traffic violations are included. However, the general trends in clemency grants over time remain similar. The number of pardons granted to traffic violators was reduced in the early 2000s but increased again during the Park Geun-hye government. This is similar to the previously outlined trends in pardon grants, where the number of pardons has been declining before increasing again during the last presidency. In summary, clemency in South Korea has been on a steady decline over the past twenty years but has recently increased under the Park Geun-hye administration.

## Qualitative Trends

### *Controversial Pardons Between 2003–2016*

It is a tradition in South Korea that the president grants special pardons in commemoration of national holidays. The most popular day for pardon grants is National Liberation Day, which marks the liberation from Japanese colonial rule in 1945.<sup>15</sup> Occasionally, Korean presidents also grant pardons in the event of Lunar New Year, Buddha’s Birthday, and other national holidays.<sup>16</sup>

15 Chang-won Lim, “Special Pardon for CJ Group Chief to Celebrate Liberation Day,” *The Aju Daily Business*, August 12, 2016, accessed December 4, 2016, <http://www.ajudaily.com/view/20160812142509302>; Sang-Ho Song, “Park Grants Special Pardons to More Than 4,870 People Including CJ Chairman,” *Yonhap News Agency*, August 12, 2016, accessed December 4, 2016, <http://english.yonhapnews.co.kr/national/2016/08/12/38/0301000000AEN2016081202653315F.html>.

16 Hong-wuk Ahn, “President Park Expresses Plans for First Press Conference and Special New Year Pardon for Poverty Triggered Crimes,” *The Kyunghyan Shinmun*, December 24, 2013, accessed December 1, 2016, [http://english.khan.co.kr/khan\\_art\\_view.html?code=710100&a](http://english.khan.co.kr/khan_art_view.html?code=710100&a)

Presidents Kim Dae-jung and Roh Moo-hyun offered pardons on eight occasions, President Lee on seven occasions, and President Park on three occasions as of 2016.<sup>17</sup> An upcoming event for clemency grants is usually announced to the public in advance, thereby causing much speculation in the media, politics, and business circles. After the presidential pardons have been granted, another round of frenzy follows, during which opponents and proponents voice their respective criticism and support of the president's choices. Over the past decade, Korean presidents have repeatedly stirred controversies by granting pardons to personal acquaintances, high-profile business people, and politicians.

Between 2003 and 2008, Roh Moo-hyun offered amnesty to hundreds of businessmen and politicians. His choice to pardon business tycoons was much welcomed by chaebol companies and their industry federations. Some of those pardoned included Daewoo Corporation Executive Lee Sung-won,<sup>18</sup> Daewoo Motors Vice President Kim Seok-hwan,<sup>19</sup> Doosan Heavy Industries Chairman Park Yong-sung,<sup>20</sup> Daewoo Group Chairman Kim Woo-choong, and Halla Engineering and Construction Chairman Chung Mong-won.<sup>21</sup> Most of the executives were convicted of financial misconduct, but Roh Moo-hyun also granted special pardons to several businessmen convicted of corruption. These included, among others, LG Group Vice Chairman Kang Yu-sig, Hyundai Motor Vice Chairman Kim Dong-jin, Asiana Airlines President Park Chan-bup, and Lotte Shopping President Shin Dong-in.<sup>22</sup> In addition to business leaders, President Roh granted pardons to several politicians. Many of these had been convicted of corruption, including Chyung Dai-chul, Lee

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rtid=201312241649047; Kyung-un Choi, "Roh Pardons Old Associate for Buddha's Birthday," *The Chosun Ilbo*, May 13, 2005, accessed December 4, 2016, [http://english.chosun.com/site/data/html\\_dir/2005/05/13/2005051361031.html](http://english.chosun.com/site/data/html_dir/2005/05/13/2005051361031.html); Whan-woo Yi, "Special Pardon Granted to 4,876 Convicts," *The Korea Times*, August 12, 2016, accessed December 4, 2016, [http://www.koreatimes.co.kr/www/news/nation/2016/08/116\\_211774.html](http://www.koreatimes.co.kr/www/news/nation/2016/08/116_211774.html).

- 17 "Stop Abusing Presidential Pardons," *Korea JoongAng Daily*, May 8, 2015, accessed December 4, 2016, <http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=3003951>; Yi, "Special Pardon Granted to 4,876 Convicts."
- 18 Choi, "Roh Pardons Old Associate for Buddha's Birthday."
- 19 Jin-young Hwang, "Kang Geum-won on the Pardon List," *The Dong-A Ilbo*, May 13, 2005, accessed December 4, 2016, <http://english.donga.com/List/3/all/26/241332/1?m=kor>.
- 20 "S Korea Pardons Criminal Bosses," *BBC News*, February 9, 2007, accessed December 3, 2016, <http://news.bbc.co.uk/2/hi/business/6345847.stm>.
- 21 Yon-se Kim, "Roh Commutes Sentences of 6 Death-Row Inmates," *The Korea Times*, December 31, 2007, accessed December 2, 2016, [http://www.koreatimes.co.kr/www/news/nation/2016/11/113\\_16476.html](http://www.koreatimes.co.kr/www/news/nation/2016/11/113_16476.html).
- 22 Choi, "Roh Pardons Old Associate for Buddha's Birthday."

Sang-soo, Shin Sang-woo,<sup>23</sup> Choi Do-sool,<sup>24</sup> Park Jie-won, Kim Hyeon-cheo, and Kwon Roh-gap.<sup>25</sup> Finally, President Roh also released some people who had been sentenced under his tenure, such as Changshin Textile Chairman Kang Geum-won. Chairman Kang was a close associate of President Roh and had been convicted of embezzlement and tax evasion.<sup>26</sup>

Lee Myung-bak was inaugurated as the president of South Korea in 2008. Similar to his predecessor, President Lee also released numerous politicians and business people who had been found guilty of illegal activities, including economic and corruption-related crimes. Among the business tycoons released by the Lee administration, Hanhwa Chairman Kim Seung-young served a sentence for kidnapping and assault,<sup>27</sup> and Samsung Chairman Lee Kun-hee, SK Group Chairman Chey Tae-won, and Hyundai Chairman Chung Mong-koo had been convicted of financial misconduct, such as embezzlement and tax evasion.<sup>28</sup> In addition to pardoning business tycoons, President Lee granted amnesty to numerous politicians and public officials.<sup>29</sup> Many of those pardoned had been convicted of corruption and election irregularities, including National Assembly Speaker Park Hee-tae, former senior aide Kim Hyo-jae,<sup>30</sup> close ally Choi See-joong, and longtime friend Chun Shin-il.<sup>31</sup> Not only politicians but also businessmen close to President Lee were granted amnesty, including his close acquaintance

23 Jung-wook Kim, "Pardoned Politicians Start Testing the Waters," *Korea JoongAng Daily*, August 14, 2005, accessed December 2, 2016, <http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=2606281>.

24 Kim, "Roh Commutes Sentences of 6 Death-Row Inmates."

25 Annie I. Bang, "434 High-Profile Convicts Pardoned," *The Korea Herald*, April 5, 2010, accessed December 4, 2016, <http://www.koreaherald.com/view.php?ud=20070210000034>.

26 Choi, "Roh Pardons Old Associate for Buddha's Birthday"; Hwang, "Kang Geum-won on the Pardon List."

27 Nathaniel P. Flannery, "How the Latest Scandal at Explosives-Maker Hanwha Highlights Broader Investment Risks at Major Korean Companies," *Forbes*, February 10, 2012, accessed December 4, 2016, <https://www.forbes.com/sites/nathanielparishflannery/2012/02/10/time-for-change-how-the-latest-scandal-at-explosives-maker-hanwha-highlights-broader-investment-risks-at-major-korean-companies/#724de0e2a8dd>.

28 Sang-hun Choe, "Korean Leader Pardons Samsung's Ex-Chairman," *The New York Times*, December 29, 2009, accessed December 21, 2016, <http://www.nytimes.com/2009/12/30/business/global/30samsung.html>; Jung, "President Pardons Convicted Tycoons."

29 "Biz Execs Pardoned to Stimulate Economy," *The Dong-A Ilbo*, August 13, 2008, accessed December 1, 2016, <http://english.donga.com/List/3/all/26/259742/1>; Myo-ja Ser, "MB's Pardons Outrage Park, Parties," *Korea JoongAng Daily*, January 29, 2013, accessed December 4, 2016, <http://mengnews.joins.com/view.aspx?aid=2966347>.

30 Mundy, "Lee Criticized Over S Korean Pardons"; Choe, "Departing South Korean Leader Creates Furor with Pardons."

31 Min-uck Chung, "Lee Presses on Pardons," *The Korea Times*, January 27, 2013, accessed December 4, 2016, [http://www.koreatimes.co.kr/www/news/nation/2017/03/113\\_129527.html](http://www.koreatimes.co.kr/www/news/nation/2017/03/113_129527.html).

Sejoong Namu Tour Chairman Chun Shin-il, who was charged with bribery,<sup>32</sup> and the son-in-law of the president's cousin, Hyosung Group President Cho Hyun-joon, who was sentenced for embezzlement.<sup>33</sup> None of those pardoned by President Lee had been convicted during his term at the Blue House.

In 2013, Park Geun-hye became the first female president of South Korea. Like her predecessors, President Park also granted some controversial pardons to businessmen charged with economic crimes, such as embezzlement and tax evasion. Between 2013 and 2016, in total 26 businessmen were pardoned by President Park, including Hanwha Group Vice Chairman Kim Hyun-chung, Yeochun NCC CEO Hong Dong-wook, SK Group Chairman Chey Tae-won, and CJ Chairman Lee Jay-hyun.<sup>34</sup> During the first four years of her presidency, Park did not grant pardons to any businessmen, politicians, or civil servants convicted for corruption or election irregularities.<sup>35</sup> During her presidency, no controversies had erupted regarding pardons of close friends and allies. As shown, Korean presidents have, over the past decades, issued pardons to businessmen and politicians convicted of economic and corruption-related crimes.

### *Official Justifications for Presidential Pardons*

In contrast to controversial pardons in the United States, Korean presidents usually provide a rationale when pardoning high-profile convicts. A variety have been cited over the years, but some themes appear to be reoccurring. Below follows an analysis of various justifications provided in relation to pardons granted by Korean presidents over the past years. Most of the data cited in this section are collected from media reports because the official statements given on special pardons often did not include elaborative comments about the underlying rationale. Instead, they were announced by the president and its administration at press conferences and through other

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32 Choe, "Departing South Korean Leader Creates Furor with Pardons."

33 Ser, "MB's Pardons Outrage Park, Parties."

34 Seung-woo Kang, "Culture is New Growth Engine," *The Korea Times*, February 26, 2016, accessed December 4, 2016, [http://www.koreatimes.co.kr/www/news/nation/2016/02/180\\_199173.html](http://www.koreatimes.co.kr/www/news/nation/2016/02/180_199173.html); Lim, "Special Pardon for CJ Group Chief"; Alanna Petroff, "South Korea to Pardon Over 6,500 Convicts to Boost Economy," *CNN*, August 14, 2015, accessed December 5, 2016, <http://money.cnn.com/2015/08/13/news/south-korea-economy-criminal-pardons/>; Yi, "Special Pardon Granted to 4,876 Convicts."

35 Seok-hoon Kim, "2.21 Million Will be Given Special Pardon on Independence Day," *The Economy Hankook*, August 14, 2015, accessed December 4, 2016, <http://www.hankook.co.kr/2-21-million-will-be-given-special-pardon-on-independence-day/>.

types of communications with the press.

Mercy is a common theme in Korean clemency grants. Humanitarian pardons are typically granted to defendants that have health issues, are elderly, or hold a foreign nationality. In 2007, President Roh granted amnesty to thirty-seven former government officials and seven politicians on the grounds of their declining health.<sup>36</sup> Later in 2013, President Lee pardoned several elderly prisoners and one foreigner.<sup>37</sup> More recently, President Park offered amnesty to CJ Chairman Lee Jay-hyun, whose health had been worsening due to illness.<sup>38</sup>

Public welfare is perhaps the most widely cited rationale by Korean presidents who grant amnesty. This is true for convicts of various crimes, ranging from petty crimes to serious economic and corruption-related crimes. Felony convicts are usually excluded. Pardons granted on the grounds of public welfare can largely be divided into two interrelated categories: economic stimulus and national unity. Politicians are usually pardoned with reference to “national unity” and “reconciliation.”<sup>39</sup> In times of economic slowdown, the release of businessmen has also been considered important in bringing people together. As such, Korean presidents have released businessmen to foster “national cohesion,”<sup>40</sup> “forge national reconciliation,”<sup>41</sup> “bring the people together,” and “overcome the economic crisis.”<sup>42</sup> Over the years, businessmen of both small and large companies have been offered amnesty under the pretense of expectations that they will contribute to the public welfare with job creation, increased investment, and economic revival. The Roh administration used terms like “new jobs” and “economic leap forward.”<sup>43</sup> The Lee administration followed up with similar terms, such as “investment stimulus,”<sup>44</sup> “job creation,” “economic reinvigoration,”<sup>45</sup>

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36 Bang, “434 High-profile Convicts Pardoned.”

37 Ser, “MB’s Pardons Outrage Park, Parties.”

38 Lim, “Special Pardon for CJ Group Chief.”

39 Chung-un Cho, “Park to Conduct Aug. 15 Pardon,” *The Korea Herald*, July 13, 2015, accessed December 4, 2016, <http://www.koreaherald.com/view.php?ud=20150713001094>; “Pardons in South Korea: Get out of Jail Free!” *The Economist*, August 17, 2010, accessed December 4, 2016, [http://www.economist.com/blogs/banyan/2010/08/pardons\\_south\\_korea](http://www.economist.com/blogs/banyan/2010/08/pardons_south_korea).

40 Seung-woo Kang, “SK Chief Pardoned,” *The Korea Times*, August 13, 2015, accessed December 4, 2016, [http://www.koreatimes.co.kr/www/news/nation/2016/12/116\\_184806.html](http://www.koreatimes.co.kr/www/news/nation/2016/12/116_184806.html).

41 Mundy, “Leading South Korean Tycoon Granted Presidential Pardon.”

42 Yi, “Special Pardon Granted to 4,876 Convicts.”

43 “S Korea Pardons Criminal Bosses.”

44 “South Korea Politics: Pardon Me,” *The Economist*, August 14, 2008, accessed December 4, 2016, <http://www.economist.com/news/asia/21571192-departing-president-proves-extravagantly-forgiving-pardon-me>.

45 “Pardons for Corporate Criminals in South Korea: Pardon Me?” *The Economist*, July 29, 2010,

“entrepreneurial spirit,”<sup>46</sup> “economic revival” and “employment.”<sup>47</sup> Finally, the Park administration also cited rationales like “national development” and “economic growth,”<sup>48</sup> while voicing expectations that those pardoned would “revitalize the economy,” “boost people’s spirits,”<sup>49</sup> and “contribute to national development.”<sup>50</sup>

### *Public Debate on Presidential Pardons*

Advocates for presidential pardons granted to company executives argue that the large conglomerates are vital to the domestic economy and that the companies require their leaders in order to function.<sup>51</sup> The symbiotic relationship between government and business in South Korea is evident in many of the government’s major projects. The release of many business tycoons might also be due to their expected participation in such projects, as illustrated by the following examples. Hyundai Motor Chairman Chung Mong-koo was granted clemency by President Lee in 2009 and later became honorary chairman of the 2012 Yeosu Expo organizing committee. Samsung Chairman Lee Kun-hee was offered amnesty by President Lee in 2009 and later supported the country’s bid to host the 2018 Winter Olympics. President Park pardoned SK Group Chairman Chey Tae-won in 2015, and one year later they launched the joint project for Hongcheon’s eco-friendly town.<sup>52</sup> Park also pardoned CJ Chairman Lee Jay in 2016, a year after the launch of the Creative Center for Convergence Culture (CCCC). Located in the CJ

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accessed November 20, 2016, <http://www.economist.com/node/16693589>.

46 “The Korea Discount: Minority Report,” *The Economist*, February 11, 2012, accessed November 20, 2016, <http://www.economist.com/node/21547255>.

47 Myo-ja Ser and So-young Moon, “Pardons Granted to Tycoons and Pols,” *Korea JoongAng Daily*, August 13, 2008, accessed December 5, 2016, <http://koreajoongangdaily.joins.com/news/article/article.aspx?aid=2893603>.

48 “The Economist Explains: Presidential Pardons,” *The Economist*, November 25, 2015, accessed December 5, 2016, <http://www.economist.com/blogs/economist-explains/2015/11/economist-explains-18>.

49 Mundy, “Leading South Korean Tycoon Granted Presidential Pardon.”

50 Song, “Park Grants Special Pardons to More Than 4,870 People.”

51 Sun-young Lee, “Hanwha Beefs up under Kim Seung-youn,” *The Korea Herald*, August 15, 2016, accessed December 5, 2016, <http://www.koreaherald.com/view.php?ud=20160815000263>; “Governance Reform Still Distant for the Chaebol,” *The Economist*, August 30, 2016, accessed December 5, 2016, <http://www.eiu.com/industry/article/1144555098/governance-reform-still-distant-for-the-chaebol/2016-08-30>.

52 Eun-jung Kim, “CJ to Step Up Global Expansion Following Chairman’s Release,” *Yonhap News Agency*, August 12, 2016, accessed December 5, 2016, <http://english.yonhapnews.co.kr/news/2016/08/12/0200000000AEN20160812006700320.html>.

E&M Center, the Center is run jointly by the CJ Group and the government.<sup>53</sup> The CCCC is considered one of the major achievements towards President Park's ambition of a "creative economy."<sup>54</sup>

The Korean government has on several occasions explained that its decisions regarding clemency grants have come about as a result of discussions with various interest groups, including business lobby groups such as the Federation of Korean Industries, the Korea Chamber of Commerce and Industry, Korea International Trade Association, and the Korea Federation of Small and Medium Business.<sup>55</sup> Industry groups and company officials have also voiced their opinion in media. In 2015, one official argued, "Conglomerates whose top executives are currently imprisoned suffer from a leadership vacuum as they have lost impetus to push new businesses forward."<sup>56</sup> An executive from the SK Group explained, "A large-scale investment needs a lot of consideration and study. With our chairman behind bars, it's practically impossible to draw up such a plan and carry it through."<sup>57</sup> Traditionally, family members run these conglomerates, instead of managers hired from inside or outside the company. Control of these companies tends to be highly centralized, which might explain the argument for release of company leaders.<sup>58</sup>

On the other hand, the government's special treatment towards South Korea's elite seems to have become increasingly unpopular among the public. In recent years, the people, media, and opposition parties have paid close attention to special pardons granted in the name of mercy and public welfare. In particular, amnesties granted to business tycoons and politicians have stirred controversy. Local media outlets report an increasing public resentment towards favoritism of criminal business leaders and

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53 Sun-ah Shim, "Gov't to Operate Cultural Belt in Full Swing This Year," *Yonhap News Agency*, January 18, 2016, accessed December 5, 2016, <http://english.yonhapnews.co.kr/news/2016/01/18/020000000AEN20160118002551315.html>.

54 Kang, "Culture is New Growth Engine."

55 Cho, "Park to Conduct Aug. 15 Pardon"; Kang, "SK Chief Pardoned"; Kim, "Roh Commutes Sentences of 6 Death-Row Inmates"; Kim, "2.21 Million Will be Given Special Pardon"; Bong-moon Kim, "Presidential Pardons Include SK Chairman Chey," *Korea JoongAng Daily*, August 14, 2015, accessed December 4, 2016, <http://mengnews.joins.com/view.aspx?ald=3007902>; Kim, "CJ to Step Up Global Expansion"; Ser, "MB's Pardons Outrage Park, Parties"; Ser and Moon, "Pardons Granted to Tycoons and Pols"; Yi, "Special Pardon Granted to 4,876 Convicts."

56 Kim, "2.21 Million Will be Given Special Pardon."

57 Park, "Will Jailed Tycoons Get Pardon?"

58 Stephen P. Ferris, Kenneth A. Kim, and Pattanaporn Kitsabunnarat, "The Costs (and Benefits?) of Diversified Business Groups: The Case of Korean Chaebols," *Journal of Banking and Finance* 27, no. 2 (2003): 251-73.

politicians.<sup>59</sup> Similarly, a national survey by Gallup Korea showed that 79 percent of the surveyed population was against special pardons offered to politicians.<sup>60</sup> Moreover, 54 percent of these respondents were opposed to pardons granted to business tycoons. In a later poll, significant variation was observed among the different generations. People in their 20s and 30s showed strong opposition, with respectively 80 percent and 69 percent of the respondents being against special treatment of business tycoons. On the other hand, the older generation was mainly in support of pardoning businessmen, with 55 percent and 59 percent of people in their 50s and 60s in favor.<sup>61</sup> Some speculate that slower growth and a perception of rising inequality have changed attitudes towards the culture of political impunity.<sup>62</sup>

In reflection of public opinion, numerous civic organizations have voiced criticism against controversial pardons. Some of the groups paying close attention to presidential pardons include Solidarity for Economic Reform<sup>63</sup> and the People's Solidarity for Participatory Democracy.<sup>64</sup> Increasingly, media outlets have also voiced discontent with perceived favoritism in the practice of special pardons. Most of the newspapers that have published critical editorials regarding pardon practices are left-wing

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59 Yi, "Special Pardon Granted to 4,876 Convicts."

60 The survey by Gallup Korea was carried out in July 2015 and included 1,003 respondents (Kang, "SK Chief Pardoned"), with a sampling error of plus/minus 3.1 percent (Ron Chang, "More Than Half of Country Opposed to Pardons for Businessmen: Gallup Poll," *Traffic Broadcasting System (TBS)*, July 24, 2015, accessed November 20, 2016, [http://www.tbs.seoul.kr/news/bunya.do?method=daum\\_html&typ\\_800=P&seq\\_800=10100140](http://www.tbs.seoul.kr/news/bunya.do?method=daum_html&typ_800=P&seq_800=10100140).)

61 "Gallup: 54% S. Koreans Oppose Special Pardons for Business Tycoons," *Korea Broadcasting System (KBS)*, July 24, 2015, accessed December 20, 2016, [http://world.kbs.co.kr/down.htm?inpage\\_id=42249&Type=DOC](http://world.kbs.co.kr/down.htm?inpage_id=42249&Type=DOC).

62 "South Korean Politics: Pardon Me."

63 Choe, "Korean Leader Pardons Samsung's Ex-Chairman"; Christian Oliver, "South Korea to Pardon Businessmen," *The Financial Times*, August 13, 2010, accessed December 20, 2016, <https://www.ft.com/content/16d3a502-a6a0-11df-8d1e-00144feabdc0>; Jee-yeon Seo, "Business Tycoons Face Growing Calls for Responsible Management," *The Korea Herald*, March 9, 2016, accessed December 21, 2016, <http://www.koreaherald.com/view.php?ud=20160309001067>; Song, "Park Grants Special Pardons to More Than 4,870 People."

64 Choi, Lee, and Kim, "Going Back on Another Election Pledge"; Jane Han, "Pardon Not Impacting Corporate Performance," *The Korea Times*, August 13, 2008, accessed November 20, 2016, [http://www.koreatimes.co.kr/www/news/biz/2011/04/123\\_29301.html](http://www.koreatimes.co.kr/www/news/biz/2011/04/123_29301.html); Jung-A Song, "South Korean Leader under Fire for Pardoning Convicts," *The Financial Times*, August 12, 2016, accessed November 21, 2016, <https://www.ft.com/content/fdbd0d10-6057-11e6-ae3f-77baadeb1c93>.

publications, including *The Hankyoreh*,<sup>65</sup> the *Korea JoongAng Daily*,<sup>66</sup> *The Kyunghyang Shinmun*<sup>67</sup> and *The Korea Times*.<sup>68</sup> Finally, many politicians have protested against controversial amnesty grants. Critical politicians are represented on both sides of the political spectrum, included Na Kyung-won of the former Grand National Party (now Saenuri Party),<sup>69</sup> Lee Sang-il of the Saenuri Party,<sup>70</sup> Roh Hoe-chan of the former Democratic Labor Party (now the Unified Progressive Party),<sup>71</sup> Jung Sung-ho, Lee Un-ju, and Park Ki-choon of the Democratic United Party,<sup>72</sup> and Yoo Eun-hae of the New Politics Alliance for Democracy.<sup>73</sup>

## Analysis

This section will present an analysis of the quantitative and qualitative trends observed in the preceding section. First, it is observed that presidential pardons have halved over the past twenty years, in spite of a small increase under the Park administration. Pardons granted to traffic offenders remain high, but they have also decreased over time and are therefore consistent with the general trend in clemency.

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65 “[Editorial] Presidential Pardons Need to be Kept in Check,” *The Hankyoreh*, February 10, 2007, accessed December 15, 2016, [http://herstory.hani.com/arti/english\\_edition/e\\_editorial/189797.html](http://herstory.hani.com/arti/english_edition/e_editorial/189797.html); “[Editorial] Improper Political Pardons,” *The Hankyoreh*, July 28, 2008, accessed December 15, 2016, [http://english.hani.co.kr/arti/english\\_edition/e\\_editorial/301109.html](http://english.hani.co.kr/arti/english_edition/e_editorial/301109.html).

66 “Pardon with Prudence,” *Korea JoongAng Daily*, July 28, 2009, accessed December 16, 2016, <http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=2907957>; “Stop Abusing Presidential Pardons,” *Korea JoongAng Daily*, May 8, 2015, accessed December 16, 2016, <http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=3003951>.

67 “[Editorial] President Lee, Give Up Special Pardon of Corrupt Aides!” *The Kyunghyang Shinmun*, January 28, 2013, accessed December 4, 2016, [http://english.khan.co.kr/khan\\_art\\_view.html?artid=201301281659157&code=790101](http://english.khan.co.kr/khan_art_view.html?artid=201301281659157&code=790101); “[Editorial] President Park Needs to Keep Her Principle, ‘Do Not Abuse Pardon Power,’” *The Kyunghyang Shinmun*, July 14, 2015, accessed December 16, 2016, [http://english.khan.co.kr/khan\\_art\\_view.html?code=790101&artid=201507141834317](http://english.khan.co.kr/khan_art_view.html?code=790101&artid=201507141834317).

68 “[Editorial] Don’t Abuse Pardon,” *The Korea Times*, December 25, 2007, accessed December 4, 2016, [http://www.koreatimes.co.kr/www/news/opinion/2013/08/202\\_16139.html](http://www.koreatimes.co.kr/www/news/opinion/2013/08/202_16139.html).

69 Su-jin Chun and Sung-tak Kim, “Roh Hands Out Pardons to 434 Convicted Figures,” *Korea JoongAng Daily*, February 10, 2007, accessed December 4, 2016, <http://koreajoongangdaily.joins.com/news/article/article.aspx?aid=2872305>.

70 Chung, “Lee Presses on Pardons.”

71 Bang, “434 High-Profile Convicts Pardoned.”

72 Sang-hun Choe, “Departing South Korean Leader Creates Furor with Pardons,” *The New York Times*, January 29, 2013, accessed December 4, 2016, <http://www.nytimes.com/2013/01/30/world/asia/outgoing-south-korean-leader-creates-furor-with-pardons.html>; Ser, “MB’s Pardons Outrage Park, Parties.”

73 Kang, “SK Chief Pardoned.”

Second, the number of controversies stirred by presidential clemency grants have decreased steadily over the last three presidencies, with a particularly noticeable decline between the presidencies of Lee Myung-bak and his successor Park Geun-hye. Presidents Roh and Lee granted hundreds of controversial pardons, but President Park has only granted a few.

Third, the principles applied by the three recent presidents differ greatly from one another, both in terms of the social standing and the crime committed by those who are offered amnesty. Roh Moo-hyun granted pardons to businessmen and politicians, some of them his close aides—all convicted of either economic or corruption-related crimes and convicted before or during his presidency. Lee Myung-bak also granted pardons in a similar manner to that of his predecessor but refrained from granting pardons to people who had committed corruption-related crimes during his presidency. Finally, Park Geun-hye had granted pardons to business tycoons and other businessmen convicted of economic crimes. However, she had steered away from businessmen and politicians convicted of corruption, both before and during her presidency. It can be argued that Korean presidents continue to consider businessmen convicted of economic crimes eligible for clemency, but the skepticism towards individuals with corruption-related convictions has been increasing. The latest president has also shown wariness towards pardoning of politicians and personal acquaintances.

Fourth, an analysis of the media reports on public announcements given by recent Korean presidents for clemency pardons granted over the last decade shows largely persistent trends. First, special pardons are usually accompanied by a justification from the sitting administration. Although the president is not obligated by law to provide any justification, Korean presidents have provided explanations for both controversial and non-controversial pardons. Secondly, presidential pardons have continuously been granted with reference to mercy and public welfare. Humanitarian pardons are mainly granted to individuals with “poor health” and “old age.” Clemencies granted in the name of public welfare mainly refer to “national unity,” such as “reconciliation,” and more commonly to “national development,” including “economic revival,” “job creation,” and “investment stimulus.”

Finally, it is concluded that both the number of clemencies in general and the number of controversial pardons in specific are in decline. Seeing how the underlying rationale for executing special pardons is largely similar among the last three presidents, despite the differences in the principles and frequency behind their principal grants, the declining trend

of controversial pardons might not be so much related to the personal character of the president as it is an outcome of unfavorable public sentiment towards controversial pardons. Surveys of Korean citizens imply increased skepticism about favoritism and corruption. Furthermore, recent political events reflect a public society in demand of more transparency and fairness. In late 2016, the Korean parliament voted for impeachment of President Park Geun-hye.<sup>74</sup> An independent counsel had investigated and accused the president of bribery and other illegal activities.<sup>75</sup> In relation to the same scandal, the Samsung heir Lee Jae-yong has been indicted on bribery charges.<sup>76</sup> It is the first time in history that a Samsung leader has been arrested on criminal charges.<sup>77</sup>

## Conclusion

By conducting a combined analysis of quantitative and qualitative data on presidential pardons in South Korea, this paper has observed significant changes in both the number and nature of recent pardons. First, there has been a significant decline in both the total number of clemency grants and in the specific rate of presidential pardons. Second, the underlying reason for executing special pardons overlaps among the last three presidents, but the principles and frequency with which they apply the clemency power largely differs from one another, especially in the Park presidency. At a glance, the pardon power might seem to maintain a strong tradition at the Blue House, as it is being executed at the same day every year, with ruling presidents citing similar rationales. However, as shown in this paper, clemency use has been in strong decline over the past two decades. Particularly, elected leaders appear more sensitive to public sentiment, as they increasingly avoid amnesty grants to controversial recipients such as

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74 Ju-Min Park and Jack Kim, "South Korean Parliament Votes Overwhelmingly to Impeach President Park," *Reuters*, December 9, 2016, accessed December 20, 2016, <http://www.reuters.com/article/us-southkorea-politics-idUSKBN13X2JS>.

75 Min-ho Jung, "Park, Choi Colluded to Receive Bribes from Samsung: Counsel," *The Korea Times*, March 6, 2017, accessed March 15, 2017, [http://www.koreatimes.co.kr/www/nation/2017/03/251\\_225161.html](http://www.koreatimes.co.kr/www/nation/2017/03/251_225161.html).

76 Kyung-min Lee, "Constitutional Court Ruling Looming as Early as This Week," *The Korea Times*, March 5, 2017, accessed March 15, 2017, [http://www.koreatimes.co.kr/www/nation/2017/03/251\\_225062.html](http://www.koreatimes.co.kr/www/nation/2017/03/251_225062.html).

77 You-kyung Lee, "Head of Samsung Arrested in South Korean Presidential Corruption Scandal," *Chicago Tribune*, February 16, 2017, accessed March 15, 2017, <http://www.chicagotribune.com/business/ct-samsung-ceo-lee-jae-yong-20170216-story.html>.

convicted politicians and businessmen. This finding is confirmative of the previously cited arguments put forward by American scholars, who contend that public opinion is sufficient to serve as a check on the pardon power. Scholarly articles about the Korean clemency power have mostly focused on the issue of abuse and the need for reform. Considering the findings presented in this paper, it would be interesting to see a continuation of the debate on clemency reform in South Korea.

This paper has some limitations. First, reliance on media for data regarding pardon rationales is arguably a disadvantage, but the method appears inevitable as most of the public statements made by recent Korean presidents and their administrations regarding public pardons were not made through official channels but rather at press conferences and in response to questions from journalists and lawmakers. Second, future studies on presidential pardons would benefit from a detailed analysis of the reasons behind both the general decline in clemency grants over time and the more recent decline in controversial pardons. Relatedly, it is also noted that the use of special pardons in treating the society's social elite favorably is becoming unpopular among the public, especially younger generations. Future studies would benefit from a more in-depth analysis of the causes behind this shift in public sentiment, which in turn might help explain the recent changes to trends in controversial pardons granted by Korean presidents.