

Responsive Democracy

Increasing State Accountability in East Asia

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and, by extension, the entrenchment of responsive democratic governance—results from political conflict among politicians vying for power. Democratic responsiveness results less from leaders' normative judgments concerning how democracy should be than from political expedience. Regardless of the motivations underlying such measures, however, APA-like procedures represent an important step along the path from institutional to responsive democracy.

3 | Deregulation, Bureaucratic Conflict, and Passage of the South Korean Administrative Procedure Act

The aim of regulatory reform is ambitious: to move Korea from a highly interventionist and authoritarian model of economic development to a market oriented and open model based on values of consumer choice, democracy, and rule of law. The Administrative Procedure Act . . . seeks "to advance a guarantee of fairness, transparency and confidence in administration and to protect the right and interests of citizens . . . by stipulating common matters regarding administrative procedures." Introduction of the Act was . . . against major opposition from the bureaucracy due to concern about the limits on administrative discretion implied by greater transparency and stricter procedures.

—Organisation for Economic Co-Operation and Development 2000

The Organisation for Economic Co-Operation and Development (OECD) viewed the Korean administrative procedure act (APA) as a tool for enhancing transparency and confidence in administration and protecting citizen rights and interests. In essence, the OECD implicitly described APAs as a mechanism for enhancing democratic responsiveness, recognizing that the desire to increase state accountability constitutes one of politicians' principal motivations for restructuring their bureaucracies in ways that enhance the responsiveness of their democratic institutions.

Elected officials in new democracies, including those in East Asia, commonly have difficulty controlling bureaucrats from the previous authoritarian period.¹ So how do newly elected post-democratic-transition presidents ensure that their policies are implemented? One option is to rein in these bureaucrats by empowering the public to participate directly in bureaucratic policy-making.

As I argue in chapter 2, one way to do so is by requiring all executive

agencies to follow specific procedures when writing regulations across all policy areas. If McNollgast's theory is generally true, outgoing presidents in other countries should support APAs to "lock in" preferred policies. Yet at least in South Korea (henceforth Korea), such is not the case.² The Korea case suggests that rather than seeking to lock in the status quo, presidents may support APAs in new democracies if they confront various types of conflict within the executive branch. In other words, the lock-in story does not ring true in many new democracies because following a democratic transition, new presidents' policy preferences often differ from those of members of their coalition or of bureaucrats left over from the previous regime. When presidents have incomplete control over their appointees, they may seek to manage delegation to cabinet ministers and their underlings by adopting an APA (Baum 2007a). Whether presidents' powers are constrained by constitutional requirements (appointment and dismissal power of the cabinet), coalitional support with heterogeneous preferences, or bureaucrats who cannot be fired, APAs can mitigate agency slippage by keeping track of bureaucrats' activities. In Korea, APA enactment is primarily, albeit not exclusively, attributable to the third condition. In this chapter, I investigate the enactment of APAs in Korea, a textbook case for examining the applicability of both the lock-in argument and my alternative reining-in theory.

Korea's first civilian leader since 1961, President Kim Young Sam (1993–98), assumed office with an ambitious reform agenda. Yet he confronted an executive branch dominated by entrenched and recalcitrant bureaucrats loyal to the previous authoritarian regimes and with a vested interest in the status quo. Institutional and coalitional factors played important roles in both the timing and substance of Kim's decision to pursue the various acts governing administrative regulations. I investigate his incentives not only before and after passage of the 1994 APA but also when the APA was strengthened three years later.

Nevertheless, it is important to avoid overgeneralizing from evidence based on a single country. Hence, following common practice in qualitative case study research (e.g., Achen and Snidal 1989; Drezner 2000; Eckstein 1975), I employ this case study as a "plausibility probe," intended to illustrate some of the key relationships described in the theory as well as to demonstrate the utility of the theory for further empirical testing.

I begin by outlining the events surrounding the enactment of Korea's APAs. I then briefly describe Korean politics under military rule, focusing on the traditional sources of political support for bureaucrats. I subsequently discuss the goals and policy preferences of Korea's politicians and

bureaucrats after democratic transition and test the applicability of the theory to the Korean case.

APA Enactment in Korea

My dependent variable is the change in the degree of administrative procedural control during a particular administration in Korea. Such control increased when an APA passed in 1994 and was strengthened in 1997.

Following his inauguration on February 25, 1993, President Kim established several deregulatory committees.³ Kim also created the Presidential Commission on Administrative Reform (PCAR) which served through the end of his five-year term. On June 11, PCAR promulgated the Special Measure Act for Deregulation of Corporate Activity. The National Assembly then passed the Basic Law on Administrative Regulations and Civil Affairs Act on January 1, 1994 (Korea 1994). The law, subsequently referred to as KAPA I, and the subsequent Prime Minister Order (April 7, 1994) and Presidential Enforcement Decree⁴ (PED) (December 31, 1996), which implemented KAPA I, set the guidelines for a new regulatory process that focused on the legal limits of regulation and the *ex ante* screening of all proposed regulations. In May 1994, the Joint Review Council of Administrative Regulation within the Ministry of Government Administration was established to review and resolve regulatory disputes among ministries.

Deregulation efforts accelerated during Kim's third year in office, when he announced globalization (*seggyehwa*) efforts (M.-J. Moon and Ingraham 1998). Kim promoted deregulation to liberalize economic activity, to facilitate market competition, and to improve the creativity of industries (B. W. Kim 1991). Toward this end, the government also introduced an ombudsman system by passing the Administrative Regulation and Service Improvement Act. A main goal of the ombudsman system was to discourage new regulations by mandating regulatory impact analyses prior to implementation (Korea, Presidential Commission 1995).

Also on December 31, 1996, Kim promulgated the Korean APA (KAPA II), which applies to all acts that exclude provisions for the procedures of dispositions, notifications, administrative preannouncement of legislation, preannouncement of dispositions, and administrative guidance.

On August 22, 1997, near the end of Kim's term, the National Assembly promulgated another comprehensive act, known as the Basic Act on Administrative Regulations (KAPA III).⁵ KAPA III was far more extensive

than KAPA I. Its main provisions included (1) a rule that all regulations must be ordained by law; (2) establishment of a civilian-led Regulatory Reform Committee⁶ in 1998; (3) adoption of a policy whereby creation of new regulations or strengthening of existing ones required a mandatory regulatory impact analysis, introduction of a registration system, and a sunset law; and (4) establishment of a Comprehensive Regulatory Improvement Plan for existing regulations. Following opposition party leader Kim Dae Jung's victory in the December 1997 presidential election, the National Assembly amended KAPA III on February 28, 1998, with the Framework Act on Administrative Regulations.

The Political Equilibrium under Military Rule

Korea's formal democratic transition from military dictatorship began on June 29, 1987. Roh Tae Woo, a conservative politician handpicked by Korea's military leaders as the presidential candidate of the ruling Democratic Justice Party, announced major democratic reforms.⁷ Following these reforms, the National Assembly amended the authoritarian constitution and adopted the new constitutional framework on October 12, 1987. In a national referendum shortly thereafter, 93 percent of voters ratified the new constitution (Diamond and Shin 2000, 6). With over two decades of democratic experience, Korea has now conducted five free and competitive presidential elections, five parliamentary elections, four rounds of nationwide mayoral and gubernatorial elections, and four series of local council and top city and county administrator elections.⁸

Prior to democratization, Korea's executive branch was a unified hierarchy, lacking presidential control problems. Authoritarian presidents and professional bureaucrats had similar preferences regarding policies. Prereform Presidents Park Chung Hee and Chun Doo Hwan routinely rewarded officers from the Kyungsang province, which was a major part of their military electorate.⁹ This strategy led to the rise of personalistic regional parties. Both military regimes also generated support from rural vote machines¹⁰ financed by political contributions from the *chaebol* (multicompany business conglomerates).

Korean parties tend to lack bureaucratic organization but are highly disciplined. Yet because the parties are largely personalistic, their survival depends on their leaders' continued success. Thus, as long as presidents generated support from these rural vote machines, they maintained strong control over their parties.

Until the 1981 legislative election, the president was allowed to choose one-third of the members of the National Assembly, thereby ensuring a working majority for the ruling party. Prior to the lifting of this rule, the major opposition parties repeatedly failed to achieve the one-third share of legislative seats required by law to initiate bills. In the wake of the rule's abandonment prior to the 1981 election, however, the opposition parties surpassed the one-third threshold, becoming for the first time a potent legislative opposition (see table 3.1).¹¹

Thus, while the National Assembly possessed some significant constitutional power, it failed to exercise its independent authority prior to 1987 primarily because the electoral system was rigged to guarantee the president's party a legislative majority. Presidents during the time of military rule thus avoided meaningful conflict with the opposition by ensuring that their parties dominated politics.

Unified Executive Hierarchy

Political survival during Park's regime was tied to economic development through export-led growth (Haggard and Kaufman 1995; Wade 1992). With this goal in mind, Park and his successors needed to build a cadre of skilled bureaucrats who could provide information regarding policy formulation as well as have the expertise and competence to execute and implement economic policy decisions. Therefore, in the 1960s, the government began to promote a merit-based system for recruitment of career bureaucrats. By the early 1970s, this system was firmly established. However, even with the new system, a patronage network based on common regional background, family ties, or school affiliations persisted throughout the bureaucracy (Cho 1975).

Under military rule, Korean presidents set the parameters of interactions between government and private industry by employing incentives and sanctions to discipline bureaucrats and big business (Amsden 1989; Campos and Root 1996; Wade 1990). In exchange for private information

TABLE 3.1. National Assembly Seats (% of total), by Party

Election Year	Ruling Party	Major Opposition	
		Parties	Other
1973	121 (62%)	52 (27%)	21 (11%)
1978	119 (58%)	61 (30%)	25 (12%)
1981	151 (55%)	106 (38%)	19 (7%)
1985	148 (54%)	102 (37%)	26 (9%)

and political support—that is, contributions and votes—presidents rewarded big business for good performance with subsidies and access to low-interest credit.

For bureaucrats, the continuity in economic policies during the Park and Chun regimes created stability in long-term policy planning, thereby minimizing fears of unexpected policy reversals. Presidents were confident that the bureaucrats would not stray too far from presidential preferences as long as job security and promotions remained contingent on loyalty. Hence, until the mid-1980s, the key actors—politicians, big business, and bureaucrats—had little incentive to deviate from this mutually beneficial relationship.

Implementing a merit-based appointment system raised the likelihood that bureaucrats would act contrary to the president's preferences. Civil servants who know that they cannot be fired for their actions face little risk in deviating from such policies.

Shift in Economic Policy and the Decline of Executive-Bureaucrat-*Chaebol* Dominance

Prior to the enactment of Korea's APA, a shift in economic policy began to threaten the political equilibrium under military rule. Yet presidential control problems did not immediately surface. To broaden its support base during the 1990s, the government began to shift its emphasis away from heavy industry development by allowing smaller firms to enter the market (Hahm and Plein 1997, 39). This change reduced the government's role in allocating credit to specific firms, which consequently had to resort to stock offerings and borrowing on the open market for capital.

In addition, the government sold off its stake in commercial banks, thereby relinquishing its power to appoint management, control loans, and set policy, including setting interest rates through its control of the Bank of Korea and the Ministry of Finance (Steers, Shin, and Ungson 1989). In short, concessions by the Chun regime to business interests not only reduced the government's role in the banking and finance sectors but also began to threaten a three-decades-old political equilibrium, which was eventually broken when economic liberalization continued in subsequent administrations.

The reforms increased uncertainty regarding the direction of future economic policy. However, this initial shift did not produce sufficient incentive for bureaucrats to resist Chun's policies. The benefits of continu-

ing to play by the old rules still outweighed the costs of doing so. Chun was a dictator, relying on his personal allies in the highest positions of government to ensure implementation of his policies. Other political institutions—the legislature, interest groups (other than big business), and parties—were relatively weak. Bureaucrats never confronted divided loyalties and, most important, still received rewards for loyalty—prestige, job security, promotions, and salary increases.

Democratic Transition and New Rules of the Game: Goals and Policy Preferences of Key Players

With the 1987 democratic transition and subsequent election of Chun's handpicked successor, Roh, a new set of rules emerged. First, a popularly elected president afforded voters the opportunity to reward or punish presidents (or their parties) at the next election based on performance. Second, the president could no longer dissolve the National Assembly. In fact, the legislature was empowered with important functions, including the authority to (1) stop presidential legislation, (2) legislate "over the head" of the presidential veto (override provisions; Korea 1987, Article 53), (3) hold hearings to determine whether presidents (current or former) were guilty of corruption, and (4) veto the president's nominee for prime minister. Third, the president had to share the right to appoint members of the newly established constitutional court with members of the parliament and the chief justice of the supreme court. The constitutional court, in turn, made the final judgment on impeachment issues and dissolution of political parties.¹² In addition, the constitutional court had various instruments that strengthened judicial review.¹³

Players in this new political game had to operate within a political environment that included term limits, increased legislative power, and independent judicial influence. Consequently, the previous principal-agent relationship between presidents and bureaucrats changed: multiple principals—the president, the legislature, the judiciary, and the public—now competed to influence the bureaucracy.

Presidential Preferences

My argument depends on several assumptions concerning presidents' motivations. President Kim faced serious intraexecutive control prob-

lems. He was a reformer who confronted not only an entrenched bureaucracy intent on preserving the economic status quo but also substantial disagreement within his party.

Ruling party conflict resulted from repeated splits and mergers. Typically, if a party leader defected to form a coalition with or to try to recruit members from another party, he could count on his supporters to follow him. (Appendix table A1 reveals the frequent party splits and mergers, indicated also by the constant renaming of parties.)

Despite the historical pattern of party splits and mergers, as the party system grew more competitive after 1987, presidents began to prioritize passing and effectively administering their legislative programs. This change in strategy gave them an incentive to control the bureaucrats responsible for implementing their policies.

One instance of a president seeking to influence future electoral outcomes to increase the likelihood that his legislative programs would be implemented arose in 1990, when Roh merged his party with those of Kim Young Sam and Kim Jong Pil. This merger, intended to give Roh a majority in the National Assembly, led to the formation of the Democratic Liberal Party. Similarly, Kim Dae Jung (president from 1998 to 2003) formed an alliance with Kim Jong Pil's¹⁴ party to increase the chances of winning the 1997 presidential election. This alliance led to the 1998 formation of the first coalition government since the democratic transition.

As a consequence of this merger, Kim Young Sam's party included followers of both Roh and Kim Jong Pil. Subsequent Korean presidents have frequently fought with their cabinet ministers over policy issues.¹⁵ As director general (the highest level of the career civil service) Park Se Jin of the Ministry of Legislation observed, "There's always some sort of conflict or disagreement between different ministers. That's why this [regulatory] reform committee exists . . . to resolve their differences in opinion."¹⁶ In addition, when he took office, President Kim Young Sam purged senior military officers closely linked to Chun and Roh (Y. J. Lee 2000, 106). Justifying his decision with charges of corruption and incompetence, Kim discharged, reassigned, or postponed the promotions of generals and colonels who were members of the Hanahoe (Society of One) (Y. J. Lee 2000, 106).¹⁷ As Y. J. Lee (2000, 113–14) observes,

Whenever he put forward a new reform measure, President Kim had to deal more with the internal dissenters in his political party than with the external opponents. President Kim thus had to walk a

tightrope between implementing reforms and maintaining his reform coalition.

Cabinet Preferences

Since its democratic transition, Korea's cabinets have typically included a single party with multiple factions, many of which did not share the president's preferences.¹⁸ Factionalized single-party cabinets threaten a president's agenda because substantial disagreement may arise over policy between the president's faction and the other factions and because opposing factions may be large enough to block the president's program within the executive branch. Under such circumstances, presidents have an incentive to institutionalize their control, *ex ante*, by supporting administrative procedures.

According to Hahm and Plein (1997, 52), "turf wars" among Korea's cabinet ministries have rapidly increased along with the

diversity and instability in presidential cabinets; as a result, bureaucrats will likely get mixed signals from their executive principals. . . . This trend is clearly evident . . . where the ruling party has been cobbled together by combining elements of entrenched regime members and established opposition leaders.

In fact, my data indicate that under Kim, 15 out of 80 new ministerial appointments between 1993 and 1996 clearly came from Roh's faction. Most of the other 65 appointments came from President Kim's faction, with only a few from Kim Jong Pil's faction.

Bureaucrats' Preferences

According to three directors general, bureaucrats' power and discretion declined after Kim came into office. For example, director general Hoh Moon of the Ministry of Trade, Industry, and Energy stated,

Under authoritarian regimes, bureaucrats were able to express opinions, challenge ministers, and develop sound policies. Since Kim, however, bureaucrats are less involved in decision making. . . . Bureaucrats and ministers used to work in a homogeneous environment where there was continuity and stability. Under Kim,

there have been multiple reorganizations, resulting in greater uncertainty. This has created confusion and discontinuity in policy direction.¹⁹

The most important changes derived from Kim's goal of deregulation are the effects of the new procedures. For all regulations, bureaucrats were now required to listen to a broader set of interest groups, including those that the authoritarian regimes had excluded. This new approach reduced bureaucrats' capacity to control policy outcomes, meant that they could no longer depend on side payments from their favorite constituents, and gave them an incentive to resist such reforms.²⁰

The one-term limit for presidents further exacerbates the potential for conflict between the president and the bureaucracy. Knowing that a president will not be around for the long term, bureaucrats have a greater incentive to resist presidential initiatives (Huber 1998), especially if they disagree on principle (Huber and Lupia 2001).

Roh did not propose radical changes in economic policy. Hence, even though he changed the rules of the game, he did not need to worry about controlling recalcitrant bureaucrats. Kim, in contrast, proposed a major shift in policy direction toward deregulation. Bureaucrats, who benefited from the status quo, resisted his economic reforms.

Analysis and Evidence

Table 3.2, excerpted from table 2.2, indicates the presence or absence of each of the three key conditions examined in this chapter across the three administrations in Korea. The table shows that a divergence of preferences between the president and career civil servants accounts for the enactments of both Korean APAs (see Baum 2007a). In the 1993–94 and 1995–97 periods, procedural control increased with the passage of the APAs. The table also compares the actual outcome with the logical prediction if the goal of each president had been to lock in the status quo.

TABLE 3.2. Factors Affecting APA Enactment in Korea

Presidential Cases	Problem Ministers?	Problem Bureaucrats?	Civil Service Protection?	Did APA Pass?	"Lock-in" Prediction
Roh (1987–92)	No	No	Yes	No	Yes
Kim (1993–94)	No	Yes	Yes	Yes	No
Kim (1995–97)	No	Yes	Yes	Yes	No

Absence of Civil Service Conflict under the Roh Administration (1988–1993)

By the late 1980s, government officials expressed concern about Korea's position in the world market. Manufacturing firms began to lose international competitiveness, and wages were high. Korea found itself squeezed between newly industrializing countries with lower wage rates and more advanced countries at the forefront of capital-intensive knowledge industries (e.g., microcomputers and biotechnology). In response, Roh advocated the development of new export-oriented initiatives aimed at securing Korea's position in the international market (e.g., automotive technology and semiconductor memory products). By the time Roh reached this decision, however, his administration lacked sufficient time to pass new policies through the legislature, let alone implement them (Hahm and Plein 1997, 71). Roh won the presidential election with a plurality, rather than a majority, of votes. He also lacked a working legislative majority until his Democratic Justice Party merged with two opposition parties.

Roh, however, did not confront policy conflict with the bureaucracy. In this regard, the Roh administration resembles the U.S. case. Like Roh, President Harry S. Truman and his bureaucracy appear to have shared a preference for preserving the New Deal. If this analogy is apt, the McNollgast (1999) lock-in hypothesis appears to imply that Roh should have passed an APA. He, too, shared common interests with his bureaucracy and so had little incentive to crack it open. Indeed, while Roh implemented some relatively modest democratic reforms, he had no incentive to fundamentally reform Korea's bureaucratic system. Doing so would have weakened his core political constituencies. In this regard, an APA designed to lock in the status quo (i.e., a strong bureaucracy plus moderate democratic reforms) should have appealed to Roh. After all, he had justifiable concern that his fundamental support constituency could be threatened by wholesale democratic reforms pursued by a future administration. Yet Roh did not pursue an APA.

Contrary to the lock-in hypothesis, the reining-in theory predicts that Roh would lack any motivation to carry out administrative reform because the bureaucrats largely shared his preferences—many were members of his military faction—and were afraid to cross him even when they did not. In short, the APA passed under Kim rather than Roh because the enacting coalition intended to change rather than to lock in the status quo.

Bureaucratic Conflict under the Kim Administration (1993–1998)

Kim's economic policy preferences clearly differed from those of the bureaucrats. He had difficulty implementing his reforms, which threatened the livelihood of those political actors, including bureaucrats, with vested interests in previous programs, as evidenced by Kim's 1993 Five-Year New Economy Plan, which sought to reduce state intervention through deregulation, financial reform, and privatization, and a 1994 initiative targeting internationalization.²¹ Under the privatization plan, 68 of 133 public enterprises were selected for sale between 1994 and 1998 (Korea, Economic Planning Board 1994, 190). The plan was only partially implemented, however. *Chaebol* reforms were also incomplete, in part because of the *chaebol*'s political and economic clout. In short, the president could set the agenda, but successful implementation required the cooperation of precisely the political actors who were the targets of reform (Y. J. Lee 2000, 108).

Kim's reform plans threatened bureaucrats' traditional sources of political support, which, in turn, threatened the mutual benefits accruing to bureaucrats and business through their long-standing close relationship. Because these bureaucrats' incentives—foremost among them political survival—depended on the status quo, Kim faced substantial intrabranch conflict. As Kim's chief of staff, Park Kwan Yong, stated, "Bureaucrats were definitely a barrier to the president's administrative reform goals."²² Since regulators tend to resist deregulation (B. W. Kim 1997, 193), it is unsurprising that a significant percentage of public officials (43.2 percent) reported suspecting that the Kim administration opposed their vested rights, while a substantial percentage of bureaucrats (29.7 percent) worried about a loss or reduction in their powers (Korea Economic Research Institute 1996, 3–4). By reforming procedures, Kim was better able to control conservative bureaucrats who were part of the old core of the military ruling party (the Democratic Justice Party).

When he took office, Kim formed several committees: the PCAR, the Economic Administrative Deregulation Committee, and the Committee on Deregulation of Restricted Corporate Activities. However, the first two committees were ad hoc and lacked full political support. In short, no institutional bodies existed within a comprehensive framework to oversee and review deregulation efforts and the drafting of new regulations. Consequently, substantial deregulation in key sectors was stymied, and bureaucrats continued to write new regulations with little scrutiny.

Reining in the Bureaucracy through an APA

How KAPA I and Presidential Decrees Improve Executive Control

Both Kim Young Sam and the legislature had incentives to manage agency drift while in office. They could do so either by limiting bureaucratic discretion or by enfranchising new groups. KAPA I emphasized the latter. The 1996 PED contains the specific provisions outlining the intent of the 1994 KAPA. The most important requirements include public notice and comment for all proposed regulations and a review committee with oversight authorities.

The new procedural requirements help presidents and legislators collect information about agencies' activities. For legislators, making bureaucratic activity transparent to the public also forces bureaucrats to reveal privately held information and provides information about constituents' positions on regulatory issues. Legislators can thus better position themselves to respond to their constituents, thereby increasing the chances of reelection. Along these lines, Rhee Zusun of the Korea Economic Research Institute's Center for Regulation Studies commented,

Politicians had no reason to oppose [the APA] as there was very little cost for a lot of gain in information as to what bureaucrats were doing. There are many benefits to politicians because of increased transparency and reduced bureaucratic discretion. If you look at the electoral connection, detection and information is broadened and so is control . . . so they have no reason to oppose [it]. Finally, interest group access has definitely increased since the act. The regulators are regulated. This is a significant change from the past.²³

By making the process entirely public and enfranchising new principals such as environmentalists and other nongovernmental organizations (NGOs), KAPA I forces agencies to consider the relevant political interests before finalizing new rules. The slowing down of the rule-making process gives new interest groups multiple opportunities to notify legislators when agencies propose actions the legislators oppose.

Finally, the provision granting the prime minister authority to order any agency head to amend, reform, or delete its regulations stands out clearly as a tool to improve current executive management, providing a powerful veto to an incumbent administration.

How KAPA II Improves Executive Control

Several of KAPA II's provisions require PEDs, thereby giving the president some discretion over implementation and further showing that presidents sometimes support APAs to manage current delegation problems.

According to the KAPA II legislation, "The purpose of this Act is to attain fairness, transparency, and confidence in administration, and to protect the rights and interest of citizens, encouraging citizens' participation in administration by stipulating the common matters regarding administrative procedures" (Korea 1996, Act No. 5241, Article 1).²⁴

KAPA II requires establishment and public notification of disposition standards as well as advance notice to the concerned parties. It also gives parties the option to submit arguments to the agency and mandates the maintenance of a record of formal hearings. To commence a public hearing, agencies must notify the parties at least 14 days before the hearing date and inform the general public through methods such as official gazettes, public bulletins, and daily newspapers.

Although, unlike the U.S. APA, KAPA II does not govern rule making per se, the purpose of procedural requirements, including dispositions and writing legislation, resembles those requirements outlined in the 1996 PED. Thus, the 1996 decree governs rule making.

How KAPA III Prevents Regulatory Capture

In the spring 1996 National Assembly election, Kim's New Korea Party (NKP) won 46 percent of the seats, falling only 11 seats short of majority status. Kim formed a working majority with 8 independents and 3 defecting opposition party members (Koh 1997, 2).

The lock-in hypothesis presumes that politicians anticipate losses in future elections. In fact, according to a national election opinion poll by Gallup Korea and *Chosun Ilbo* conducted in March 1997, between the 1996 National Assembly elections and the December 1997 presidential elections, popular support for the National Congress for New Politics (NCNP), the "second party," was essentially equivalent to that for Kim's party. The NKP led the NCNP by just 16.6 percent to 16.4 percent, a statistical dead heat. Moreover, 57 percent of respondents expressed no opinion at all, suggesting that their votes might swing either way.

Based on these data, Kim most likely recognized that an opposition party candidate could win the next election. At first glance, this situation might suggest that KAPA III was intended to lock in existing policies. Yet the policy preferences of President Kim's primary opponent, the NCNP's Kim Dae Jung, were farther from those of the bureaucracy than were those

of Kim Young Sam. Hence, while the predictions of my theory and the McNollgast theory are in this instance observationally equivalent, they derive from substantially different—or, more specifically, additional—motivations. Yet the two theories are distinct in their capacity to explain one aspect of procedural reform: regulatory sunset provisions.

Perhaps the provision that most strongly supports my reining-in argument is the five-year sunset review requirement. According to the Korean APA, for any existing regulations to be extended beyond five years, bureaucrats must submit an extension request one year prior to expiration. In addition, agencies must first notify the public and allow for comments prior to submitting such a request to the Regulatory Reform Committee (RRC).

Of course, this sunset requirement means that future administrations can also undo any administration's regulations after five years. Why would a president who cares about locking in his policies increase his successor's power to undo his regulatory accomplishments? Indeed, the fact that only KAPA III, enacted just before Kim left office, included the sunset provision strongly suggests that its motivation could not have been solely lock-in. After all, sunset laws are explicitly intended to prevent lock-in. If no new deal is struck, the reversion point is deregulation. Thus, this requirement is clearly not a mechanism for locking in the status quo. Rather, it is a tool incumbent presidents use to manage the executive branch by giving them the authority to sign or veto a particular proposal to renew an existing regulation, thereby biasing outcomes away from rather than toward status quo policies.

Kim included this provision to prevent bureaucrats from attempting to return to the previous era's regulatory policies. Under this five-year review cycle, bureaucrats would not be able to revive Roh-era regulation without a public notice and comment period and a justification process under the RRC. This requirement would limit the policy range within which career bureaucrats could write new regulations. Kim apparently saw the still-conservative bureaucrats as a greater threat than the prospect that Kim Dae Jung might win the 1997 election.

In addition, the passage of KAPA I occurred early in Kim's term, thereby further calling into question the applicability of the lock-in hypothesis. This timing leads to the question of why a president with a working legislative majority would subject his own branch to procedural constraints designed to slow down policy implementation and increase governance costs.

When KAPA I was passed, Kim's party controlled 58 percent of the

seats in the National Assembly and had no reason to believe that its majority status was threatened. In a Gallup poll conducted several months prior to KAPA I's passage, Kim and his party enjoyed approval ratings of 85 percent and 55 percent, respectively. At that time, the approval rating for the next-most-popular party (the Democratic Party) was 20 percent (Gallup Korea 2007). Therefore, contrary to the conditions of the lock-in theory, it seems improbable that KAPA I was passed because of an expected loss in the next general elections (scheduled for spring 1996).

KAPA III mandates additional procedural requirements. The consensus among the bureaucrats I interviewed was that the new administrative procedures added another layer to regulatory decision making. My interviewees emphasized that the procedural reforms prevented the continuation of policies that served only *chaebol* interests. Bureaucrats would now have to consider new interest groups' views, especially those that had previously been excluded and that had not been associated with the ruling party. According to Choi Byung-Sun of Seoul National University, a key author of KAPA III,

The primary motivation was to place some kind of an obstacle or break on bureaucrats' discretion and to institute more democratic procedures of the bureaucracy. The entire bureaucracy was strongly opposed to this law because it interfered too heavily with day-to-day activities. The requirements are so counter to current government practices, and it will put a heavy burden on bureaucratic discretion.²⁵

Along the same lines, a report by the Office of the Prime Minister to the OECD clearly indicates that procedural reforms faced substantial bureaucratic resistance: "Difficulties of enacting [regulatory review] were . . . opposition and resistance from vested interest groups and ministries concerned about being the losers of reform" (Korea, Office of the Prime Minister 1997, 17). In fact, Hoh Moon stated, "The establishment of the Office of Government Policy Coordination and the RRC have increased the power of the Prime Minister's Office."²⁶ Hoh added that since both are checking points, the ministries try to persuade their counterparts in these organizations—in particular, the Policy Coordination Office.

Most of my interview subjects referenced the two major requirements under KAPA III: public hearings and notice of draft rules. A member of the RRC, bureaucrats at the Office of Policy Coordination (Office of the Prime Minister) and Ministry of Legislation, and several directors gen-

eral who advise RRC members also mentioned a third requirement: review by the RRC.²⁷ The only bureaucrat who expressed support for the new process was director general Park Nam Hoon, from the prime minister's Office of Policy Coordination, which assists the committee. Park commented,

The 1994 act, 1997 act, and related enforcement decrees were designed to ensure that agencies consider interest group opinions. Without the RRC, bureaucrats cannot be trusted to enforce a new direction in regulatory policy, allowing for flexibility when needed and making sure that the right kinds of regulations are created and modified. Also, ministries in the past did not have to deal with each other. Now they do.²⁸

Joh Jung Jay, a member of the Presidential Committee on Regulatory Reform, explained that in addition to overseeing deregulation, the RRC had to "ensure that the lower-level bureaucrats could not deviate and write their own regulations."²⁹ Thus, to control bureaucrats, all new regulations or revisions of existing regulations must now be justified via mandatory regulatory impact analysis.³⁰

Landscape of Nongovernmental Organizations (NGOs)

One method that politicians can use to reduce bureaucratic discretion and that is evident in Korea is to enfranchise new principals. Since democratization, NGOs have proliferated rapidly and have become increasingly active. Civil society and NGOs began to form in 1987—democratic transition opened up "organizational space" for social interests and interest groups (H.-R. Kim 2000). The year 1994 saw the abolition of a 1963 law that had sought to suppress antigovernment activities by requiring civil organizations to register. The 1998 Information Disclosure Law also increased accessibility and allowed citizens and NGOs to sue state bureaucracies that refused data access (H.-R. Kim 2000, 602). Between the 1980s and the 1990s, the number of registered NGOs grew from 773 to 2,114 (see P. S. Kim and Moon 2003; Koo 2002). According to the OECD, Korea now has an estimated 8,000 NGOs (Organisation for Economic Co-Operation and Development 2000). The *Directory of Korean NGOs* (1999) lists 7,600 organizations, a number that jumps to 20,000 when local branches are included; most of these groups formed in the 1990s (Koo 2002). Korean officials argue that by implementing major new legislation such as the KAPAs, which have increased NGOs' input on policy, the government

has facilitated this rapid growth in organizations (Organisation for Economic Co-Operation and Development 2000, 53–54).

Among the NGOs that have proliferated in Korea are three particularly large groups: the Citizens' Coalition for Economic Justice, the Korean Federation for the Environment Movement, and the People's Solidarity for Participatory Democracy (now Transparency International Korea, or TI Korea). These NGOs appear to be central to policy-making and reform; because they were linked to the democratization movement, they are seen as both centralized and focused at the national level. This landscape differs from that of Japan, where NGOs are more grassroots based. Smaller NGOs appear to use these larger NGOs as focal points, lobbying with them or under campaigns run by them (P. S. Kim and Moon 2003; S.-J. Lee and Arrington 2008).

NGOs and Presidents

NGOs appear to play a role in consolidation efforts. According to S.-J. Lee and Arrington (2008, 81),

Since the Kim Young Sam administration, presidents have recruited former democratization activists and NGO leaders into the public service to legitimize major reforms and jointly fight against vested interests or for women's rights.

The authors argue that one of the primary reasons Korea's advocacy NGOs have taken such root and have become particularly politicized is the underinstitutionalization of party politics.

NGOs (at least advocacy/interest group organizations) are seen as a tool for reformers but not as grassroots organizations. "NGOs also risk being co-opted politically or losing public backing when support for an administration wanes" (S.-J. Lee and Arrington 2008, 82).³¹ By this logic, incoming presidents benefit most.

Along these lines, President Kim's chief of staff, Park Kwan-Yong, commented, "Labor and environmental groups play a very important role in Korean politics today."³² Kim Sung Hyun, the press secretary to Representative Kwon Chul-Hyun, added, "During good economic conditions under Kim Young Sam, citizens began to care about the environment. Key groups started to mobilize and become more active."³³ And Lee Chae-Pil, director of Ministry of Labor's Administration Management Division, Planning and Management Office, observed, "Labor groups have become

more important players during the 1990s. Industrial safety regulations have been critical in recent years."³⁴

The number of NGOs skyrocketed during Kim Dae Jung's administration, which "believed that the activities of civic organizations would aid it in carrying out the political reforms Kim was committed to" (Shin 2003, 699). This belief, coupled with a high level of skepticism/distrust of parties and other more standard institutions, may explain the link between presidents, bureaucracy, and NGOs.

All of the senior policymakers I interviewed agreed that interest groups, especially civil activist groups, are important players in government decision making. No longer can bureaucrats simply ignore them. "Civic interest groups and other NGOs are performing a voluntary watchdog role to raise [the] quality of regulation observance in the field of environment and consumer protection regulation" (Korea, Office of the Prime Minister 1999, 15). In short, civil society groups' access to the bureaucracy has opened up so that participation is greatest and most visible during the public hearing and notification stages.

Conclusion

The passage of the three KAPA measures is consistent with my reining-in explanation and inconsistent with McNollgast's lock-in hypothesis. Korea is an important test because it experienced one episode where a president agreed with the bureaucracy and another in which he did not. It also includes a clear instance (the Roh administration) when an APA should have emerged if lock-in was the driving motivation, yet no such law passed.

Administrative procedural reform did not occur under Roh because the bureaucrats shared his economic policy preferences. So while the lock-in explanation implies that Roh would want an APA, this explanation cannot account for either the timing or substance of Korea's multiple APAs.

In contrast, President Kim sought to change the country's economic policy and thus threatened the traditional sources of political support for bureaucrats. Since their political survival depended on the status quo economic policies, Kim confronted hostile bureaucrats with powerful incentives to resist his agenda. As a result, Kim initiated procedural reforms to help improve current executive management.

What most distinguishes Korea's 1997 KAPA III from the 1946 U.S.

APA is the sunset provision. Kim sought to prevent career bureaucrats from returning to pre-Kim-era policies by imposing a five-year sunset provision for all regulations. But the fact that the sunset provision was included only in KAPA III, just before the end of Kim's administration, strongly suggests that it could not have been intended solely for lock-in. After all, sunset provisions prevent lock-in.

Any democratic chief executive who is facing intrabran­ch conflict and who cannot freely appoint and dismiss her agents will have an incentive to implement an APA or comparable law. Coalition governments in parliamentary systems sometimes face intrabran­ch conflict as well (Thies 2001), and some have passed APAs (Baum and Jensen 2009). Finally, APAs enhance transparency, participation, and the accountability of elected officials and bureaucrats, which are cornerstones of democratic institutions. By passing such laws, countries take an important step toward responsive democracy.

4 | Decline of Kuomintang Dominance, Bureaucratic Conflict, and Passage of the Taiwan Administrative Procedure Act

Now under the administrative reform by the KMT, there is a second track for appeals. [Citizens] can start at the Executive Yuan. When people fail there, then they can appeal through the judicial system. In turn, they can face each other and debate between government and people. In other words, we have created a situation where the third party or the judiciary can arbitrate between the people and government.

—Yao Eng-Chi, Vice President, Legislative Yuan, July 15, 2000

Citizens' ability to challenge administrative policies is a crucial aspect of increasing state accountability. Taiwan, like Korea, has instituted such opportunities for its citizens, thereby enhancing the responsiveness of their democratic institutions.

Taiwan began its democratic transition from authoritarian rule on July 15, 1987, when President Chiang Ching-Kuo lifted martial law and other bans on political activity.¹ In January 1988, after Chiang's death, Vice President Lee Teng-Hui assumed the presidency. While consensus existed within the Kuomintang (KMT) Party regarding Lee's succession, the question of whether he should also become the party's chair became a hot political issue.² The following July, however, Lee was elected chair at the 13th Party Congress.

In this chapter, I investigate two periods during Lee's presidency, 1988–96 and 1997–99, to examine another case of the passage of an administrative procedural act (APA) in a new East Asian democracy. I again ask why presidents would voluntarily tie their own hands by supporting measures that limit leaders' capacity unilaterally to pass their preferred policies.