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# The politics of prosecution service reform in new presidential democracies: The South Korea and Russia cases in comparative perspective

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ABSTRACT

This paper explains why large-scale reform of a civil-law prosecution system will be abandoned, fail, or succeed in exceptional cases, focusing on the strategic interaction between an incumbent president and prosecutors, through a comparative analysis of the South Korea and Russia cases. A civil-law prosecution system could hardly be reformed, although there were several attempts to correct the politicization of the prosecution service, in new presidential democracies. An incumbent president sometimes considers major reform against the prosecutors, but he or she tends to abandon it and seek to form alliance with them, expecting short-term political benefits under intense political competition. Moreover, although a president strongly pushes for large-scale prosecution service reform, he or she also cannot easily achieve this goal, since the prosecutors' willful initiation of criminal proceedings will cause his or her momentum to decline. Indeed, only Putin exceptionally succeeded in major reform of the prosecution system under weak political competition, among South Korean and Russian Presidents after democratization.



## 1. Introduction

After the Third Wave of democratization, the rule of law has been suggested as one of the crucial conditions for democratic consolidation (Linz & Stepan, 1996, p. 10). More recently, the political distortion of criminal justice by prosecutors has also arisen as a serious dilemma, especially in many young democracies which retain a civil-law prosecution system, although this issue has received somewhat less attention than the judicialization of politics by courts. In fact, judges could only passively influence politics through criminal proceedings because they are able to issue no decision without prosecutors' indictment. In addition, whether a politician involved in a scandal would be *ex post* granted an acquittal from court is not particularly significant in many cases, even though it might also play a pivotal role in causing his or her downfall.

On the other hand, prosecutors can exercise the initiative in undermining a particular politician's moral foundations, regardless of courts' final decision, only via pre-trial criminal proceedings. Yet prosecutors of common-law countries just decide whether criminal suspects would be indicted for trials in the decentralized and adversarial criminal justice system (e.g. the U.S. and England), which can introduce 'checks and balances' between the investigation and prosecution, and therefore induce them to take their role significantly impartially. Although common-law prosecutors can also be said to have a considerable influence over pre-trial procedures through plea bargains, at least the presumption of innocence is seldom damaged (Dammer

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**Table 1**
Comparison of prosecution systems in various countries.

| Feature | Country | | | | | | |
|---|---|---|---|---|---|---|---|
| | U.S. | England | Germany | France | Japan | South Korea | Russia (by 2007) |
| Power to terminate criminal investigations | X | X | O | O | Δ | O | O |
| Power to control investigative officers | X | X | O | O | Δ | O | O |
| Investigative force of its own | O | X | X | O | O | O | O |
| Exclusive right to indict criminal suspects | X | X | O | X | O | O | O |
| Discretionary indictment system | O | O | X | O | O | O | O |
| Organizational setup | Federal | Central | Federal | Central | Central | Central | Central |

O, chosen; X, not chosen; Δ, partly chosen.
*Sources*: Kim, Suh, Oh, and Ha (2011, p. 146); Mikhailovskaya (1999, pp. 98–104).

& Albanese, 2014, p. 128). This means that the potential of political distortion of criminal justice would be relatively low, because of the due process, in these countries (Hamilton, 2008). By contrast, prosecutors of civil-law countries must receive more attention in that they generally initiate criminal investigations, command police officers during the investigations, terminate the criminal cases at their disposal, and indict the criminal suspects for trials in the centralized and inquisitorial criminal justice system (e.g. Germany and Japan). Therefore civil-law prosecutors can exercise enough power to manipulate pre-trial criminal proceedings, not only in order to stigmatize a certain political faction as immoral or criminal suspect, but also to grant immunity to another (Di Federico, 1995, 1998; Zannotti, 1995).

However, it cannot be concluded that civil-law prosecutors always have chances to distort criminal proceedings for political purposes. Under consensual forms of government in Continental Europe, a suprapartisan coalition has been required to select top-ranking judicial officers (Ferejohn, Rosenbluth, & Shipan, 2007, p. 734). Moreover, the composition of an incumbent government unpredictedly changes when an assembly dissolves, regardless of regular elections, or when a shift of power occurs within a ruling party (Linz, 1994, p. 9). Hence, civil-law prosecutors also tend to exercise their far-reaching power not in favor of a particular political faction, but in a depoliticized manner, for their career development. In reality, the political distortion of criminal justice occurs relatively less often, despite the civil-law prosecution system, not only in Continental Europe, but even in some new consensual democracies (The WJP Rule of Law, 2013). By contrast, in several young democracies adopting a presidential system, which gave the president almost exclusive control over high-ranking prosecutors' career, along with the Third Wave of democratization, civil-law prosecutors have a strong incentive to exercise their extensive power in favor of an incumbent president during most of his or her fixed tenure, but to betray him or her at his or her last phase, for their career progress (Lee, 2014). In practice, Alberto Fujimori in Peru, Chen Shui-bian in Taiwan, Young-Sam Kim (YS) and Dae-Jung Kim (DJ) in South Korea, and Boris Yeltsin in Russia dominated that office during most of their tenure but experienced prosecutorial defection at their final phase. In this regard, as the former South Korean President DJ (Kim, 2011, p. 65) argued, "Currently the worst cancer in South Korea is the Prosecution Service … It is excessively subservient to an incumbent president during his heyday but violently bites him at his last phase."

Notably, a civil-law prosecution system could hardly be reformed, although there were several attempts to correct the dilemma of the politicized prosecutors, in the new presidential democracies. Accordingly, this article attempts to explain why large-scale reform of a civil-law prosecution system will be abandoned, fail, or succeed in exceptional cases, focusing on the strategic interaction between an incumbent president and prosecutors, through a comparative empirical analysis of the South Korea and Russia cases. The selection of these cases has some advantages in explaining the politics of prosecution service reform, while a number of other young democracies also accompany the discordant combination of a civil-law prosecution system and presidentialism. First, the units of analysis that this paper focuses on are very similar between these two countries. In fact, South Korea and Russia are so different since they had come from a typical military-authoritarian and communist-party regime, respectively. In addition, the former is a unitary country, while the latter is a federal one. Nonetheless, South Korea and Russia not only inherited a strikingly similar formal power and organizational setup in the prosecution service, but also have the presidential control on judicial careers in a similar style. The two countries adopted a presidency with the appointment power over high-ranking prosecutors, and as Table 1 shows, an extremely centralized criminal justice system for prosecutors. Second, almost all variations of the case concerning prosecution service reform could be found across the two countries. Specifically, on the one hand, not only South Korean President YS and DJ, but Russian President Yeltsin and Vladimir Putin (in his first term) also readily abandoned large-scale reform of the civil-law prosecution system, while being satisfied only with minor changes. On the other hand, South Korean President Moo-Hyun Roh and Russian President Putin (in his second term) unusually did not abandon major reform, but the former eventually failed, and only the latter exceptionally succeeded in June 2007.

The composition of this article is as follows. The second section critically reviews the previous literature about judicial reform, and provides an alternative framework for the explanation of reform of a civil-law prosecution system in new presidential democracies. The third and fourth sections empirically analyze the South Korea and Russia cases for a comparative explanation of the politics of prosecu-