

The Erosion of the South Korean Constitutional Order in the Yoon Suk-Yeol Administration and the Martial Law Crisis

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Abstract

This paper provides an analysis of the Yoon administration's systematic dismantling of constitutional norms through mechanisms of "executive aggrandizement" - specifically the "rule by decrees" and the "governance by reserve funds". It examines the legal physiology of the December 3, 2024, Martial Law Decree, the subsequent Constitutional Court ruling, and the unprecedented defiance of judicial orders by the interim executives during the constitutional interregnum. They were made possible by the fundamental shortcomings of the current South Korean constitutional order, and reforms are necessary to end the current political crisis and to prevent recurrence of coup or self-coup in South Korea.

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I. INTRODUCTION: THE CRISIS OF THE SIXTH REPUBLIC

From the perspective of early 2026, the political landscape of the Republic of Korea (‘South Korea’) remains visibly scarred by the constitutional trauma of the previous year. The impeachment and removal of President Yoon Suk-Yeol on April 4, 2025, did not, as many observers initially hoped, resolve the crisis of governance that had plagued the latter half of the Sixth Republic. Instead, it precipitated a protracted period of instability that the Democratic Party of Korea (DPK) and its supporters have characterized as a ‘judicial coup’ - a systemic clash between the popular will represented by the legislature and an entrenched technocratic-judicial alliance [1–3]. Conversely, conservative factions and the remnant of the Yoon administration frame the events as a legislative insurrection that necessitated extreme executive countermeasures [4–6].

This paper provides an analysis of the Yoon administration’s systematic dismantling of constitutional norms through mechanisms of ‘executive aggrandizement’ - specifically the ‘rule by enforcement decrees’ and the ‘governance by reserve funds’ (yebibi). It examines the legal physiology of the December 3, 2024, Martial Law Decree, the subsequent Constitutional Court ruling, and the unprecedented defiance of judicial orders by the interim executive during the constitutional interregnum.

The central thesis of this analysis is that the ‘Yoon Crisis’ was not merely a failure of individual leadership, but a structural failure of the 1987 Constitution. Drafted to transition the nation from military dictatorship to democracy, the 1987 framework successfully prevented a return to authoritarianism but failed to provide adequate mechanisms for resolving the rigid gridlock of a divided government. The trajectory of South Korean democracy in the mid-2020s serves as a cautionary tale regarding the fragility of consolidated democracies when confronted with a polarized ‘imperial presidency’ lacking a release valve such as midterm elections or parliamentary dissolution.

From a 2026 perspective, the Yoon Suk-Yeol administration (2022–2025) is defined not solely by the event of the martial law declaration, but by a multi-year degradation of legislative oversight that forced the republic to its breaking point. This degradation did not end with Yoon’s removal from power; rather, the necessity to reform the democratic system of South Korea has ironically fueled a never-ending spiral of conflict, with the (current) Lee Jae-Myung administration supporters now accusing the judiciary of subverting the demo-

cratic order to protect the remnants of the ancien régime.

II. THE ARCHITECTURE OF EXECUTIVE UNILATERALISM

The constitutional crisis that culminated in the events of late 2024 was rooted in two primary mechanisms of governance employed by the Yoon administration to bypass an opposition-controlled National Assembly: the aggressive expansion of government decrees ('Rule by Executive Orders') and the weaponization of fiscal reserves and central bank borrowing ('Fiscal Unilateralism'). These mechanisms allowed the executive to govern around the legislature rather than with it, fostering a form of 'delegative democracy' where the president ruled by decree, rendering the National Assembly's checks and balances increasingly nominal.

A. Fiscal Unilateralism

A defining feature of the Yoon administration's disregard for the National Assembly's constitutional 'power of the purse' was the aggressive utilization of yebibi (reserve funds) and the exploitation of temporary borrowing mechanisms from the Bank of Korea (BOK). Under Article 55 of the Constitution [7] and the National Finance Act [8], reserve funds are constitutionally intended for unforeseen emergency expenditures. However, the Yoon administration normalized their use as a parallel budget to finance controversial policy initiatives that the National Assembly had explicitly rejected or defunded.

The most egregious initial example of this was the relocation of the presidential office from the Blue House (Cheong Wa Dae) to the Ministry of National Defense compound in Yongsan. While the administration initially budgeted 49.6 billion KRW for the move, subsequent investigations and opposition audits suggest that the total cost estimates - including dispersed expenses across various ministries and the relocation of the Joint Chiefs of Staff - may exceed 1 trillion KRW [9, 10]. When the National Assembly slashed budgets related to the relocation and associated police bureau establishments, the administration tapped into reserve funds and relocating budgets from different ministries to proceed, effectively nullifying the legislature's constitutional authority to review and approve the budget [11].

1. *The Weaponization of Temporary Loans (2023-2025)*

Beyond the use of reserve funds, the administration relied heavily on the Bank of Korea (BOK)’s temporary loan system (essentially a government overdraft facility) to mask a chronic structural deficit caused by aggressive tax cuts and revenue shortfalls. This practice allowed the government to bypass the issuance of Treasury bonds, which requires stricter legislative oversight, market transparency, and immediate interest payment calculations that would impact the deficit figures visible to the public.

Data submitted to the National Assembly’s Strategy and Finance Committee reveals the unprecedented scale of this fiscal detour. The BOK’s temporary loan system was designed for brief, intra-year cash flow management. However, the Yoon administration utilized it as a persistent financing tool.

TABLE I. Government Temporary Borrowing from the Bank of Korea (2023–2025) [12–14]

| Year | Borrowing & Interest (KRW) | Fiscal Context |
|------|---|--|
| 2023 | 117.6 Trillion (borrowed); 150.6 Billion (interest) | First major spike; used to cover initial tax revenue shortfalls from corporate tax cuts. |
| 2024 | 173.0 Trillion (borrowed); 209.2 Billion (interest) | All-time record. Borrowing surged to cover massive deficits prior to the martial law crisis. |
| 2025 | 164.5 Trillion (borrowed); 158.1 Billion (interest) | Second-largest on record; heavily utilized in H1 (88.6T) during the post-impeachment chaos. |

In 2024, the government borrowed a record 173 trillion won (\$117.5 billion), a 47% surge from the previous year. This included 15.4 trillion won borrowed in just ten separate instances in October 2024 alone, and an additional 5 trillion won in the final two days of the year to cover immediate cash shortages. This frantic year-end borrowing indicated a government struggling to meet basic solvency requirements without legislative approval for new debt.

The reliance on the BOK’s ‘minus account’ was not merely a cash-flow management tool but a political strategy. By borrowing directly from the central bank rather than issuing

bonds, the administration avoided the immediate political cost of rising market yields and the legislative scrutiny that accompanies formal debt issuance. The government treated the central bank as a private slush fund, bypassing the BOK's independence.

B. Rule by Executive Orders

The most structural alteration to the executive balance of power was the establishment of the new Police Bureau within the Ministry of the Interior and Safety. This was accomplished via enforcement decree (Sihyeong-ryeong) rather than primary legislation. The Government Organization Act requires legislative approval for creating new ministry functions. By bypassing this via decree, the administration effectively seized direct control over the police - a power explicitly stripped from the Interior Ministry during the 1987 democratization process to prevent the recurrence of authoritarian abuse [15, 16].

This centralization of coercive power was a precursor to the events of December 2024. It allowed the executive to bypass the independent checks of the police organization, consolidating force mechanisms under the direct control of the Interior Minister, a close presidential ally. This rule by enforcement decree extended to the Ministry of Justice as well, where decrees were used to dilute the prosecutorial reforms passed by the DPK (known as geom-soo-wan-bak), effectively restoring investigatory powers to the prosecution service without legislative consent [17, 18].

III. THE DECEMBER 3, 2024 MARTIAL LAW DECLARATION

The protracted political crisis reached its peak on the night of December 3, 2024. President Yoon's declaration of emergency martial law was not a response to external invasion or violent insurrection, but a reaction to political paralysis - specifically, the National Assembly's refusal to pass the 2025 budget proposal and the ongoing impeachment motions against administration officials.

A. The Justification: “Legislative Dictatorship”

In his address to the nation, President Yoon framed the legislative gridlock as an existential threat to the state. He accused the Democratic Party of Korea (DPK) of creating a ‘legislative dictatorship’ that had ‘paralyzed judicial operations’ and ‘cut all major budgets for key essential functions’. He explicitly cited the DPK’s slashing of 4.1 trillion won from the government budget and the serial impeachment of prosecutors and cabinet members as acts of ‘civil war’ and ‘anti-state behavior’ [19].

Crucially, Yoon’s justification hinged on a structural asymmetry in the South Korean impeachment process. The bar for impeaching cabinet ministers and prosecutors is a simple majority in the National Assembly - a threshold the DPK easily met with its 170+ seats. By contrast, the President is protected by a two-thirds supermajority requirement. DPK sought to leverage on this lower threshold to check the administration, filing more than 20 impeachment motions against officials including the head of the Board of Audit and Inspection, the Chair of the Korea Communications Commission, and numerous prosecutors involved in investigating the opposition leader [7, 20, 21].

Yoon argued that these serial impeachments constituted a ‘paralysis of the executive and judiciary,’ thereby justifying emergency measures. However, by equating the opposition’s exercise of constitutional powers (budget review and impeachment) with ‘rebellion,’ Yoon attempted to criminalize the separation of powers. The ‘anti-state forces’ he sought to eradicate were the elected representatives of the legislature.

This standoff exposed a critical flaw in the 1987 Constitution: the lack of a conflict resolution mechanism for divided government. Unlike the United States, where midterm elections every two years provide a release valve and a fresh mandate for legislative control, the South Korean system locks the President and the National Assembly into a five-year/four-year cycle with no mechanism to resolve persistent gridlock [22]. Neither Yoon nor the National Assembly had a constitutional means to break the stalemate, leading both sides to engage in constitutional hardball that escalated into the martial law declaration. The DPK strategy of impeachments and the Executive’s strategy of rule-by-decree created a zero-sum game where neither side could yield without facing political annihilation.

B. The Legal Physiology of Martial Law Decree No. 1

The ‘Martial Law Decree No. 1’ (Gyeom-saryeongbu Pogoryeong Je-il-ho) provides irrefutable evidence of the administration’s unconstitutional intent. A detailed textual analysis of the decree reveals direct violations of the Constitution, which the Constitutional Court later affirmed [23]. The decree was not merely a suspension of rights but a blueprint for a self-coup designed to dissolve the constitutional order.

TABLE II. Constitutional Violations in Martial Law Decree No. 1 [23]

| Provision | Content | Constitutional Violation |
|-----------|--|--|
| Section 1 | “All political activities, including activities by the National Assembly... are banned.” | Violation of Article 77: The Constitution explicitly prohibits the President from suspending the National Assembly during martial law. |
| Section 3 | “The press and all publications will be controlled by the Command.” | Violation of Article 21: Freedom of speech and press; excessive restriction without clear and present danger. |
| Section 5 | “Trainee doctors... must return to work within 48 hours... Violators may be arrested without a warrant.” | Abuse of Emergency Power & Violation of Article 12: Using martial law to resolve a labor dispute; violating warrant requirements and habeas corpus. |

The decree’s prohibition of National Assembly activities (Section 1) was the most flagrant violation. Article 77 of the Republic of Korea Constitution mandates that the President must lift martial law if the National Assembly so requests [7]. By attempting to ban the Assembly from meeting, Yoon sought to preempt the very mechanism designed to check his emergency powers.

C. The Events of December 3-4, 2024

The execution of the decree failed due to the resilience of civil society and the lukewarm support of the military and police beyond minimal execution. While troops from the 707th Special Mission Group and the Capital Defense Command were dispatched to the National Assembly and the National Election Commission (NEC), they encountered physical resistance from aides, citizens, and lawmakers who barricaded the assembly hall [23].

Crucially, 190 lawmakers managed to enter the main chamber—some scaling fences to bypass police blockades 19—and unanimously voted to lift the martial law decree at 1:00 AM on December 4, 2024. Under the Constitution, the President must immediately comply. Yoon’s subsequent delay in lifting the order until 4:30 AM, despite the clear constitutional mandate, further solidified the legal grounds for his subsequent impeachment.

The ramifications of this decree extended far beyond the six hours it was in force. It shattered the norm of civilian control over the military and reintroduced the specter of state violence into South Korean politics. The crisis did not end with the lifting of the decree; rather, it metastasized into a prolonged legal and political struggle over accountability, with the DPK and its supporters viewing the judiciary’s subsequent handling of the case as a continuation of the coup by other means.

D. The Constitutional Fault Lines: No Midterm Mechanism

The crisis revealed the structural fragility of the 1987 Constitution. The system assumes a degree of mutual tolerance and institutional forbearance that had completely eroded by 2024.

In parliamentary systems, a deadlock of this magnitude would be resolved by a vote of no confidence and a snap election. In the US presidential system, midterm elections provide a mechanism for the public to adjudicate the conflict. South Korea lacks both. The President (5-year single term) and the National Assembly (4-year term) operate on non-concurrent cycles with no mechanism to dissolve the legislature or recall the president short of the high bar of impeachment [22]. This rigid gridlock incentivized the DPK to use impeachments to check the executive, and incentivized the Executive to use ‘Rule by Decree’ and eventually Martial Law to bypass the legislature. The absence of a midterm election meant that the

will of the people could not be formally updated to resolve the impasse, leaving the two branches to escalate their conflict until the system broke.

IV. THE POST-IMPEACHMENT CRISIS AND “JUDICIAL CARTEL” RHETORIC

The impeachment of Yoon Suk-Yeol did not restore stability. Instead, it ushered in a period of constitutional interregnum marked by a fierce struggle between the Democratic Party-controlled legislature and the acting executive, staffed by Yoon’s appointees. This phase involved the strategic use of legal technicalities by the executive to defy court orders and obstruct the transition of power, fueling the DPK’s aggressive rhetoric against what they termed a ‘judicial cartel.’

A. The Acting Presidency and the Constitutional Court Appointment Crisis

The epicenter of the post-impeachment pre-removal institutional conflict was the composition of the Constitutional Court itself. Following the retirement of several justices, the Court faced a quorum crisis [24]. The National Assembly nominated three successors to fill the vacancies for the National Assembly block of the Constitutional Court. However, the Acting Presidents - first Prime Minister Han Duck-soo, and subsequently Finance Minister Choi Sang-mok - refused to appoint them.

Han argued that as an acting president, he lacked the legitimacy to make permanent appointments to the Constitutional Court, despite the vacancies all being from the National Assembly’s quota. This omission threatened to paralyze the Court’s ability to rule on Yoon’s impeachment. The National Assembly impeached Han in December 2024 partially for this refusal [25, 26]. However, the Constitutional Court later dismissed this impeachment in March 2025, ruling his inaction was ‘unconstitutional but not grave enough for removal’ [27].

Upon Han’s suspension, Acting President Choi Sang-mok appointed two justices but specifically withheld the appointment of the DPK-nominated Ma Eun-hyuk, citing ‘lack of bipartisan agreement’. This selective appointment process was viewed by the DPK-led opposition as a calculated attempt to manipulate the Court’s composition ahead of the final impeachment verdict and subsequent legal proceedings against Yoon. To DPK supporters,

it demonstrated a ‘technocratic insurrection’, where unelected bureaucrats used procedural delays to hollow out the judiciary’s authority and delay the restoration of full constitutional order [28, 29].

B. The Mandamus Gap and Executive Defiance

The Constitutional Court ruled in February 2025 that Choi’s refusal to appoint the nominee was unconstitutional but also refused to declare the nominees automatically appointed. Choi continued to defy the ruling. This highlighted a critical flaw in Korean administrative law: the lack of a strong writ of mandamus (a court order compelling a government official to perform a mandatory duty) enforceable against the head of state [30–32].

Unlike in the US or UK, where contempt of court could lead to immediate enforcement, the Korean system relied on voluntary compliance (or depending on a point of view, the Constitutional Court self-imposed such a system), which Choi withheld. This mandamus gap allowed the Acting Executive to effectively ignore judicial orders without immediate consequence. The inability of the Court to enforce its rulings exposed a structural weakness in the South Korean constitutional system, allowing the executive to maintain a weak form of resistance against the constitutional order even after strong measures, such as martial law, had failed.

C. The DPK War on the “Judicial Cartel”

Following the impeachment, the DPK and its supporters increasingly framed the judiciary - specifically the Supreme Court and elements of the lower courts- as a ‘judicial cartel’ allied with the remnants of the conservative establishment. This rhetoric intensified after the Supreme Court *expeditiously* [33] and unprecedentedly overturned a lower court’s acquittal of DPK leader Lee Jae-Myung on election law violations in May 2025, just as he was preparing for the post-impeachment presidential election [34].

The DPK characterized this ruling as a ‘judicial coup’ designed to eliminate their leading candidate from the upcoming election. Park Chan-Dae, the DPK floor leader, urged ‘full mobilization against the judicial cartel,’ arguing that the courts were acting as a ‘retrogressive vested interest force’ conspiring with the ‘insurrection forces’ of the ousted Yoon

administration [1–3]. This narrative posited that while the executive coup had been stopped, a ‘soft coup’ by the judiciary was underway to achieve the same result: the elimination of the opposition. This rhetoric marked a dangerous escalation, as the legislature began to question the legitimacy of the judiciary itself, proposing impeachment against Supreme Court justices and more radical reforms of the Court.

Such rhetoric is reinforced by the fact that the Supreme Court of Korea condemned Yoon’s declaration of martial law only nearly a year later, and by its allegedly cooperative actions during the attempted self-coup [35, 36]. In addition, the National Conference of Judges (*jeon-gook-bub-gwan-dae-pyo-hoi-eui*) - the body most representative of the judiciary - likewise did not condemn the self-coup, yet moved quickly to criticize the current Lee Jae-Myung administration when judicial reforms and the establishment of an insurrection court were placed on the policy agenda [37, 38].

V. THE IMPEACHMENT RULING

On April 4, 2025, the Constitutional Court of Korea (CCK) unanimously upheld the impeachment of Yoon Suk-Yeol (8-0 decision), removing him from office [23]. We note how the Yoon case was legally different from the Park Geun-Hye impeachment case.

A. The Yoon case vs. the Park case

In the 2017 impeachment (and removal by unanimous decision) of President Park Geun-hye, the core offense was the privatization of state power (corruption via Choi Soon-sil) and a violation of the ‘duty to serve the public interest’. The Court found that Park had allowed a private citizen to manipulate state affairs for personal gain [39].

In contrast, the 2025 ruling against Yoon focused on the structural subversion of the democratic and constitutional order. The Court explicitly rejected Yoon’s defense that the martial law declaration was a ‘warning exercise’ or a ‘political act’ to preserve order. The Justices wrote: “There is no such thing as a ‘warning’ or ‘appeal’ form of martial law... A president’s subjective sense of crisis is not enough”. The Court ruled that Yoon’s actions constituted a grave violation of the Constitution because they threatened the very existence of the separation of powers and the democratic order.

B. Rejection of the ‘Political Question’ Doctrine

Yoon’s defense team attempted to invoke the ‘political question doctrine’ (or *acte de gouvernement*), arguing that the declaration of martial law was a high-level sovereign decision immune from judicial review. This doctrine, often cited in U.S. jurisprudence (e.g., *Baker v. Carr*), suggests courts should abstain from reviewing inherently political acts of the executive to avoid overstepping their bounds.

The Constitutional Court of Korea (CCK) decisively rejected this application. Drawing on the precedent of the 1997 treason trials of Chun Doo-hwan and Roh Tae-woo, the Court affirmed that acts which suspend constitutional rights or threaten the constitutional order are always subject to judicial review, regardless of their political motivation. The ruling solidified the CCK’s role as the ultimate guardian of the constitution, refusing to allow governing acts to serve as a shield for insurrection. This decision establishes a clear boundary for executive power in South Korea: no act of the president, even under the guise of national security, is above judicial review [23].

C. A critique of the legislature in the ruling

In contrast to a popular misconception, the ruling contained a critique of the legislature, largely consistent with its previous stance that has significantly constrained the power of legislative checks on the executive branch . While upholding the impeachment, the Court noted that the “opposition party repeatedly obstructed the president and failed to engage in dialogue and compromise”. The Court, however, affirmed that the remedy for legislative obstruction is political negotiation or elections, not military force. “Treating the National Assembly as an adversary to be excluded... is fundamentally incompatible with democratic governance” [23].

With the possibility of rule-by-decree, mandamus gap and the election structure of South Korea, combined with the current judiciary stance, the South Korean constitutional crisis theoretically remains ongoing, and the current conflicts between the judiciary and the South Korean government (and DPK) confirms such a view.

VI. CONCLUSION

The ongoing political crisis of 2026 confirms that the institutions of the Sixth Republic, designed to prevent the return of a military dictatorship, were ill-equipped to handle an executive dictatorship masked in the language of law and order and its aftermath.

The Yoon Suk-Yeol administration demonstrated that a determined executive could:

1. Bypass the legislature through decrees and reserve funds.
2. Weaponize Emergency Powers by redefining political opposition as an insurrection.
3. Paralyze the Judiciary through the refusal of appointments by acting executives.

The Constitutional Court’s ruling on April 4, 2025, successfully removed the individual, but it did not repair the system. The DPK’s rhetoric of a ‘judicial cartel’ signals that the conflict between the elected power (legislature) and the non-elected power (for example, parts of judiciary sympathizing with Yoon) has not ended with Yoon’s departure; it has merely shifted phases.

The resilience shown by the Korean people in 2024-2025 saved the Republic, but the structural fissures that allowed the crisis to emerge remain unsealed.

To prevent a recurrence, the analysis suggests the necessity of the following reforms:

1. **Mandamus Power:** Granting the Constitutional Court the power to issue binding, enforceable orders to the Executive for administrative acts (like judicial appointments), with immediate removal from office as a penalty for non-compliance.
2. **Budgetary Legalism:** Abolishing the executive’s monopoly on budget formulation and restricting the use of BOK temporary loans and Reserve Funds to strictly defined cases, requiring prior legislative consent for any other use.
3. **Midterm Elections:** Introducing a mechanism to resolve executive-legislative gridlock, such as synchronized terms (4-year renewable presidency) or a parliamentary dissolution power, to prevent the rigid gridlock that fueled Yoon’s desperation.

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