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Inventing “the People”: The Discourse of Democratic Transformation in Early 20th Century
Imperial Japan and Colonial Korea

DISSERTATION

submitted in partial satisfaction of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

in Political Science

by

Chung-Jae Lee

Dissertation Committee:
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DEDICATION

To Mi-Soon Lee

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ABSTRACT OF THE DISSERTATION

Inventing “the People”: The Discourse of Democratic Transformation in Early 20th Century
Imperial Japan and Colonial Korea

By

Chung-Jae Lee

Doctor of Philosophy in Political Science

University of California, Irvine, 2021

Professor Keith Topper, Chair

Democratic peoplehood is the foundation of constitutional institutions, but it is not necessarily “always already” available to nascent polities seeking to transform themselves into constitutional democracies. This means that people living under a nondemocratic regime must first develop a collective identity as the sovereign and then authorize themselves as capable of practicing self-governance. Only through such a transformation can they come to realize and embody both the privileges and duties of their sovereign authority that are entailments of the act of self-governance. While this topic has been amply explored in Anglo-American contexts, relatively little attention has been paid to moments in East Asia in which ordinary people were called upon to transform themselves into “the people.”

My dissertation seeks to contribute to this scholarship by presenting Minobe Tatsukichi (1873-1948) and Cho Soang (1887-1958) as two noteworthy political theorists for thinking through the issue of democratic transformation at the moment of founding. For this purpose, Chapter 1 surveys the scholarship on democratic founding. Rather than providing a comprehensive overview of this vast field of intellectual inquiry, I specifically focus on demonstrating how the recent literature in the field has so far undertheorized the socio-cultural dimension of democratic

founding. Chapter 2 briefly discusses the methodology of this dissertation by reexamining Quentin Skinner's contextualist approach to the history of political thought. In doing so it critically engages the issues of historical contextualism, incommensurability, and translation. Chapter 3 presents Minobe's emperor organ theory as a notable approach to the issue of democratic transformation. I argue that emperor organ theory illustrates a model of democratic transformation in which the subjugated people transform themselves into "the people" through the incremental process of political representation within the existing constitutional order. Chapter 4 investigates a theory of democratic transformation developed by Cho during one of the most troubling times in Korea's modern history. This model conceptualizes democratic transformation as a temporally-extended process of actualizing the principle of non-domination, one that seeks to harmonize self-determination with equality. In my view, although these two models do not *solve* every practical and theoretical problem the transition from a nondemocratic form of government to the establishment of a constitutional democracy entails, they at least provide new conceptual and practical resources for us to reimagine democratic founding as an ongoing process of dynamic transformation at the socio-cultural level.

Introduction¹

That their insincerity reaches such extremes is due to there being no precedent for public advocacy of people's rights. They are ruled by a spirit of subservience. And reasoning that spirit, they are incapable of showing the true colors of *koku-min*. It may well be said that in Japan there is only a government, but there is/are yet no *koku-min*.²

- Fukuzawa Yukichi (1835-1901), *An Outline of a Theory of Civilization*

From Emmanuel Joseph Sieyès to Bruce Ackerman, political theorists and legal scholars have pondered the complex relationship between the radical potential of a democratic constitution which claims to bring about a new beginning and the apparent inability of that act to provide a legitimate foundation for the new constitution. On the one hand, “the people”³ acts in the name of popular sovereignty to declare its independence from a tyrant, colonial power or other and subsequently creates a constitution that is designated to serve as the basis of a new, and specifically democratic, political order. On the other hand, however, “the people” cannot claim as the normative basis of what it seeks to establish by virtue of that act. If “the people” cannot appeal to the authority of the previous regime because it has rejected it, but also cannot appeal to the

¹ All translations are mine unless otherwise noted. Korean terms have been romanized in accordance with the McCune-Reischauer system throughout the dissertation. The modified Hepburn system has been used for Japanese terms.

² This is an English translation by Michael Burtscher (2012). See Yukichi (1969-1971) for the original text.

³ According to Jan-Werner Muller, “the people” has been used in at least three senses since Greek and Roman times: first, the people as the sovereign whole; second, the “common people” or the “subjugated”; and third, the nation as a distinct cultural body (2008, 22). In this dissertation, I use “the people” as a singular noun when it refers to “the people” in the first sense. This is the conventional practice in the field of political theory.

authority of the new regime because this is what its action intends to bring about, then the very attempt to create a new democratic constitution appears to lack legitimate authorization. Although this alleged paradox of democratic founding may appear to be merely a philosophical question, its legal and political implications are both evident and profound. If “the people” is incapable of authorizing a democratic constitution at the founding moment, then to what extent is that constitution legitimate? If “the people” is both the author and subject of the constitution, how could we make sense of this potential lack of legitimacy shaping the democratic founding?

One growing trend among scholars of constitutionalism is to circumvent this paradox by anchoring the legitimacy of a constitution in a future-oriented process instead of in “the people.” From this perspective, even though the problem of authorizing a constitution at the time of the founding may be real, it need not be fatal. It can still gradually augment its legitimacy through a self-corrective process of constitutional learning⁴ and institutional amendments. Understood in this way, democratic foundings are not unified, singular performative acts, but instead are part of an open-ended, continuous process of collective deliberation and institutionalization (e.g., Arato 2009, 2016, and 2017; Chambers 2004; Habermas 2001; Tekin 2016; Zurn 2010). This theoretical approach has been significant to democratic theory in that it shifts (a) the source of authority from the unified subject to the procedure and (b) the temporality of the authority from a singular moment in the past to an ongoing collective project that extends into the future.

⁴ By constitutional learning, I do not mean simply that one can learn from previous failures. Rather, it refers to a rationalization process through which those who participate in the constitution making process gradually become more and more aware of the performative meaning of their collective endeavor. This process in turn facilitates a self-corrective movement within a constitutional order, one that accommodates new changes and demands raised in the public sphere. On Habermas’s conception of social progress and learning more broadly, see Owen (2002) and Allen (2016).

This proceduralist view is highly compelling as a practical solution to the tension between popular sovereignty and the rule of law at the moment of democratic founding. It provides a way out of the purported paradox of democratic founding. A key theoretical insight of this procedural approach is that the problem of legitimate founding becomes paradoxical only if one fixates on a snapshot of the constitutionalization process at any particular moment. When approached from a diachronic perspective, it becomes possible to see democratic foundings as evolving processes in which questions of legitimacy are resolved over extended periods of time instead of being settled at a single moment. Although democratic foundings may lack legitimacy at the outset due to practical and theoretical difficulties entailed in the process of constitution making, it nevertheless can augment its legitimacy over time through a process of self-correction and inclusion.

However, legitimacy is not the only issue here. Democratic peoplehood or a “population accustomed to freedom (Habermas 1998, 385)” from which constitutional institutions arise is not necessarily “always already” available to nascent polities seeking to transform themselves into constitutional democracies (Jenco 2010; Tekin 2016). Especially for societies without the experience of democratic self-rule, ordinary people living in it must first develop a collective identity as the sovereign people and then authorize themselves as capable of practicing the act of self-governance. Only through such transformation can they come to realize and embody both the privileges and duties of their sovereign authority that are entailments of the act of self-governance. That said, this transformative process cannot be completed in a short span of time. Individuals are not necessarily conscious of socially constituted dispositions that orient their behaviors and identities. As such, even after they come to understand the locutionary meaning of constitutional democracy, their daily practices as new political agents may be at odds with their state of mind that determines their most immediate political priorities. In this respect, democratic transformation

must be understood as a temporally extended process through which the subjugated people transform themselves into an increasingly active and legitimating political agent. Although this process is neither uniform nor the product of historical necessity, many political communities around the world undergo it.

Deprovincializing the Narrative of Democratic Transformation

Then, how does this transformative process unfold in concrete socio-cultural settings? When asked to answer this question, it is very likely that we will conjure up the images of the American Revolution and the French Revolution. Thomas Jefferson, Jean-Jacques Rousseau, Emmanuel Joseph Sieyès, Hannah Arendt, and other canonical writers and texts also constitute part of the answer. In many ways, our understanding as citizens of well-established constitutional democracies is indebted to this rich tradition of European and American political thought. However, rather than revisiting Rousseau, Sieyès, and other classical thinkers time and again to squeeze more insight from their writings, might it not be equally if not more fruitful, and certainly more intellectually prudent, to investigate in detail both the experience and the lessons to be learned from an engagement with “culturally distant others” who have grappled with recognizably similarly, yet far from identical predicaments? The growing field of comparative political theory rests on the postulate that there is much to be learned from such an undertaking, and this dissertation is similarly grounded in this postulate.

In recent years, comparative political theory has become one of the most dynamic areas of inquiry in political theory. It has produced a number of path-breaking studies and has done much to deprovincialize the field of political theory, one has long been preoccupied almost exclusively with “Western” canons, histories, and political institutions and practices. Notwithstanding this

growing body of important scholarship, relatively little attention has been paid to moments in East Asian history where ordinary people were called upon to transform themselves into the sovereign people. In order to begin filling this gap, this dissertation introduces Minobe Tatsukichi (1873-1948) and Cho Soang (1887-1958) as two noteworthy figures who illuminate contemporary discussions about the transformation of the subjugated people into self-governing political collectives. The wager of this study is that Minobe's and Cho's visions of democratic transformation provide new conceptual and practical resources for us to reimagine democratic founding as a temporally extended process of transformation. As Leigh Jenco importantly notes, "the best way to affirm the global diffusion of political theorizing is to act upon it: to develop *from* alternative traditions and *in* alternative modes new possibilities for thinking critically about politics (2010, 10).

These considerations notwithstanding, one might argue that my conception of democratic transformation is problematic because it assumes a unilinear trajectory from a non-democratic form of community into a self-governing people. If the criticism here is that my account is defective because it embraces a teleological conception of democratic transformation in Japan and Korea, then this criticism is certainly misplaced. To be clear, this study unequivocally rejects teleological accounts of these transformations. Nevertheless, the conceptual transitions from the people of the emperor, *s[h]in-min*, to an imagined people of a constitutional democracy to come, *koku-min* (in the case of Minobe) or *in-min* (in the case of Cho), were unmistakably about making of a democratic people, even if the preliminary agenda was not one of politics as such. In early 20th century Japan and Korea, the former referred to commoners ruled by a monarchical figure. By contrast, both Minobe and Cho deliberately chose the latter over the former as an adequate name

of a self-governing people. For both thinkers, *s[h]in-min*'s transformation into *koku-min* or *in-min* was more than being political per se.

Why Minobe Tatsukichi and Cho Soang?

This project of introducing Minobe and Cho into the field of political theory merits attention at least for two reasons. First, their ideas and arguments significantly shaped the trajectory of democratization in Japan and Korea. In thinking about democratization in Northeast Asia, most literature in political science postulates the establishment of institutional frameworks of electoral democracy following World War II as Japan and Korea's democratic founding (e.g., Ansell and Samuels 2015; Choe and Kim 2012; Kim 2016; Koo 1991). This institutionalist approach implicitly or explicitly adopts a modernization theory that posits socioeconomic development a necessary condition, or *sine quo non*, of democratization (e.g., Lipset 1959; Moore 1966; Przeworski, Alvarez, Cheibub, and Limongi 2000) and is premised on the causal relationship between the rise of "the middle class" and democratization in the context of post-war Japan and Korea. Although the validity of this thesis has been widely debated and its core tenets have been modified (e.g., Chen 2013; Kawagishi 2003; Kim 2019; Shin 2012), many scholars in the field still consider it one of the most generalizable approaches to explaining democratic regime transitions in Northeast Asia.

This institutionalist approach explains why one may focus solely on the years following 1945 in one's attempt to understand Japan and Korea's democratization. The story goes something like the following: constitutional institutions and their underlying principles were first incorporated into the Japanese and Korean political systems shortly after World War II came to an end (or even forced upon in the case of Japan via the Potsdam Declaration), and these two countries each

underwent a turbulent path of consolidating democracy. As Kawagishi (2003) and Hahm and Kim (2015) have pointed out, however, this institutionalist narrative largely overlooks the democratic culture and intellectual discourse on constitutional democracy in Japan and Korea that was already in existence prior to the post-war intervention. As early as late 19th century, both Japan and Korea had already been inundated with the “Western” knowledge while intellectuals and commoners alike were engaged in the practice and discussion of constitutional democracy. Minobe and Cho were amongst the leading intellectuals at the time whose novel ideas and sophisticated theoretical arguments had a substantial impact on the discourse of democratic founding in Japan and Korea.

Second, Minobe’s and Cho’s attempts to incorporate the Western practices of constitutional democracy illustrate particular, substantive moments of “Western Learning”, i.e., efforts to theorize possibilities for learning from differently situated others (Jenco 2015). Forced to reconsider their understandings of “good” governance, Minobe and Cho each explored the knowledge of “the West” in their attempts to learn from “culturally distant others.” For instance, while Minobe was deeply influenced by the work of Georg Jellinek, he also critically engaged the works of other prominent texts in the history of political thought such as Jean-Jacques Rousseau’s *Social Contract* and John Locke’s *Two Treatises of Government*. Similarly, Cho’s political writings reveal him to be an avid follower of Marxist and anarchist thinkers such as Vladimir Lenin and Errico Malatesta. However, Minobe’s and Cho’s ideas and arguments were not simply unvarnished of colonized thinking, crude emulation or wholesale acceptance. Rather, they reflect uniquely self-critical and self-aware understandings of the historical and institutional limitations of authors’ own theoretical practices. My dissertation thus seeks to make both a substantive and a methodological contribution to political science: the former regarding the imagined terrain of

constitutional democracy, and the latter regarding the possibilities for self-understanding enabled by learning from multiple cultural and political traditions.

Who Are Minobe Tatsukichi and Cho Soang?

Minobe's and Cho's political projects broadly shared similar aims: to generate anew a politicized people by projecting an imagined people. However, in their attempts to transform the people of the emperor into an imagined people of the nation-state, Minobe and Cho encountered different obstacles. To start with Minobe's case, Japan during the Meiji period (1868-1912) witnessed a major political, economic, social and industrial revolution, emerging at the dawn of the new century a world power. While the Meiji Emperor presided over a period of modernization and growth to which the Japanese still refer proudly, his son and successor Taishō was a decidedly less influential ruler. His poor health kept him from fulfilling the duties expected of his role, and he increasingly delegated decision-making authority to the Diet, the newly constituted legislature first convened in 1890 (Large 1992, 11-13). The growth of party politics during this time, compounded by the liberalizing forces of Japan's increasing openness to trade and its intellectual exchanges with European scholars, promoted "the greater political pluralism of 'Taishō democracy'" (Ibid., 13). In the midst of this seismic change in Japanese politics and society, Japanese intellectuals attempted to transform the subject of the emperor, *shin-min*, into an active political agent of a constitutional state⁵, *koku-min* within the parameters of pre-existing institutions. Minobe was a liberal legal scholar whose "emperor organ theory" sought to do just that.

⁵ Minobe's constitutional state is an amalgam of constitutional monarchy and democracy. As Ienaga Saburo remarks, it is a system where "the people" and the emperor govern together (1964, 108). If one understands democracy as respecting the will of *koku-min*, Minobe posits, democracy is compatible with the presence of the emperor as a symbolic authority (1935b, 75). Thus, the distinction between constitutionalism and

In understanding Minobe's emperor organ theory, it is necessary to note a particular event that decisively shaped Minobe's intellectual development: Minobe's contact with Ichiki Kitokurō (1867-1944). When Minobe was a student at Tokyo Imperial University, Ichiki was a professor of law at the same institute. Minobe was exposed to comparative constitutional law and constitutional theory under Ichiki's tutelage and was encouraged by him to pursue the study of comparative legal systems in England, France and Germany from 1899 until 1902. During his stay in Europe, Minobe acquainted himself with the work of leading early 19th century authorities in German jurisprudence. Immediately after his return to Japan, Minobe began lecturing on comparative legislative history and became in 1908 the chair of legislative history at Tokyo Imperial University.

Minobe's intellectual proximity with Ichiki sharply contrasted with his negative response to Hozumi Yatsuka (1860-1912), a professor of constitutional law at Tokyo Imperial University. While Hozumi had been a pioneer in developing of a systemic interpretation of the Meiji Constitution, according to Minobe, he mischaracterized the fundamental principles of constitutionalism. For Hozumi, the constitutionalization of Meiji Japan did not mean that the emperor's power was restricted by the Imperial Constitution. Instead, Hozumi argued that the emperor not only possessed the powers stipulated in the Imperial Constitution, but also that he alone had the power to create, amend, and abolish any constitution. The Imperial Constitution, in this view, was nothing more than a tautological clarification of the emperor's sovereign authority. However, Minobe maintained that once enacted, the constitution becomes the single source that defines, clarifies, and limits sovereign authority. Thus, notwithstanding the fact that he or his predecessor drafted and promulgated it, the emperor cannot violate the Imperial Constitution.

authoritarianism lies in whether the Emperor governs the country with or without the assistance of *koku-min* and the cooperation and consent of the Diet (1923a, 793-806 and 842-845). I follow Minobe's terminology and language of constitutional state.

In advancing this interpretation, Minobe was not only challenging Hozumi's conservative interpretation of the relationship between the emperor and the Imperial Constitution, but also the conventional understanding of Japanese people in the early 20th century. Minobe thought that Japan's *de facto* political shift toward constitutionalism rendered *shin-min* - conceptualized as a passive subject of the emperor - obsolete. For him, given that the culture of self-governance is the primary foundation of constitutionalism, constitutionalization must include the socio-cultural task of making a democratic people as well as the legal and institutional tasks of modifying of the constitutional order. Working from this premise, Minobe attempted to invent *koku-min* out of the Meiji Constitution as part of the broader project of building and legitimating Japan's nascent constitutional state. Unfortunately, both Anglophone and Japanese scholars have overlooked this socio-political dimension of Minobe's legal thought (e.g., Furukawa 2011; Hayashi 2009; Ienaga 1964; Kawagishi 2003; Kawaguchi 1999; Miller 1965; Nagao 1972).

The cultivation of democratic peoplehood was an urgent task for contemporary Korean intellectuals as well. The difficulties of democratic transformation in early 20th century Korea, however, did not pivot entirely around the need to throw off the shackles of a monarchy.⁶ A more challenging issue was that the Korean people, the very people who were to become the locus of sovereignty in a newly emerging democratic polity, were under the colonial rule of imperial Japan. Following the First Sino-Japanese War (1894-1895) and the Russo-Japanese War (1904-1905), imperial Japan drove Qing China and Russia out of the Korean peninsula and gradually annexed it under the ideological banner of the Greater East Asia Co-Prosperity Sphere [*Dai tōakyōeiken*].⁷

⁶ On the relationship between Confucianism and monarchy and the former's influence on commoners in early 20th century Korea, see Song (2011 and 2013).

By the time of the 1910 Japan–Korea Annexation Treaty [*Hanilbyōnghapchoyak*], the Korean emperor’s dominion over the Korean peninsula was only a titular one. At this time of unprecedented crisis, where the emperor had failed to fulfil his sovereign duties, commoners were expected to transform themselves into an active political agent. In fact, the March First Revolution [*Samirundong*], one of the earliest public displays of Korean mass resistance during Japanese colonial rule, declared commoners, not the defunct imperial family or the Japanese emperor, as a new sovereign authority. Inspired by the March First Revolution, a group of independence activists gathered in Shanghai, China to establish a provisional government. The first meeting was convened on April 10, 1919, and among notable figures, Cho Soang, with the help of Yi Kwangsu (1892-1950) and Shin Ikhi (1894-1965), drafted the “Provisional Charter of the ROK [*Taehanmin'guk Imshihōnjang*]” (Han 2009; Kim 2012; O 2009; Sō 2012; Yi 2010).

In the 1919 Provisional Charter, the word “*in-min*” replaces the word “*sin-min*” as the category of Korean people. Compared to the latter term which referred to the subject of the emperor in the “National Polity of the Great Han [*Taehan'gukkukche*]” of 1899, the former, as expressed in the 1919 Provisional Charter, was explicitly democratic and revolutionary in its nature. Since the establishment of the Provisional Government of the Republic of Korea [*Taehanmin'guk Imshijōngbu*] (henceforth referred to as the PGRK) to the surrender of imperial Japan in 1945, Korean independence activists’ *raison d’etre* had been the transformation of *sin-*

⁷ The Greater East Asia Co-Prosperity Sphere was an imperialist ideology promulgated by the Empire of Japan from 1931 to 1945. Its primary claim was that a modernized Japan has a moral responsibility to protect less civilized Asian nations from Western imperialism. The boundary of the Greater East Asia Co-Prosperity Sphere extended to the Asia-Pacific and forced the Northeast Asians, Southeast Asians, South Asians (in particular Indians and Punjabis) and Oceanians to abide to the Japanese law.

min into *in-min*. Cho was one of the few intellectuals at the time who actively participated in the process of formulating this project.

One distinctive feature of Cho's political thought is its emphasis on the complementary relationship between self-determination and equality. As reflected in the 1919 Provisional Charter itself, Cho believed that political and social problems were intertwined. Revisiting Korean history as a history of domination, Cho in his political writings argues that inequalities in the spheres of politics, economics, and education have perpetuated the systems of domination. In this line of reasoning, he concludes that Korean people cannot reinvent themselves into *in-min* unless they eradicate the multiple sources of domination, i.e., political, economic, and educational inequalities among Korean people. Written around 1920s to 1930s, his political pamphlets systemize this "Principle of Three Equalities [*samgyunjuŭi*]" and propose it as the founding philosophy of a constitutional democracy to come (or what he calls "new democracy [*shinminjujuŭi*]").

In comparison to Minobe, it is relatively more difficult to specify the intellectual inspiration animating Cho's political thought. Cho was initially interested in learning Chinese classics at *Sŏnggyun'gwan*, the foremost educational institution in the Korean empire [*Taehanjeguk*] (1897-1907)⁸, but decided to study abroad in Japan when the Russo-Japanese War broke out. From 1904 to 1912, he stayed in Tokyo, Japan, and familiarized himself with diverse fields of "modern knowledge," including literature, history, natural science, religion, and philosophy. In 1912, Cho moved to Shanghai, China, to join like-minded independence activists and interacted with Chinese intellectuals in residence. From 1912 until 1945, Cho dedicated himself to Korean independence

⁸ The Korean Empire was the last independent unified Korean state. Proclaimed in October 1897 by Emperor Kojong, the empire existed until Japan's annexation of Korea in August 1910. Though short-lived, the Korean Empire sought major socio-political reforms that constituted a project to liberate the Korean peninsula from the intervention of Qing China and other imperial powers.

and the birth of Korean democracy. Unfortunately, he did not leave any monographs behind – most of his writings were written in the form of government telegrams, manifestos, and political pamphlets – and was abducted to North Korea during the Korean War (1950-1953). For these reasons, Cho’s political thought is largely unknown both to Anglophone audiences and many Koreans today. However, as the primary drafter of the 1919 Provisional Charter and of the “Essential Points for Founding a New State [*Taehanmin'guk Kŏn'gukkangnyŏng*]” of 1941, Cho has undeniably shaped the birth and development of Korean democracy. One of the primary purposes of this dissertation is to provide the first extended analysis of Cho Soang’s political thought in any Western language.

The Outline of Dissertation

This dissertation consists of four substantive chapters. Chapter 1 surveys the scholarship on the paradox of founding and related works. Rather than providing a comprehensive overview of this vast field of intellectual inquiry, I specifically focus on how the field has understood which I term “the temporality of founding.” To this end, the chapter begins with analysis of Sieyès’ influential solution to the paradox of democratic founding. According to Sieyès, I demonstrate, the nation/the people has a will that precedes the founding of a constitutional order. Although this understanding of the temporality of democratic founding has shaped the terrain of subsequent scholarship regarding the founding act, I argue that it suffers from the problem of an infinite regress. In the next section, I introduce the proceduralist understanding of democratic founding and argues that it offers a way to break through the otherwise unyielding impasse of the paradox. In my view, this novel approach to the paradox of founding provides conceptual resources and practical proposals for reconceiving democratic founding not as a logical impasse, but as a temporally

extended, future-oriented project. However, I also argue that the proceduralist approach unfortunately overlooks the socio-political dimension of democratic founding. To this end, I recast Jean-Jacques Rousseau as a theorist of democratic transformation. Drawing on Rousseau's political writings, I show that while he correctly maintains that the cultivation of democratic peoplehood must be prioritized over the establishment of constitutional institutions, he wrongly precludes the possibility of piecemeal and incremental transformation over time. In the final section, I revisit Jacques Derrida's later writings in order to develop a theory of founding that conceives of democratic transformations as first and foremost temporally extended processes through which individual subjects are transformed over time into active political agents – precisely the kind of agents that can legitimate newly emerging constitutional democracies. I conclude this chapter by arguing that this socio-cultural approach complements rather than undercuts the procedural understanding of democratic founding.

What then does this socio-cultural side of democratic founding look like? Before discussing Minobe's and Cho's answers to this question, Chapter 2 analyzes recent work in the field of comparative political theory that examines Quentin Skinner's distinctive methodological approach for reading and interpreting historical texts. In doing so it critically engages important issues of historical contextualism, incommensurability, and translation. Drawing on the writings of Leigh Jenco and Christopher Goto-Jones, I problematize the incongruity between the ostensibly universal outlook of Skinner's approach and its inward looking and self-referential posture. Ultimately, I conclude that Skinner's historical contextualism is nonetheless useful for understanding what Minobe and Cho were ultimately *doing* in their political texts.

Chapter 3 presents Minobe's emperor organ theory as an important but often underappreciated contribution to current understandings of democratic transformation. Both

conceptually and institutionally, emperor organ theory attempts to reconcile the constitutional state as a modern concept with historical roots in Western Europe Japan's pre-modern, monarchical political structure. It is thus quite natural that most research on Minobe's emperor organ theory, both Anglophone and Japanese, has so far focused on Minobe's discussion of institutional designs and the emperor's status in the constitutional state. However, emperor organ theory also calls for the transformation of *shin-min*, the presumed subject of the emperor, into *koku-min*, the people of this constitutional state, as a key element in the process of institutional innovation. In contrast to a conventional framework of founding which legitimizes the constitution by postulating the pre-constitutional power of "the people," Minobe invents "the people" out of the Meiji Constitution as a democratically empowered subject to-come. "The people," or *koku-min*, emerges only after constitutionalization and its construction of systems of representation embodied in formal political institutions. As the meaning of its characters suggests, *koku-min*—*koku* for state and *min* for people—is born within and from the constitutional state. Emperor organ theory thus illustrates a model of democratic transformation in which "the people" does not originate the constitutional order but is instead a future-oriented subject posited in the constitution itself. Although this vision does not dissolve the paradox of founding, it does suggest an alternative mode of democratic transformation, one that deserves serious consideration. I conclude this chapter by highlighting the contingency of democratic transformation: though *koku-min* emerged through the Diet as a conceptually new political actor in Japan's nascent constitutional state, it never solidified its sovereign status as "the people."

Chapter 4 investigates Cho's political thought as it developed during one of the most troubling times in Korea's modern history, which provides new insight into the issue of democratic transformation. Compared to Minobe's emperor organ theory, Cho's attempt to found what he

calls a “new democracy” was much more radical. For Cho, a distinct understanding of the relationship between self-determination and equality lies at the heart of this alternative form of democracy. Cho argues that the Korean case of democratic transformation must be conceptualized as a temporally-extended socio-political movement to attain equality among people. Cho’s point is not simply that inequality is an important issue to be addressed by the Korean people but that they remain subjugated unless they continuously act in concert to eradicate inequalities that perpetuate the relationship of domination. In his political writings written in 1920s, Cho stresses that colonialism is only one manifestation of inequality and exhorts the Korean people to realize that self-determination and equality complement, rather than mutually exclude one another. His drafted constitutional charter in 1919 well represents this vision of democratic transformation as the process of actualizing the principle of non-domination. Similar to the case of Minobe, Cho’s vision of democratic transformation nevertheless remained incomplete. Though *in-min* emerged through the March First Revolution as a new concept and agent in Korea’s nascent constitutional democracy, it never solidified its sovereign status as “the people.”

Chapter 1: The Complexity of Democratic Transformation

I would have wanted to be born in a country where the sovereign and the people could have but one and the same interest, so that all the movements of the machine always tended only to the common happiness. Since this could not have taken place unless the people and the sovereign were one and the same person, it follows that I would have wished to be born under a democratic government, wisely tempered.

- Jean-Jacques Rousseau, *Discourse on Inequality*

Democratic foundings constitute the essence of our political life. In the narrow sense of the term, they refer to the establishment of democratic regimes through the promulgation of constitutions in the name of “the people.” In the broader sense of the term, they denote a nationwide socio-political transformation that often accompanies the emergence of a new political paradigm. Whether we follow the former or the latter definition, it is fairly uncontroversial to claim that foundings are complex phenomena that have long captivated the political imagination. However, what precisely is democratic founding? To put this question more concretely, how is it possible to found a new polity in the name of “the people”? Inspired by this question, political thinkers – including, to name a few, John Locke, Niccolò Machiavelli, Carl Schmitt, Jean-Jacques Rousseau, Emmanuel Joseph Sieyès, Hannah Arendt, and Jürgen Habermas – have reflected in seemingly endless fashion on what is known as “the paradox of democratic founding.”⁹ To roughly

⁹ According to radical democrats, the paradox of founding assumes many different forms. However, most fundamentally it is about the discrepancy between the ideational people and the referential people: the ideal people whose sovereign authority is declared in the constitution cannot exist as a concrete, complete entity (e.g., Honig 2007; Ochoa Espejo 2012). While I agree with radical democrats that such discrepancy “is alive at every moment of political life and not just at the origins of a regime” (Honig 2007, 3), I focus on this indeterminacy of “the people” at the founding moment and explore its relationship with the discourse of democratic transformation in early 20th century Japan and Korea.

formulate this paradox, in transitions from nondemocratic forms of government to various forms of democratic constitutionalism, the authority that is claimed to legitimate the founding act and in whose name the act is performed (namely, “the people”) does not and cannot possess this authority for the simple reason that the constitution is the mechanism through which popular sovereignty is normatively established as a source of authority and principle of legitimacy. In other words, the act of founding presupposes what it is designed to create.

This chapter has five primary aims. First, it analyzes on Sieyès’s influential solution to the paradox of democratic founding and argues that it suffers from the problem of an infinite regress. Second, it introduces the procedural understanding of the founding act that suggests a way to break through the otherwise barren impasse of the paradox. According to this paradigm, if we consider the legitimacy of founding a temporally-extended project in making, the problem of an infinite regress can be circumvented. Third, it argues that while this novel approach to the paradox of founding provides both conceptual resources and practical proposals for reconceiving the founding act not as a logical impasse, but as a temporally extended, future-oriented project, this approach overlooks the socio-cultural dimension of the founding act. Fourth, it recasts Rousseau as a thinker of democratic transformation. Drawing on Rousseau’s political writings, I demonstrate that while Rousseau’s understanding of democratic founding as a socio-cultural making of the people is insightful, it fails to account for the possibility of piecemeal and incremental transformation over time. Finally, drawing on Derrida’s political writings, it develops a distinct understanding of democratic transformation, one that understands the founding act as first and foremost a process of social ontology in which the referential people are transformed by the temporally extended founding act into an increasingly active and legitimating political agent.

The Temporal Logic of Democratic Founding

The literature on the paradox of founding engages with two interrelated, complex questions. First, is it possible to create a democratic constitution without recourse to the incumbent authority? Second, if “the people” can authorize such a founding act, how does this people come to exist as a collective entity, expressing a unified will to constitutionalize a new polity? One of the most widely discussed solutions to the paradox of democratic founding is Abbé Emmanuel Sieyès’s influential account of constituent power. In conceptualizing constituent power as the extraordinary force authorized to posit constituted power, Sieyès suggests that the former precedes the political order it creates. Writing in the context of the French Revolution, Sieyès argued that the common French people - the Third Estate - constitutes the nation unto itself, without the First and Second Estates, the clergy and aristocracy respectively. As a “a body of associates living under a common law” (2003, 97), the nation “exists prior to everything; it is the origin of everything. Its will is always legal. It is the law itself” (Ibid., 136). In attributing to it this extraordinary and originary power, Sieyès suggests that the nation is defined by its - indeed, is coterminous with - constituent power, that power to found and adopt a constitution for France. Insofar as, historically, the Third Estate already comprises a collective living under a common system of law and a common representation, Sieyès collapses the people within the nation. It is in this way that “the people” comes to be the rightful possessor of constituent power. In this capacity, “the people” exceeds the legal and institutional powers that it posits: it cannot be exhausted by representative institutions and retains its will independent of this constituted power. Put differently, constituent power “signifie[s] a legal beginning, an ability to stand outside the established juridical order, assess its

desirability, and replace or transform it in important ways” (Colón-Ríos 2010, 206).¹⁰ While constituent power operates at the level of fundamental laws, i.e., originating and/or dissolving a constitutional order or the procedures contained within, constituted power is limited by them.

Note the temporal directionality implied in Sieyès’ understanding of constituent power: the nation has a will that precedes the founding of the constitutional order. In that “the people” originates all positive law, it stands outside the constitution whose creation it authorizes. As an antecedent authority that legitimates all positive norms, the nation cannot be subject to them. Indeed, this constituent power cannot be extinguished after the original founding act and can at any moment be exercised anew in accordance with the sovereign will of “the people.” Sieyès’ conceptualization of constituent power thus reflects the classical distinction made between “a will that predates the constitution and is superior to it” and “positive constitutional forms created by the constituent subject” (Ibid., 205). In fact, both formulations imply a temporal framework in which constituent power antedates constituted power: the nation’s will, and therefore the nation or “the people” itself, precedes, originates and legitimates the political order.

Sieyès is not concerned with the paradox of founding; indeed, the problem does not exist in his thought. “The people” or nation as constituent power always retains the extraordinary authority to originate and legitimize a new political order. Nevertheless, Sieyès’s distinction between constituent and constituted power has shaped the terrain of subsequent scholarship regarding the founding act. Whereas some scholars seek to preserve the generative democratic potential of the former, others seek to mitigate the risk and instability it may produce by

¹⁰ Though Sieyès reserves to “the people” the authority to originate a constitutional order and ratify a constitution, he also champions a representative government that “derives its legitimacy from the people’s initial authorisation” and operates within the confines delegated by that constituent power (Rubinelli 2016, 55). See especially Sieyès (2003, 139-142).

emphasizing the latter. A radical democrat like Andreas Kalyvas, for instance, follows Sieyès and Carl Schmitt in considering constituent power to be the extralegal force of democracy. He argues that “the constituent power cannot be absorbed or consumed by the order of the constitution...It remains both below and next to the constituted powers ... as the excess of constitutionalism” (2013, 13). In this way, Kalyvas sees constituent power to be a normative authority that not only functions as a check against constituted power but also exceeds its institutionalization (e.g., Kalyvas 2013, 2005; see also Negri 1999). Colón-Ríos likewise seeks to preserve constituent power’s democratic potential in theorizing a weak constitutionalism (2012; see also 2009, 2010, 2020). According to Colón-Ríos, in contrast to a strong version like Bruce Ackerman’s that would render symbolic or sublimate into institutional channels the force of constituent power¹¹, weak constitutionalism would facilitate the exercise of said power by providing an institutional opening for its expression – at the level of the fundamental laws, not daily governance. In so articulating constituent power as the source of democratic legitimacy with juridical nature, Colón-Ríos’ theory maintains Sieyès’s distinction between constituent and constituted powers. And insofar as legitimation proceeds from the former to the latter, so too must constituent power precede constituted power.¹² While

¹¹ Ackerman conceptualizes democratic founding as the enactment of institutional change in the name of “the people.” Oriented toward institutional changes within a constitutional order, this approach incorporates “the people” into the pre-existing constitutional order in an undifferentiated fashion (Ackerman 1991, 1998). For the critique of Ackerman’s institutional understanding of founding from the perspective of agonistic democracy, see Frank (2010), Bernal (2017). On the comparison between Ackerman’s dualist approach to democratic founding and Habermas’s co-originality thesis, see Vargova (2005).

¹² Colón-Ríos in his most recent book provides an extensive discussion of the concept of constituent power in the history of constitutional thought and clarifies how constituent power can be conceptualized as both an extra-legal phenomenon and a procedurally regulated activity (2020). According to him, while sovereignty refers to “the ability to create any legal content without being subject to separation of powers” (Ibid., 25), constituent power refers only to a constitution-making authority. In my view, although such a move suggests a way to synthesize popular sovereignty with constitutionalism, it cannot escape from the

constitutional theorists differ in their normative aims and in their conceptualizations of the relationship between the two powers, this distinction is critical for them.

Solving the paradox of founding through the invention of constituent power, however, raises another conundrum. Frank Michelman famously claimed that a legal and political order cannot be democratically founded, at least not in a procedurally legitimate sense (1997; see also 1998, 1999). According to him, in order to undertake a democratic founding, founders must constitute themselves as a group and agree on procedures that they will follow to create a constitution. The problem, however, is that such procedures can be legally valid only if they are legitimized by pre-existing procedures that must have been established democratically. At this point, the paradoxical nature of democratic founding becomes evident. There is an infinite regression of procedures presupposing procedures, each necessary to form the procedures following it. In a similar vein, if, as Sieyès and his followers argue, the nation/people as a primordial sovereign creates and legitimates the constituted order of law and institutions, how does the nation/people acquire its authority that legitimates the founding act in the first place? Does not presupposing the authority of the nation/people also suffer from the problem of an infinite regress?

The Inverted Temporality of Democratic Founding

Recent efforts to address this problem of an infinite regress directly engage the issue of temporality in the process of democratic founding by developing an alternative understanding of the constitutional making process, one that anchors the legitimacy of a constitution in a promise regarding a collective project that extends to the future rather than in a single revolutionary act that

paradox of founding as long as constituent power remains as a power that antecedes the establishment of a constitutional order.

occurred in the past (e.g., Arato 2009, 2016, 2017; Chambers 2004, 2018, 2019; Olson 2007; Tekin 2016; Zurn 2010). According to this proceduralist view, the legitimacy of a constitution is non-binary, processual, and approachable but never perfectly realizable (Zurn 2010). First, the legitimacy of a constitutional order depends on the degree to which it more or less approximates the ideals of constitutional democracy. Second, a constitutional order may lack legitimacy at the outset but can argue it over time. Finally, the idea of full legitimacy is not only improbable but also problematic. A constitutional order can further actualize its democratic ideals only by opening itself to new information and new insights and correcting heretofore unnoticed maladies and defects. Andrew Arato, for instance, has developed a theory of post-sovereign constitution making¹³ that has received much attention from political theorists. In his recent work on constitutionalism, Arato argues that no singular moment or institutional feature captures the sovereign will of “the people” and legitimates the political order: constituent power is “not embodied in a single organ or instance with the plenitude of power” (2009, 427). Instead, founding and its legitimation are generated in a two-stage process whereby representative actors of “civil society” develop an interim constitution, after which under those constraints a democratically elected assembly produces a final constitution. Neither an exceptional moment of collective action nor a one-off act of drafting and promulgating a constitution, both executed in the name of “the people,” the proceduralist approach thus figures constituent power to be an extended process of plural legitimation. That said, it is important to emphasize that although citizens do constitute and

¹³ Andrew Arato argues that the ideal type of the post-sovereign paradigm includes the following five features. First, a multi-stage process and the making of two constitutions, where the first (or the interim) constitution regulates the making of the second. Second, round-table negotiations that create the first constitution. Third, an emphasis on legal continuity in the constitution making process. Fourth, the role of a democratically elected assembly in drafting the second and the final constitution. Finally, the role of constitutional courts in policing the procedural limitations stipulated by the first constitution (2017, 186).

participate in this temporally extended project of pluralistic legitimation, they cannot dominate the entire process. In lieu of Schmitt's conception of the unitary sovereign people, Arato primarily draws on Claude Lefort to buttress this argument.

In *Democracy and Political Theory*, Lefort argues that under monarchy, power was embodied in "the person of the prince" (1988, 17). This does not necessarily mean that the prince holds unlimited power but, that his religious-political body was the locus of power that unified and hierarchized the regime. Following the great revolutions of the 18th century, however, the space of power once occupied by the body of the prince became empty of any unitary and substantive form of power. The sovereign power no longer resided in an individual body, and a new sovereign authority, "the people," replaced the prince. According to Lefort, however, this irreducibly plural, collective agent cannot function as a new locus of power in modern democracies. The space of sovereign authority "cannot be occupied – it is such that no individual and no group can be consubstantial with it – and it cannot be represented" (Ibid., 17).

Though this conclusion seems to suggest that all modern democracies inevitably suffer from a power vacuum, Arato sees it as a foundation of his post-sovereign paradigm that suggests an alternative approach to the constituent power paradox:

I called Lefort the *philosopher* of this new paradigm, because his concept of democracy alone allows us to conceive how one can begin democratically where there is no democracy before. This was the lesson on the level of *the political*, and even if he used organic metaphors to express this he was right to see the process of collective re-invention whose full source and meaning and motivation could not be accessible to the instituting actors themselves. Nevertheless, on the level of *politics*, that Lefort unfortunately tended to neglect, the actual practice learned, by trial and error, that it is the de-dramatization of the revolutionary event and the bridging over revolutionary rupture by law that has the best chance of realizing and consolidating the revolutionary aspiration, the empty space of power that could be well guarded (never finally of course) against re-occupation. Part of the secret was to establish for the first time an empty space of power in the very process of producing that empty space, and forbidding even temporary claimants the right to use dictating violence. This is the part that follows from Lefort's theory, his conception of democracy as a form of the political. But part of the answer lies on the level of institutional

design, that in his unfortunately binary scheme falls to mere politics, but is nevertheless very important in providing some guarantees (never full proof) against usurpation by forms of embodiment.” (2012, 5)

As a caution against populist movements that reduce certain types of constitutional, judicial and democratic oversight, Arato’s post-sovereign paradigm (a) shifts the locus of legitimacy¹⁴ from “the sovereign people” to the procedure and (b) anchors the temporality of its legitimacy in a promise regarding a collective project that extends to the future rather than in a single revolutionary act that occurred in the past. Accordingly, the sovereign authority of “the people” cease to remain *legibus solutus*. Rather the constituent power is shared among multiple institutional bodies that express the plurality of “the people” differently, so that there is no single institutional organ of sovereignty that can monopolize a plenitude of powers for itself.¹⁵ Arato lucidly summarizes this transition:

¹⁴ Andrew Arato makes an important distinction between legitimacy and authority (2017, 1-41). According to him, genuine legitimation requires a plurality of forms and its subject can include institutions and even impersonal systems, whereas authorization in popular sovereignties must pertain to concrete persons or groups who presumably represent the singular people. In this line of reasoning, Arato argues that if we hope to retain popular sovereignty as a concept, it must be treated as equivalent to democratic legitimacy (Ibid., 30).

¹⁵ Though I am not going to discuss this line of critique, it is important to note that some find this gesture to replace “the people” with “pluralistic legitimation” or “proceduralism” problematic because it underplays the democratic potential of “the people,” i.e., “the people” functions as the supreme normative authority that ordinary citizens can invoke to challenge the existing constitutional order (e.g., Bernal 2017; Colón-Ríos 2020; Frank 2009; Honig 2001a). For agonistic democrats, “the people” promotes, rather than prohibits, contestation and resistance against a constitutional order’s authority, which in turn can augment the legitimacy of the existing constitution. In *Constituent Moments: Enacting the People in Post-revolutionary America*, Jason Frank demonstrates how under-authorized individuals or associations challenge rules of authorization stipulated in the constitution and thereby reconstitute the definition and boundaries of constitutional democracy by invoking the first words of the Preamble of the American Constitution: “We the People” (2009). Similarly, Angelica Bernal emphasizes that “the people” is “not simply a figure of underauthorization because of something it cannot do—garner its own legitimacy— but because of something it can do: expose and exploit the system’s own underauthorized nature. It does so by virtue of its quality as a political category not only of consensus building but moreover of fracture and

As for popular sovereignty, if one still wishes to retain the idea of bodies, then it must be the multiple rather than the two or even three bodies of “the” people. It must involve the legalization of each supposed body. But the survival of the definitive article “the” even here indicates the danger that a temporary incarnation expressing one valid perspective will be propagated and accepted as the only valid one. Even if Lefort is right that the claim itself is not a problem, claims and counterclaims of this type if taken sufficiently seriously, each claiming to be judge in its own cause, can be adjudicated only by violence. Thus it may be best to go beyond incarnation altogether, as Lefort and Habermas both repeatedly suggest, and replace the idea of popular sovereignty by that of a democracy that can be defined only in procedural terms, the notion of the people in the singular by a model of pluralistic legitimation (2016, 280-281).¹⁶

Exemplified by Arato’s post-sovereign model, a key theoretical insight of this procedural understanding of a constitution making process is that the problem of legitimate founding becomes a dilemma only if one fixates on a snapshot of the constitutionalization process at a particular moment. To borrow Habermas’s expression, the legitimacy deficit that exists *at* the moment of founding when the new constitution is written and ratified is “the understandable expression of the future-oriented character, or openness, of the democratic constitution” (Habermas 2001, 774). As Habermas correctly emphasizes in his later works on constitutionalism, the ambition to create a constitution that embodies democratic ideals of a free and equal polity is virtually impossible to achieve in a single moment or act. The issue at hand is not only one of establishing institutional frameworks to guarantee a trajectory toward a more inclusive democratic community, but also one

dissent” (2017, 12). Along this line of reasoning, agonistic democrats claim that the dilemma of authorization at the founding moment is the very condition of re-founding a constitutional order in the name of “the people.”

It is worth considering this criticism, namely that the post-sovereign paradigm’s attempt to eschew the decisionism of sovereignty at the founding moment by recourse to procedure may result in the dissipation of the constituent subject. Perhaps the post-sovereign model cedes too much of “the people” to institutional authority and legal continuity. However, fully addressing this issue is beyond the scope of this dissertation. For the most recent academic discussion of this issue, see Bernal (2017) and Chambers (2019).

¹⁶ Despite the conceptual proximity between Arato’s post-sovereign constitution-making theory and Habermas’s constitutional theory, Arato links his theory most closely with Claude Lefort’s understanding of democracy as an empty space. On this, see Lefort (1988, 17-39 and 223-231).

of continuously accommodating societal changes to address emerging collective concerns and recurring disputes (Chambers 2018, 260). In this respect, constitutionalization (including the act of founding) entails a complex, ongoing process of legitimation that operates through normative *and* legal registers (Habermas 1975 and 1992). From the normative perspective, public participation in the constitution-making process gradually augments and reinforces the legitimacy of a constitution. The legitimacy of a constitution is not based simply on participants' evaluation of a particular article of the constitution, but on the rigor and inclusivity of deliberations regarding the constitutional order. Indeed, a vitally important trend in contemporary constitution making has been its focus on the inclusion of citizens (Bernal 2017, 142; see also Chambers 2004, 2018, 2019). From the legal perspective, the legitimacy of a constitution resides in a set of procedures that embody the values of freedom and equality which animate the creation, and sustain the durability, of democratic constitutions. Without these legal frameworks that both reinforce and sustain each constitutional order, "popular uprisings," though they may invoke the authority of "the people" in the constitution, can too easily jeopardize political and civil liberties. This is precisely the reason why Habermas emphasizes that democracy (the normative) and law (the legal), the two pillars of constitutionalism, are co-original.¹⁷

As a novel theoretical approach to the problem of constitutional legitimation, the proceduralist approach to constitution-making process is a highly compelling and important

¹⁷ Habermas' co-originality thesis is a path-breaking theoretical innovation that seeks to reconcile a possible tension between the normative and the legal: "The system of rights can be reduced neither to a moral reading of human rights nor to an ethical reading of popular sovereignty, because the private autonomy of citizens must neither be set above nor made subordinate to their political autonomy" (Habermas 1992, 103). For recent academic commentaries on Habermas' co-originality thesis and constitutional patriotism, see e.g., Baxter (2011); Chambers (2004, 2017, 2018, 2019); Hahm and Kim (2015); Honig (2001a, 2007); Markell (2010); Muller (2008); Ochoa Espejo (2011); Olson (2007).

contribution to political theory. This multistage constitution-making process provides conceptual resources and practical proposals for reconceiving the founding act not as a logical impasse, but as a temporally extended, future-oriented project. As Simone Chambers writes, “constitutionalisation is understood instead as a disaggregated process over time that could have any number of institutional articulations and manifestations, for example, referenda, constituent assemblies, online crowdsourcing or no extraordinary procedures at all” (2018, 257).

The Rousseauian Dream of Democratic Transformation

Though this proceduralist paradigm provides an intriguing and in many ways appealing model of democratic founding, it fails to fully resolve the paradox of founding. The paradox of founding consists of two interrelated theoretical problems. The first is the retroactivity of authorization: “the people” does not possess the authority to legitimate the founding act prior to the act itself, because it cannot generate spontaneously the procedures necessary to confer its legitimacy. Regarding this issue, the proceduralist paradigm suggests an alternative theory of democratic founding that sees the process of legitimation as a temporally-extended project. Deliberative constitutionalists, such as Andrew Arato, constitute the vanguard of a paradigm shift that aims to develop a sustainable model of the constitution-making process. Importantly, this new approach has practical as well as theoretical significance. It can serve as a practical model for non-democratic countries that are struggling to navigate the transition to constitutional democracy. This new theoretical approach, however, does not fully address the other thorny issue of democratic founding, namely, the problem of democratic transformation.

The development of a constitutional order requires at least two things; (1) well-crafted constitutions that organize government and legal institutions, specifying the scope and limits of

their powers, while also articulating the basic rights and duties of citizenship and (2) the development of democratic citizens who possess the capacities needed to active participants in the process of self-government. Constitutional institutions without active citizen participation cannot sustain democratic self-governance. Instead they merely perpetuate non-democratic relation of authority. In this respect, the cultivation of democratic peoplehood is not just a matter of allowing people to voice their concerns during the constitution-making process, but also about the creation of a political culture where the activities of self-governance become *ordinary* to those involved in the process. The development of democratic peoplehood, however, is not part of a teleological process, moving inexorably toward broader inclusion, greater equality and more enlightened political participation over time (Olson 2007, 333). As Pierre Bourdieu emphasizes, *habitus* or socially constituted dispositions that orient human behaviors and identities are flexible but are simultaneously enduring and in certain circumstances become ossified (Topper 2001, 38). Moreover, because these dispositions are engrained in the body as habits, individuals are not necessarily conscious them. Consequently, institutional changes that systemize constitutional democracy do not necessarily result in or guarantee a corresponding transformation of the subjugated people into active agents capable of protecting and exercising effectively their rights and duties as citizens. In other words, even after individuals come to understand the locutionary meaning of constitutional democracy, their habits may remain deeply at odds with the demands of democratic citizenship. Bourdieu clarifies this point in the following passage: “the *habitus*, a product of history, produces individuals and collective practices – more history – in an accordance with the schemes generated by in each organism in the form of schemes of perception, thought and action, tend to guarantee the ‘correctness’ of practices and their constancy over time, more reliably than all formal rules and explicit norms...” (1990, 54).

The transformation of subjects into citizens, of the multitude into “the people” is of great urgency in any society hoping to achieve a democratic transformation in the absence of a democratic culture. In *The Time of Popular Sovereignty*, Paulina Ochoa Espejo convincingly argues that the incipient Mexican state could not initiate the process of constitutionalization in 1821 in part because Mexican people did not view themselves as a collective body (2011, 104-105). Similarly, Leigh Jenco, in *Making the Political*, explores the challenge of cultivating democratic peoplehood in the absence of properly functioning constitutional institutions. Jenco stresses that in societies without already established democratic practices and institutions, democratic peoplehood must be cultivated from within through “the gradual reorientation of personal practices and outlooks toward unprecedented, society-wide ways of living and governing” (2010, 5). Drawing on the political writings of Zhang Shizhao, Jenco suggests the possibility that individual action may be capable of inaugurating the founding a democratic regime where it has never previously existed. This question of democratic transformation, according to Jenco, is rarely discussed in the mature democracies of northern Europe and North America because “many of the necessary institutions and shared practices of democracy are already there” (Ibid., 6). In the early Republican Chinese case, Jenco argues, “political regimes meant nothing without the commitment of the people who both founded and sustained them.... At the same time, without a tradition of democratic self-rule, the Chinese people were bereft of the practices that could motivate and sustain a self-ruling government (Ibid., 49).

If we approach the issue from this more empirically informed perspective, the proceduralist paradigm appears less promising. At best, the proceduralist project – one which aims to create a virtuous circle between the maturation of constitutional institutions and the cultivation of democratic peoplehood – is a work in process. The likelihood of its success depends not only on

the design of the constitution itself, but also on a vision of democratic transformation that enables those involved in the constitution making process, as well as those who were not, to realize both the privileges and duties of sovereign authority that are entailments of the self-governance. For this reason, the cultivation of democratic peoplehood must be prioritized over the establishment of constitutional institutions in some socio-political contexts. Chambers eloquently expresses this point: “politics (in the narrow sense) cannot create a civic culture ex nihilo.... One can write as many constitutions as one wants, but without some underlying lifeworld purchase for the ideas contained in the constitution, it is not likely to take root and serve its purpose of structuring democratic action” (2018, 261).

Rousseau’s *Social Contract* famously develops the first canonical expression of the paradox of democratic founding that explores this urgency of democratic transformation. Like Sieyes in *What Is the Third Estate?*, Rousseau’s *Social Contract* deals with the problematic character of popular unity. In order for individuals to be “the people,” individual differences must be transcended to some degrees. Only through such transcendence can “the people” said to express the valid will of the entire community. Unlike Sieyes, however, Rousseau does not invoke the nation to legitimize the founding act. In lieu of this primordial sovereign, he invents “the people” as a new political agent that constitutes itself through the founding act. For Rousseau, the self-constitution of “the people” is not an easy task. Participants of the founding act must achieve some sort of dramatic unity through a cognitive transformation that enables them to consider each other as members of a larger whole. A mere aggregation of equals in the absence of this sense of connectedness only produces a collection of individuals, not “the people” (Olson 2016, 61). As Dana Villa observes, “the change in human nature is most definitely not a question of how to form anything like new socialist man, let alone a master race. Rather, it is, simply, how to change human

beings as we find them into citizens worthy of the title, into members of a political community possessed of public spirit and a morality of the common good” (2017, 30)

For Rousseau, this cognitive transformation must yield two outcomes. First, ordinary citizens should see an emerging political community as a single corporate body shared by plural “selves.” By this Rousseau means that the members of this new collective body are characterized by their commitment to the common good, one that is compatible with the pursuit of their individual interests. Second, a multitude of people accustomed to the dominant-subordinate relationship must be able to reinvent themselves as “the most virtuous, the most enlightened, the wisest, and in short, taking this word in its widest sense, the best people” (2000, 395). As David Lay Williams insightfully remarks, a fundamental goal in Rousseau’s *Social Contract* “is a virtuous citizenry. It animates nearly the entire work – sometimes suggesting that a virtuous citizenry is required to set its institutional forces in motion, sometimes suggesting that its institutions must vigorously pursue all measures necessary to produce that same virtuous citizenry.” (2014, 23).

Providing the example of the Roman people, Rousseau, however, contends that it is difficult to complete such a transformation at an instant:

the Roman people itself — that model of all free peoples—was in no position to govern itself when it emerged from the oppression of the Tarquins. Debased by slavery and the ignominious labors of the Tarquins had imposed on it, at first it was but a stupid rabble that needed to be managed and governed with the greatest wisdom, so that, as it gradually became accustomed to breathe the salutary air of liberty, these souls, enervated or rather brutalized under tyranny, acquired by degrees that severity of mores and that high-spirited courage that eventually made the, of all the peoples, most worthy of respect. (2011, 32)

This graphic description of the Roman people shows that good laws are necessary to liberate the subjugated people from the chains of tyranny. The likelihood of a democratic transformation would indeed be remote without the presence of these institutional conditions.

Although this thesis may sound reasonable enough, the following passage from Rousseau further complicates it with a dizzying paradox: “for a nascent people to be capable of appreciating sound maxims of politics and of following the fundamental rules of reason of State, the effect would have to become the cause, the social spirit which is to be the work of the institution would have to preside over the institution itself, and men would have to be prior to laws what they ought to become by means of them” (Ibid., 71). What does Rousseau mean by “the effect would have to become the cause” in this passage? For him, a democratic people is required to establish sound laws that would enable the practice of self-governance, but these institutional frameworks must be of the democratic people’s own creation. In this respect, the establishment of sound laws and the democratic transformation of pre-political people are caught in a vicious cycle.

This is the context within which the introduction of a wise legislator in Rousseau’s political thought should be understood. Rousseau provides several examples of this mysterious figure – including, to name a few, Numa, Moses, and Lycurgus.¹⁸ Although the historical contexts of these notable founders differ in important ways, their primary role is quite similar: to inspire a sense of collective identity in pre-political people through the act of law-giving. For Rousseau, this collective identification would enable the transformation of pre-political people into “the people.” As such, the legislator is the one who “must feel capable of, so to speak, changing human nature, of transforming each individual who by himself is a perfect and solitary whole into part of a larger whole from which that individual would as it were receive his life and his being; of substituting a partial and moral existence for the independent and physical existence we have all received from

¹⁸ I will further discuss this issue later in this chapter, but for now, it suffices to note that Rousseau’s mention of notable foreign founders at crucial points in his text suggests that he sees foreignness as an inevitable feature of democratic foundings. Bonnie Honing (2001b) develops the theoretical implication of this “foreignness” in *Democracy and the Foreigner*.

nature. In a word, he must take from man his own forces in order to give him forces which are foreign to him and of which he cannot make use without the help of the others” (Ibid., 69). That said, this godlike figure cannot dominate or monopolize the entire process of a democratic transformation and its subsequent modifications. Rather his role is “to read the text of collective action and shared experience, hear its underlying meaning, and interpret the historically conditioned endeavors of the people in their true light” (Tekin 2016, 67) and must leave the picture once the act of law giving is completed.

This constructive intervention of the legislator, nevertheless, does not necessarily result in an ideal outcome. As Villa insightfully observes, it is the reliance upon the distinction between “teachers” and “taught” in the work of Rousseau which ironically generates civic passivity and ignorance, which in turn creates conditions favorable to the emergence of an undemocratic and illiberal populism (2017).¹⁹ Furthermore, a more critical commentator like William Connolly contends that Rousseau’s invention of the legislator conceals the legacy of violence, such as “the systematic violence against indigenous inhabitants in the founding of the United States, that often accompanies an actual founding moment (2004, 138). According to him, this problem of founding violence is not merely a philosophical issue but a political one because the legislator, albeit good willed, forcefully homogenizes irreconcilable individual plurality in the name of democratic transformation.²⁰ Following Connolly, Bonnie Honig also problematizes Rousseau’s legislator. In

¹⁹ Using the MacArthur-led American postwar occupation of Japan as an example, Bonnie Honig similarly claims that the legislator’s foreignness “may benefit the regime he (re)founds, but it is also a threat to the regime at the same time” (2001b, 24).

²⁰ Contra Connolly, Honig argues that the problem of political violence is compatible with Rousseau’s vision of democratic founding. She suggests that Rousseau calls on the legislator because “he seeks to externalize the General Will’s violence, the willed violence of (re)-founding” (2003, 37).

her view, however, Rousseau's solution is incomplete not simply because of its unintended, problematic implications pointed out by Connolly but because of its logical structure. According to Rousseau, Honig argues, it is only through the legislator that the blind multitude can organize themselves as “the people” and express a unified opinion. This multitude, however, must be capable of distinguishing a wise legislator from a charlatan and of expressing a unanimous decision to select him as their teacher in the first place (Honig 2007, 6-7). In this line of reasoning, Honig concludes that this chicken-and-egg problem is merely another variant of the paradox Rousseau himself formulated.²¹

To be clear, I am not suggesting that Rousseau's *deus ex machina* is a futile attempt. Many have pointed out that the legislator is presented in *The Social Contract* as a miraculous, thus exceptional, and even potentially fictional figure that illustrates the damned condition of civil society (e.g., Williams 2013; Wingrove 2000). Considering this line of interpretation, a more fruitful reading of Rousseau seems to be the one that focuses on the mutually constitutive relationship between an “external other” and pre-political people throughout the process of democratic transformation, and more broadly of constitutionalization. Understood this way, we can begin to see that Rousseau's legislator is not a *solution* to the paradox of democratic founding but a *clarification* of it: the transformation of pre-political people into a self-governing people inevitably involves the presence of an “external other.” The internal/external dichotomy posited here often manifests itself in the forms of geological or cultural difference. External forces, where in the form of cultural, historical or linguistic others, influence constitution-making in various

²¹ On the relationship between heteronomy and Rousseau's lawgiver, see Keenan (2003), Connolly (1994), Honig (2007), and Frank (2008). For a more sympathetic reading of Rousseau's lawgiver and his role in the founding moment, see Benhabib (1994), Tekin (2016), and Williams (2014).

ways, so that the sovereign people is never self-constituted. Drawing on the constitution-making experiences of Japan and South Korea in the aftermath of World War II, Hahm and Kim make a similar point: “The very nature, indeed, of that politically fraught event seems to require that outsiders be present in various guises to interact with the locals and even to participate in the making of the constitution. This does not mean merely that constitution-making often has foreign-relations and international-legal dimensions, or that it cannot be understood as an insular domestic event. It means that the distinction itself between the “internal” and the “external,” or between domestic and foreign, is (re)defined and clarified through the complex and formative politics of constitutional founding” (2015, 66).²²

Derrida’s the “People” to Come

Although I agree with this Rousseau that no founding act is truly “endogenous,” the focus on the idea of foreignness in Rousseau’s political thought has the effect of shifting our attention from another core issue – Rousseau’s preoccupation with “presence.” Upon the democratic transformation of pre-political people into the popular sovereign, Rousseau freezes the time so as to salvage the general will from corruption and doom, which in turn precludes the possibility of piecemeal and incremental transformation over time (Connolly 2005, 132-133; Tekin 2016, 69). In his discussion of the fall of Sparta and Rome, Rousseau expresses this pessimistic view of democratic founding, “If Sparta and Rome perished, what state can hope to last forever? If we

²² One can also imagine that foreignness is found at home. For example, the Scientific Revolution in Europe is also a kind of foreignness, as are international trade routes, diasporic movements, immigration, etc. In this line of reasoning, Honig (2003) insightfully notes that from popular movies to the biblical narratives of Moses and Ruth to the myth of an immigrant America, from Rousseau to Freud, foreignness is represented not just as a visible threat to the people but as a complement for nascent communities requiring (re)founding.

wish to form a durable establishment, let us then not dream of making it eternal. To succeed, one must not attempt the impossible or flatter oneself with giving to the work of men a solidity that things human does not allow. The body politic, like the human body, begins to die from the very moment of its birth, and carries within itself the causes of its destruction” (2011, 194). One can easily read here a sort of foundationalism. Every political collective, even the most virtuous one, cannot escape from the contingency of the future. Accordingly, the democratic transformation of pre-political people into the popular sovereign via the legislator’s intervention must be completed *at* the moment of founding. As such, Rousseau invents the most virtuous *timeless* people.

The most sustained critique of this thread of foundationalism in Rousseau’s political writings is developed by Jacques Derrida. According to Derrida, the problem is not simply that Rousseau places too much confidence in the legislator’s charisma to mobilize and transform a disaggregated populace into a unified whole. While Derrida agrees with Rousseau that the legislator is indeed “in every respect an extraordinary man (Ibid., 69),” he argues that Rousseau’s project of inventing “the people,” even with the help of the legislator, cannot guarantee democratic transformation. For Derrida, the issue here is not that Rousseau’s legislator is insufficient for the task unifying and educating the multitude or that he is, as Jason Frank aptly puts it, “a figure of heteronomic support” (2008, 114). Rather it is that Rousseau’s “the people” cannot exist as a concrete, empirical entity. If “the people” exists, it does so only as a futuristic sovereign to come. In order to understand this seemingly radical but innovative critique of Rousseau, we need to have a better grasp of Derrida’s understanding of the paradox of founding.

In 1976, Derrida was invited to present a lecture on Friedrich Nietzsche with some remarks on the American Declaration of Independence at the University of Virginia in Charlottesville and prepared an essay to be known as “Declarations of Independence.” In this rather brief piece,

Derrida notices a distinct feature of the American Declaration of Independence that “the people,” who authorizes the act of founding, exists only as a retroactive product (and subject) of the act itself: “But this people does not exist. They do not exist as an entity, it does not exist, before this declaration, not as such. If it gives birth to itself, as free and independent subject, as possible signer, this can hold only in the act of the signature. The signature invents the signer” (1986, 10). For Derrida, this retroactivity suggests that even though “the people” attempts to anchor the legitimacy of the Declaration in its name as a stable reference point of the sovereign authority, it is not authorized to do so. Paradoxically, “the people” becomes the normative authority of the Declaration only *after* the act of declaration itself. Accordingly, Derrida holds that the boundaries and meaning of “the people” are not only radically indeterminate but also temporally deferred and thus can never be presented as such. This clearly troubles Rousseau’s ambition that the founding of a democratic regime can be legitimated by the collective act of *pouvoir constituant* with the help of the legislator.

In order to attain a clearer understanding of Derrida’s critique along with its wide-ranging implications, it is necessary to revisit J.L. Austin’s speech act theory. In *How to Do Things with Words* Austin makes a distinction between constatives and performatives. Constatives are referential statements about the world that are assessed along the dimension of truth and falsehood. By contrast, performatives are utterances that perform a certain kind of action within a given context²³ and are assessed along dimensions of felicity and infelicity; their efficacy depends upon

²³ Performatives have two sub-distinctions. First, performatives could be further classified into explicit and implicit. Explicit performatives usually contain a performative verb which is apparent to the other party. It bears a clear-cut meaning. In the utterance; "I promise to study," there is a clear performative verb which is "promise". Unlike explicit performatives, implicit performatives do not contain a performative verb. Second, performatives consist of three dimensions of efficacy: locutionary, illocutionary, and perlocutionary acts (Austin 1975). Imagine a situation where a police officer sees a cyclist on the street and

whether the conditions required for their success have been met.²⁴ In “Declarations of independence”, Derrida follows this distinction but at the same time appropriates it. For him, though “the people” may seem to be a constative that refers to the totality of ordinary citizens at the moment of founding, it cannot function as such because ordinary citizens at the moment of founding become “the people” only after the act of declaration itself. In this respect, “the people” is a performative (or an utterance that declares the emergence of the sovereign) that retroactively invents itself as a constative.

Though it may seem, on first reading, a rather technical text, “Declarations of independence” evidences this radical claim that is more clearly on show in Derrida’s overtly political interventions like *Specters of Marx*, *The Politics of Friendship*, *Rogues: Two Essays on Reason*, and *The Beast and the Sovereign*. Especially in *The Politics of Friendship*, “Force of Law,” and *Rogues: Two Essays on Reason*, he expands on the retroactivity of “the people” by making a conceptual

says, “You are going too fast.” Here, the police officer’s locutionary acts, i.e., utterances with semantic meanings (Austin 1975, 102), signify that the cyclist is going too fast. The police officer, however, was also warning the cyclist that it might be dangerous to cycle too fast. In other words, he was doing something in uttering the words he uttered. This is what Austin means by illocutionary acts or utterances with pragmatic force(s) (1975, 103). Now, consider the example again. In addition to locutionary and illocutionary acts, the police officer might have performed perlocutionary acts, i.e., further effects or consequences of the utterance. In other words, the police officer might have succeeded in persuading the cyclist that he or she should reduce the speed through his utterance.

²⁴ Derrida applauds Austin for differentiating performatives from constatives. However, in Derrida’s view, Austin’s understanding of performatives is partially misguided. While Austin acknowledges that the meaning of a sentence is necessarily contextual, that is, no utterance can be self-identifying, he proceeds with the assumption of a stable and static context that anchors the meaning of a performative. For Derrida, though performatives do perform a certain kind of action within a given context, felicity conditions of each performative can never be fully determined (1988, 11-20). Derrida’s point is not to disregard the importance of Austin’s distinction but to emphasize the point Austin underplays that no meaning can be determined out of context, but no context permits full determination.

distinction between the notion of promise and that of “to come.”²⁵ The notion of “to come,” though it appears to be a form of promise, refers to the impossibility of actualizing or making present what is being promised. In *The Politics of Friendship*, for instance, Derrida argues that the syntagm “democracy to come” does not refer to “a future democracy correcting or improving the actual conditions of the so-called democracies” (1994a, 5). Rather, as Derrida clarifies in the same passage, “this democracy we dream of is linked in its concept to a promise. The idea of a promise is inscribed in the idea of a democracy: equality, freedom, freedom of speech, freedom of the press – all these things are inscribed as promises within democracy. Democracy is a promise. That is why it is a more historical concept of the political – it’s the only concept of a regime or a political organization in which history, that is the endless process of improvement and perfectibility, is inscribed in the concept. So it’s a historical concept through and through, and that is why I call it ‘to-come’” (Ibid., 5).²⁶

According to Derrida, this endless process of improvement and perfectibility follows the logic of autoimmunity. Originated from Paul Ehrlich’s discovery of “Horror Autotoxicus,” autoimmunity, in biology, refers to the self-destructive immune responses of an organism against its own cells and tissues naturally present in the body. In theorizing the relationship between “to come” and democracy, Derrida appropriates this concept to describe what he sees as the inevitable irony of democracy in his later writings – the tendency in democracy to produce internal

²⁵ Although Derrida himself insists that his work has always been “political,” his work underwent a turning point in the mid-1980s, engaging more explicitly with political matters. On this, see Boudou (2012).

²⁶ Some critics problematize this notion of “to come” because it is “insufficiently theorized and balanced to take account of (the limits of) its own normativity, especially in regard to the indispensable value of democratic equality as it conditions freedom, popular sovereignty, as well as the pluralization of creative possibilities for responsive action, as favored by Derrida” (Fritsch 2002, 591). For a more extended discussion of Derrida’s “democracy to come,” see Hägglund (2008) and Thomson (2005).

contradictions that destabilize and re-stabilize itself in the process of self-purification and development. One manifestation of this supposed “autoimmunity” in democracy is the precarious co-existence of popular sovereignty with the rule of law. On the one hand, “the people” invokes the principle of popular sovereignty embedded in the constitution to challenge and modify the existing constitutional order. On the other hand, “the people” is bound by the very institutional modifications it makes to the system of law. For Derrida, this endless process of disruption and construction defines the essence of democracy.

In this respect, Derrida’s “to come” is not the positing of some horizon of possibility for democracy, as if it were just an ideal that we must move toward. Rather it points to a transformative and disruptive potential at the heart of democracy. Juxtaposing this view of democracy with Francis Fukuyama’s end of history thesis, Derrida in *Specters of Marx* remarks that democracy undergoes a continuous cycle of deconstruction and reconstruction, for it is a political system that always promises its better self to come:

Even beyond the regulating idea in its classic form, the idea, if that is still what it is, of democracy to come, its “idea” as event of a pledged injunction that orders one to summon the very thing that will never present itself in the form of full presence, is the opening of this gap between an infinite promise (always untenable at least for the reason that it calls for the infinite respect of the singularity and infinite alterity of the other as much as for the respect of the countable, calculable, subjectal equality between anonymous singularities) and the determined, necessary, but also necessarily inadequate forms of what has to be measured against this promise. To this extent, the effectivity or actuality of the democratic promise, like that of the communist promise, will always keep within it, and it must do so, this absolutely undetermined messianic hope at its heart, this eschatological relation [i.e., the relation to the final event or last judgment] to the to-come of an event *and* of a singularity, of an alterity that cannot be anticipated. (1994b, 65)

In *The Beast and the Sovereign*, Derrida applies a similar logic to the relationship between “the people” and “to come.” Analogous to the relationship between democracy and the notion of “to come,” while the existence of “the people” is promised in the constitution, this imagined collective can never be fully reified as an empirical entity. Derrida’s point is not simply that “the

people” invented out of the founding act is idealized but that “the people” as a complete unity between the referential people and the ideational sovereign is empirically not possible. Such a unity can only be promised at the founding moment as a form of declaration that “the people” *is* sovereign.

This invention of a popular sovereign is of particular interest to Derrida because it resembles the structure of a fable characterized by the personification of animals and the dispensation of moral wisdom through the use of allegory.²⁷ In *The Beast and the Sovereign*, Derrida famously introduces “The Wolf and the Lamb” by La Fontaine to clarify this point. In “The Wolf and the Lamb,” a fasting wolf approaches a lamb near a pure stream. The wolf claims that the lamb meddled with his drinking, and thus it warrants punishment. As a desperate attempt to seek mercy, the lamb lists out several plausible reasons as to why the wolf’s claim is unjust. The wolf, however, ultimately devours the lamb. The lesson of this short fable, for Derrida, is that “the stronger” attributes to himself “the right to keep everything for himself, to monopolize everything... he says what he is doing in doing what he says, authorizing himself with the very performative that he declares himself” (2011a, 213). Derrida finds this act of self-authorization performed by “the stronger” fascinating because “as fables themselves show, the essence of political force and power, where that power makes the law, where it gives itself right, where it appropriates legitimate violence and legitimates its own arbitrary violence - this unchaining and enchainment of power passes via the fable. i.e., speech that is both fictional and performative, speech that consists in saying (Ibid., 217).” The founding act, then, is functionally akin to fable – the

²⁷ Derrida readily acknowledges his former colleague Louis Marin as a source for his seminars. He encourages those attending them to read two consecutive chapters of Marin’s 1986 book *Food for Thought*: “The Fabulous Animal” and “The Reason of the Strongest Is Always the Best.”

founding act *appropriates* the pre-existing sources of legitimacy to declare what it performs, that is, to institute a newly imagined but only *arbitrarily* authorized sovereign people. This one-bodied “people” declares what it performs: the self-authorization of its sovereign status in the name of its future self (Ibid., 67).

This Derridean reading of the paradox of democratic founding *complicates* Rousseau’s vision of democratic transformation. Given the importance of cultivating and subsequently preserving the *moeurs* of the people in Rousseau’s political thought, it is understandable why Rousseau highlights the urgency of democratic transformation. For Rousseau, even though the introduction of a wise legislator may raise problematic implications theorized by Connolly, Honig, and others, the making of a certain kind of “we” must be completed *at* the moment of founding. Derrida’s problem with Rousseau, contra other commentators, is precisely about the logic of this temporal schema. At its most basic, Rousseau’s project is of inventing a unified, self-governing political community *at* the moment of founding, one that seeks the common good over overtly private interests. However, to borrow Derrida’s parlance, this ideal people cannot be “present” at any given particular moment because the very definition of the popular sovereign, “an absolute identification of the sovereign and the people in a single person” is an oxymoron (2011b, 23). The following passage encapsulates this Derridean perspective: “In any case, to come back to this pre-political sovereignty of the citizen, in the *Discourse on the Origin of Inequality among Men*, Rousseau describes what was basically always his political dream, namely a country or a state in which sovereign and people would be a single person, and he calls this “democracy” (and this identification of people and sovereign, the sovereignty of the people, is indeed the very concept of democracy, or at least of what is named by the name *demokratia*). But what does ‘person’ mean, once the sovereign and the people are but one?” (Ibid., 22).

According to Serdar Tekin, the question posed by Derrida in the passage above has the danger to transpose “the logical structure of the paradox to the realm of political action, thereby turning a primarily political issue into a logical puzzle” (2016, 52). Indeed, one can certainly read it as yet another instance of philosophizing what is a deeply political issue. In my view, however, Derrida’s conception of “to come” as a form of resistant against the reification of the sovereign people at any particular moment does not necessarily “paralyze political action (Ibid., 70)” as Tekin suggests. Derrida sees democratic founding as foremost a process of social ontology where the referential people are transformed by the temporally extended founding act into an increasingly active and legitimating political agent. For him, citizens do not remain the passive subject of the traditional authority only by engaging in this process of becoming “the people” declared in the constitution. Although the qualities one expects from “the people,” such as political consciousness, seeking collective interests, and political participation and deliberation, can never be *fully* attained, they constitute the essence of democratic politics.

While persuasive it may sound, this conclusion leaves us with a pressing question: to what extent is it possible to transform the referential people into the ideational people? Derrida’s proposal to reconceptualize the founding act as a transformative process *in action* can hold external validity only by demonstrating in detail how such a process unfolds in multiple socio-cultural settings. By this, I am not simply arguing that one must provide more cases studies to substantiate Derrida’s thesis of democratic transformation. Rather my point is that there are important lessons to be learned by investigating unfamiliar democratic foundings because each of these instances manifests distinct dynamics between the referential people and the ideational people. These lessons may not be of great use in solving Rousseau’s formulated paradox of democratic transformation, but they at least have potential to broaden and thus enrich our understanding of democratic

transformation for the simple reason that, as Derrida himself notes, “the people” is thoroughly a historical concept. There is no concept that can claim the universal meaning across time and space, and this is the case for the idea of “the people” as well. Though functionally similar they may be, “the people” in the American Declaration of Independence is conceptually different from, let’s say, that in the 1919 Provisional Charter of the PGRK. When a concept or idea travels to another context, it necessarily undergoes the process of translation that involves unexpected transmutations in its meaning (Olson 2016, 93-109). This alchemy of concepts, if you will, is the very source of innovations and novelties that we find in each case of democratic founding.

That said, although the literature on the people making process at the founding moment is vast, most studies are limited to American and European cases and relatively little attention has been paid to moments in East Asia where ordinary people were called upon to transform themselves into “the people.” Partaking in a growing trend within constitutional studies of investigating non-Western constitution-making processes (e.g., Arato 2016, 2017; Bernal 2017; Hahm and Kim 2015; Jenco 2010), I attempt to begin filling this gap. I argue that Minobe’s emperor organ theory and Cho’s vision of a “new democracy” each suggest the existence of alternative mechanisms of democratic transformation with distinct lessons as well as conspicuous limitations.

Conclusion

As a novel way to address the paradox of democratic founding, a number of scholars in the field of democratic theory and constitutional studies have recently proposed to (a) shift the locus of authority from “the people” to the procedure and (b) anchor the temporality of its authority in a promise regarding a collective project that extends to the future rather than in a single revolutionary

act that occurred in the past. While this procedural approach provides conceptual resources and practical proposals for reconceiving the founding act not as a logical impasse, it unfortunately overlooks the socio-cultural dimension of democratic founding. Rousseau has the most canonical expression of this view. In *The Social Contract* and his other political writings, he insightfully observes that the cultivation of democratic peoplehood must be prioritized over the establishment of constitutional institutions because the latter does not necessarily guarantee the former. This emphasis on the making of a democratic people is an important insight into democratic founding, but it precludes the possibility of piecemeal and incremental transformation over time. As an attempt to overcome this limitation, I have developed an alternative approach to the complexity of democratic transformation, one that sees the cultivation of democratic peoplehood as a project of social ontology where the referential people are transformed by the temporally extended founding act into an increasingly active and legitimating political agent.

Chapter 2: How Do We Write a Narrative of “the Other”?

The West is a name for a subject which gathers itself in discourse but is also an object constituted discursively; it is, evidently, a name always associating itself with those regions, communities, and peoples that appear politically or economically superior to other regions, communities, and peoples. Basically, it is capable of sustaining if not actually transcending, an impulse to transcend all the particularizations.

- Naoki Sakai, *Translation and Subjectivity*

To what extent is it possible to learn from our past? If it is possible, what constitutes the category of “our” past? Inaugurated by scholars like Roxanne L. Euben and Fred R. Dallmayr, comparative political theory has established itself as one of the most vigorous sub-fields of political theory. Those who identify themselves as comparative political theorists argue that it is necessary to broaden the parameters of political theory by incorporating marginalized voices of “culturally distant others.” To this end, important new works on comparative political theory have emerged in recent years. However, it remains still contested whether or not there exists a standard approach to translating ideas and arguments of “culturally distant others” into the language of contemporary political theory. This chapter examines this issue by revisiting Quentin Skinner’s genealogical approach to the history of political thought. In doing so it critically engages the issues of historical contextualism, incommensurability, and translation. The first section summarizes Skinner’s genealogical turn in his later writings and highlights the methodological value of what he calls “rhetorical description.” The following section provides a brief literature review of a methodological debate in comparative political theory in relation to Skinner’s historical contextualism. Drawing on the methodological writings of Leigh Jenko and Christopher Goto-Jones, I problematize the incongruity between the ostensibly universal outlook of Skinner’s

approach and its inward looking and self-referential posture but ultimately conclude that Skinner's historical contextualism is nonetheless useful in understanding what Minobe and Cho were *doing* in their political texts.

Historical Contextualism Revisited

It is not an overstatement that the academic discussion of constitutional democracy in the Anglophone academic world tends to focalize on European and American instances of democratic founding. After all, are not the institutional processes of democratic founding across the world remarkably similar in that they seem to follow a unilinear temporal sequence popularized by the American Revolution and French Revolution – a revolution, a constitutional assembly, and a constitution? If this temporal logic is indeed universal, as Andrew Arato seems to suggest (2016, 2017), would not it be possible to develop a standard model of democratic founding that is normatively sound, legally delicate, and institutionally feasible?

Developing a qualified answer to this question is difficult because every instance of democratic founding is always and already modified by individuals and groups participating in that process. In an effort to navigate the issue of democratic founding, they draw on resources provided by particular cultural and political formations, as well as the histories of these formations. By this I am not simply recapitulating the thesis of Dipesh Chakrabarty's celebrated book *Provincializing Europe* that "the universal concepts of political modernity encounter pre-existing concepts, categories, institutions, and practices through which they get translated and configured differently" (Chakrabarty 2007, xii). The project I intend to embark on in this dissertation has a more ambitious goal: to demonstrate that an investigation of non-Western instances of constitution making process can provide new conceptual and practical resources for us to reimagine democratic

founding as a temporally extended process of dynamic transformation at the socio-cultural level. The two case studies around which this project is organized, Minobe Tatsukichi's emperor organ theory and Cho Soang's vision of a "new democracy," both deal with the issue of transforming the subjugated people into a self-governing political collective. In their political writings, Minobe and Cho each projects a modern and imagined people of the nation-state onto *s[h]in-min* by deliberately choosing the word *koku-min* (in the case of Japan) or *in-min* (in the case of Korea) over the former as the proper designation of the sovereign authority in the constitution.²⁸

However, given linguistic and cultural gulfs between these two political thinkers in early 20th century Northeast Asia and contemporary political theorists whose primary training is in European political thought, how should we proceed with a project of rendering the former's ideas and arguments sensible to the latter? To answer this question, I turn to recent academic debate on Quentin Skinner's methodology and its applicability to comparative political theory. Historical contextualism²⁹ can be broadly defined as a distinct mode of interpretation that places primary emphasis on the historical *context* and intellectual *convention* of a political text in discussion. Defending the history of political thought against "both reductionists who dismissed ideas as mere epiphenomena and canonical theorists who approached texts as timeless philosophical works" (Bevir 2011, 14), historical contextualists treat a political text as a set of speech acts whose meanings are recoverable only within their specific contexts. Arguably, this historically sensitive approach to political ideas has acquired something of an orthodox status in the history of political

²⁸ *Koku-min* (*kung-min* in Korean) and *in-min* (*jin-min* in Japanese) share the same Chinese suffix *min*, a reference to commoners.

²⁹ Historical contextualism is mostly associated with the work of Quentin Skinner, John Dunn, and J.G.A. Pocock, but encompasses the work of a number of scholars in the field of history of political thought who both directly and indirectly are affiliated with the University of Cambridge from the 1950s to the present.

thought. More than anyone associated with historical contextualism, Quentin Skinner has provided one of the most compelling philosophical justifications of this interpretative approach.

In the essays collected in *Visions of Politics*, Skinner draws on J. L. Austin's distinction among locutionary, illocutionary, and perlocutionary acts in developing a methodology that aims to recover an author's intention(s) in writing or speaking. He argues that authorial intent *in* writing is an illocutionary act, which is neither semantic meaning, an individual psychological state, nor the effect of a verbal utterance. Rather it is a *public* feature of an utterance which constitutes an author's work within an intellectual convention, which in turn renders it *sensible* to individuals within a particular context; even though the meaning of the text always *exceeds* the text itself, intentions are constitutive of the text (Skinner 2002, 113-136).³⁰ For Skinner, we cannot fully understand what individual writers are *doing* in their political texts unless we excavate intellectual conventions and contexts of their conceptual vocabularies and theoretical arguments. As Skinner writes, "to understand what any given writer may have been doing in using some particular concept or argument, we need first of all to grasp the nature and range of things that could recognizably have been done by using that particular concept, in the treatment of that particular theme, at that particular time" (Ibid., 77).

Although the above quote by Skinner seems to suggest that individual writers are subject to a set of particular linguistic and intellectual norms that govern their writings and thought, one should not misconstrue this emphasis on contextualism as a sign of historical determinism. As much as authors are governed by their conventions, they can also persuade their audiences to reconsider the meaning of certain concepts or behaviors at stake by making use of various means

³⁰ For Skinner, illocutionary acts are different from motives which are contingent, antecedent conditions of the appearance of an author's work. See Skinner (2002, 91-102) and Tully (1988).

of rhetorical redescription. If these redescriptions are successful, their audiences will be prompted to “view the behavior in question in a new moral light” (Ibid., 182). This emphasis on authorial agency perplexes those who are familiar with Skinner’s initial methodological position. Skinner in his earlier works – in the late 1960s and early 1970 – claimed that the task of the historian of ideas is to (as much as possible) recover the historical context of the text in discussion “to decide what conventionally recognizable meanings it might have been possible for an author to have intended to communicate” (Ibid., 87). While criticizing the instrumentalist approach to the writings of past others, Skinner holds that “the classic texts in moral, political, religious and other such modes of thought contain a ‘dateless wisdom’ in the form of ‘universal ideas’” (Ibid., 57). For him, although the wisdom of the past cannot provide answers to our contemporary problems, it can at least help us realize the contingency and historicity of our self-understanding that we often take for granted.

Around late 1980s, Skinner began to develop an alternative approach to textual interpretation that focuses on how illocutionary acts in a particular text fulfil the author’s ideological agenda of challenging an existing, dominant convention. This transition indicates that Skinner has moved away from the descriptive model of studying illocutionary acts in his earlier writings:

Koselleck and I both assume that we need to treat our normative concepts less as statements about the world than as tools and weapons of ideological debate. Both of us have perhaps been influenced by Foucault’s Nietzschean contention that ‘the history which bears and determines us has the form of a war’ (Ibid., 182).

What then does this transition entail? In his 2013 two lecture series at Northwestern University on the notion of state, Skinner argues that “with certain concepts, including the concept of the state, there is no option, but to proceed genealogically,” because when authors write their

texts, they employ illocutionary acts as strategic tools for their own ideological purposes.³¹ Although Skinner's take on ideological use of illocutionary acts clearly resembles Foucault's genealogy as critique, he rejects any direct connection with Foucault in developing this new methodological position and claims instead that Max Weber was his muse (Ibid., 176). Unlike post-structuralist thinkers like Foucault and Derrida, Skinner insists, he wants to retain the notion of authorial intent to help account for processes of conceptual changes:

It is true that their [Roland Barthes and Michel Foucault] announcement has always struck me as exaggerated. I accept of course that we are all limited by the concepts available to us if we wish to communicate. But it is no less true that language constitutes a resource as well as constraint. This means that, if we wish to do justice to those moments when a convention is challenged or a commonplace effectively subverted, we cannot simply dispense with the category of the author (Ibid., 117).

As Melissa Lane aptly puts it, this genealogical turn in Skinner's thought constitutes three normative claims. First, our current moral and political beliefs turn out to be directly questionable when viewed from the eyes of past others (2012, 73). Second, a presumably continuous development of our contemporary practices and concepts has in fact been subject to historical contingency and arbitrariness (Ibid., 74). Finally, the genealogical understanding of the past enables us to realize that "the values embodied in our present way of life, and our present ways of thinking about those values, reflect a series of choices made at different times between different possible worlds" (Skinner 2002, 6). This awareness, in turn, "can help to liberate us from the grip of any one hegemonal account of those values and how they should be interpreted and understood (Ibid.).

³¹ See Skinner (2002, 158-187) for the ways in which ideologists pursue this project. See also Goto-Jones (2005, 2008); Melissa Lane (2012); Robert Lamb (2009a, 2009b).

Historical Contextualism and Comparative Political Theory

Along with the philosophical hermeneutics of Hans-Georg Gadamer and poststructuralist philosophy³², Skinner's genealogical approach to the history of political thought has been adopted by leading figures in the field of comparative political theory (e.g., Jenco 2010, 2015; Goto-Jones 2005, 2008). For instance, in the introduction of her monograph on Zhang Shizhao, Leigh Jenco claims that Skinner's interpretative approach can be applied to understanding not only "historical others" but also the "cultural others":

That Zhang is Chinese and I am not has little to do with my own ability to extract from his work sophisticated theoretical arguments, given adequate grounding in the language and discourse of that time and place. It may be possible to formulate an argument that cultural versus historical differences demand alternative modes of engagement, but until that time I will pass forward on the assumption that, given proper training, the political thinking of early Republican China is as accessible to me as is that of any other time and place, whether ancient Athens or Florentine Italy (2010, 11).

Similarly, Christopher Goto-Jones in his work on Kyoto School philosophy draws on Skinner's methodology to recast Nishida Kitarō's work as an act of dissent:

Most of the existing literature in Nishida Studies adopts a traditional 'text only' approach to Nishida's work, reading it in isolation from other texts of the period (and in the context of the historical fact of Japanese ultra-nationalism and imperialism, which is an inevitable part of the baggage of the contemporary reader). Such an approach fails to engage seriously with Nishida's work as a series of 'speech-acts' whining a contemporaneous ideological and political discourse. In other words, there is a deficit of meaning in such a reading. If we want to talk about Nishida's political location in 1930s-1940s Japan, then we must attempt to understand the meaning of his texts in *the context of that period and time* (2005, 16, italics mine).

This methodological alliance between comparative political theory and historical contextualism is not at all surprising. Both Jenco and Goto-Jones warn us that text-only approaches

³² On the relationship between Gadamer's hermeneutics and comparative political theory, see Dallmayr (1997, 2004). For poststructuralist approaches to comparative political theory, see Godrej (2009, 2011).

may decontextualize the ideas of “non-Western” thinkers from their immediate contexts or uncritically incorporate them into pre-existing theoretical paradigms developed within the European tradition – the writings of 19th century Chinese reformers were not some variants of a modernization theory (Jenco 2015), and the Kyoto School was not some sort of a research institute of the Heideggerian philosophy (Goto-Jones 2005). In their view, comparative political theory ought to focus on developing alternative modes of theorization that can complicate our self-understanding rather than on substantiating whether or not “non-Western” ideas resonate with conceptual categories and arguments rooted in the “Western” tradition. For Skinner, the possibility of learning from “others” stems from a critical examination of our self-understanding. This examination enabled by the genealogical approach problematizes practices and concepts we find natural and neutral, which in turn reveals the contingency and arbitrariness of our self-understanding. Jenco and Goto-Jones only add that the category of “our” past is not limited to the European past. For instance, Goto-Jones problematizes that Skinnerian scholars have mostly been working only with “Western” political thought. This preoccupation with “historical others” has not only consolidated the supremacy of “Western” ideas over “non-Western” ones, but it also has *inadvertently* universalized concepts and arguments developed within the “West.” As he emphatically puts it,

An additional problem for the history of political thought is that the pursuit of a recognizably European history of thought is not the same enterprise as is implied by the titles of the works produced by Taylor and MacIntyre, nor by the title of the seminal work by one of the Cambridge School’s leading lights, Quentin Skinner’s *The Foundations of Modern Political Thought*. The aspiration here is clearly universal – there is no European in sight. Hence, there appears to be a tension in the field of the history of political philosophy between the particularist and narrative tendencies of history on the one hand, and philosophy’s aspirations toward universalism on the other. To the extent that thinkers such as Taylor, MacIntyre, and Skinner conflate the particular and the universal in their presentation of the discipline, they not only risk charges of antiquarianism but they also risk perpetrating a kind of imperialism; antiquarianism here slips into ethnocentricity. It would be unimaginable (at least in today’s geo-historical context) if, say, Tetsuo Najita’s

important book, Japan: *The Intellectual Foundations of Modern Japanese Politics*, were reprinted as *The Intellectual Foundations of Modern Politics*. Of course, Najita is not nearly so ambitious about the achievements of his work (2008, 8).

To be clear, although “the West” is a convenient placeholder, such a label gives an impression that there exists a clear distinction between “the West” and “the non-West.” My argument is not that linguistic and cultural differences between “the West” and “the non-West” are insubstantial but that the issue of what constitutes these geo-cultural categories is never pre-determined and remains open to cross-cultural dialogues. In fact, Jenco and Goto-Jones also reject the “non-Western” history of political thought as a proper designation of their works because “the West” and “the non-West” cannot be reduced into culturally homogenous units of analysis.

Following this insight, my dissertation also seeks to destabilize the distinction between “the West” and “the non-West.” The rich tradition of European and American political thought deserves our revisiting and reexploration, and I do not have any quibbles with such a proposal. However, might it not be equally if not more fruitful, and certainly more intellectually prudent, to investigate in detail both the experience and the lessons to be learned from an engagement with “culturally distant others”? To what extent is this intellectual enterprise irrelevant for enriching our understanding of politics, given the evidence that “cultural others” have also grappled with recognizably similarly, yet far from identical predicaments by reading and interpreting works like Georg Jellinek’s *Allgemeine Staatslehre*, Errico Malatesta’s *Anarchy*, and Gustave Le Bon’s *The Psychology of Socialism*? To borrow Jenco’s parlance, the value of investigating their political thoughts lies in the potential to “acquire new conceptual and practical resources which can themselves prompt entirely unanticipated questions and answers” (2010, 10).³³

³³ To this argument, one may respond by saying that applying Skinnerian approach to understanding Minobe’s and Cho’s writings raises some significant difficulties. Political theory by nature involves some

What are then these performative acts? According to Skinner, authors can employ two principal rhetorical strategies to challenge their ideological opponents. First, authors can seek to introduce an entirely new set of concepts or manipulate pre-existing concepts to express their approval or disapproval of the established conventions. The purpose of this strategy is to challenge ideological opponents to reconsider their evaluation of the concepts on the table. The other strategy is to challenge the conventional empirical application of existing concepts. This strategy is subtler than the first one because it does not generate new concepts or redefine existing ones. It rather involves the manipulation of the relationship between existing concepts and the socio-political reality that they presumably represent (Skinner 2002, 152-153). Although both strategies can be found in Minobe's and Cho's writings, the latter is much more prominently present: an attempt to reimagine the relationship between *koku-min* (for Minobe) or *in-min* (for Cho) and the socio-political reality of early 20th century Japanese and Korean people as *s(h)in-min*. For Minobe, his targets were the staunch supporters of absolute monarchy in Japan who dismissed the democratic aspiration of 20th century Japanese people by claiming that the Japanese case of constitutionalization was nothing more than a tautological clarification of the emperor's sovereign authority. As one of the most influential liberal intellectuals at the time, Minobe problematized this conservative reading of the Imperial Constitution because it was based on faulty reasoning that Japanese people were subject to the emperor instead of to the Constitution. Minobe's *koku-min* was invoked as the proper name of Japanese peopling living under a constitutional government

abstraction. It can claim the power of generalizability only by systematically condensing "the details surrounding any given act of political thinking" (Simon 2020, 426). Indeed, if we focus too much on historical details, it may become impossible for us to compare differently situated concepts developed within various cultural contexts. Accordingly, rather than presenting the entirety of Minobe's and Cho's political thought, I focus on interpreting what Minobe and Cho each *intended* to achieve by writing their texts.

precisely to challenge this academic convention. Similarly, Cho firmly rejected the pessimistic view of democratic transformation held by his intellectual opponents, which maintained that early 20th century Korean people were overly factionalized for a sustained collective action over time to bring about significant change in colonial Korea. Against this defeatist attitude, Cho asserted that the Korean people *could* succeed in transforming themselves into the sovereign people if they could act in concert to found a new democracy based on the principle non-domination. The term *in-min* was the most appropriate semantic choice for this purpose.

To be clear, I engage the theoretical problems Minobe and Cho sought to address with the conviction that their concerns extend beyond early 20th century Japan and Korea and have implications for broader audiences, including contemporary political theorists rooted in the Western canon. Although Minobe's and Cho's rhetorical redescription discussed above originate within specific contexts, "their sense is not inextricably bound by or limited to native circumstances" (Kaufman-Osborn 1992, 72). Accordingly, I develop a two-level comparative analysis of Minobe's emperor organ theory and Cho's vision of a "new democracy." First, I examine what Minobe and Cho are *doing* in their texts by appropriating "the Western" knowledge in their larger projects of democratic transformation. By tracing how particular European thinkers – Georg Jellinek, Jean Jacques Rousseau, Karl Marx, and Joseph Stalin, to mention a few – influenced the development of Minobe's and Cho's distinct approaches to democratic transformation, I demonstrate that "the West," for Minobe and Cho, was a useful conceptual reservoir rather than the embodiment of incommensurability. If this argument is valid, this means that cross-cultural learning is possible for contemporary political theorists trained in the European and American intellectual legacy, as it was for Minobe and Cho in early 20th century North East Asia.

Second, I analyze what Minobe's and Cho's performative acts are *showing* us in relation to the issue of democratic transformation. Although they themselves may not have conceptualized democratic transformation in the way I have formulated in Chapter 1 by drawing on Derrida's political writings, I demonstrate that it is possible to read Minobe's emperor organ theory and Cho's vision of a "new democracy" as two distinct models of democratic transformation. Though contemporary to each other, Minobe and Cho each faced a disparate manifestation of an "external other" within their respective historical contexts. Minobe's challenge was to conceive of a pathway that would allow ordinary Japanese people's gradual transformation into a self-governing political agent within the system of constitutional monarchy. On the contrary, Cho's project was about fostering the culture of self-governance within the system of colonial domination. I am going to explore these themes in the following chapters, but for now it suffices to mention that the ways in which Minobe's *koku-min* and Cho's *in-min* are invented out of the Meiji Constitution and the 1919 Provisional Charter respectively suggest the existence of alternative configurations of democratic transformation.

Before concluding this chapter, let me make a brief remark on the relationship between translation and interpretation. Suggesting that Karl Marx's analogy between the circulation of commodities and translation shows how commensurability is not inherent in languages but rather "made possible by the equivalencies translation can provide for languages (Suh 2013, xvii), Serk-bae Suh insightfully observes that the idea of translation as an exchange between two equivalents that bridges the gap between two languages is problematic. Following this insight, I am not arguing that what Minobe and Cho intended to achieve by writing their texts are readily accessible to Anglophone audiences. Their illocutionary acts become *sensible* to the readers only through my interpretation, although in its process various interpretative stereotypes are necessarily involved.

However, as Hans-Georg Gadamer (1992) points out, stereotypes that presumably prohibit an “authentic translation” are in fact the only entrance points to the hermeneutic circle. Accordingly, I postulate that my identity as a “political theorist educated in the U.S.” does not limit my capability to make plausible arguments about what Minobe and Cho were *doing* in their texts but it rather opens up the possibility of alternative interpretations, approaches, and conversations.

Conclusion

In *Enemy in the Mirror*, Roxanne L. Euben posits the possibility that “disparate cultures are not worlds apart, morally and cognitively incommensurable, but exist in conversation with one another, even if they have serious moral and political disagreements” (1999, 10). Answering this call for cross-cultural learning, many political theorists have devoted themselves in building comparative political theory as an intellectually diverse and rigorous sub-discipline within the field of political theory. Since its inception, comparative political theory has attracted other fellow travelers from regional studies, post-colonial studies, comparative politics, and other adjacent humanistic fields of inquiry due to its interdisciplinary nature. At the same time, such diversity has generated ongoing debates on the methods, scope, and even the very definition of the word “comparative.” If the normative appeal of the “comparative turn” initiated by comparative political theorists lies in its potential to salvage marginalized thinkers, ideas, and narratives that remain peripheral to the discipline of political theory, to what extent is it possible to render “foreign” knowledge sensible to “us” without sacrificing its contextual subtlety? This chapter attempted to answer this question by visiting the recent academic discussion of Quentin Skinner’s methodology and of its applicability to comparative political theory. Addressing both the values and limitations of Skinner’s genealogical approach to textual interpretation, I have argued that Skinner’s approach

is useful in understanding what Minobe and Cho are *doing* in their texts: an attempt to reimagine the relationship between *koku-min* (for Minobe) or *in-min* (for Cho) and the socio-political reality of early 20th century Japanese and Korean people as *s(h)in-min*.

Chapter 3: Minobe Tatsukichi's Emperor Organ Theory

Is it then a truth so universally acknowledged that a pure democracy is the only tolerable form into which human society can be thrown, that a man is not permitted to hesitate about its merits without the suspicion of being a friend to tyranny, that is, of being a foe to mankind?

- Edmund Burke

This chapter presents Minobe Tatsukichi's emperor organ theory as a novel understanding of democratic transformation. For this purpose, the first section begins by providing the intellectual context of Minobe's writings and demonstrates how it influenced the development of emperor organ theory. Introducing Japan's intellectual and political milieu at the time is necessary in order to provide a more nuanced understanding of the challenges the theory intended to address. The second section elaborates on emperor organ theory that attempts to reconcile the constitutional state as a modern concept with roots in Western Europe with monarchy as Japan's pre-modern political structure both conceptually and institutionally. In the third section, I shift attention to a crucial element of Minobe's legal thought that has been overlooked by both Anglophone and Japanese scholars. I argue that emperor organ theory invents "the people" out of the constitution as a democratically empowered subject to-come through the Imperial Diet as a representative institution. In so doing, I demonstrate how emperor organ theory calls upon the transformation of the presumed subject of the emperor into the people of a constitutional state. The final section highlights the contingency of emperor organ theory. Though Minobe attempted to transform the subjects of the emperor into "the people" of the constitutional state, "the people" as a conceptually new political actor in Japan's nascent constitutional state failed to solidify its sovereign status as such.

Minobe's Intellectual Context

Following the overthrow of the Tokugawa shogunate³⁴ and the advent of the Meiji Period in 1868, Japan embarked on a series of projects to modernize its political culture and institutions. These projects included policies of enriching the wealth and military strength of the country [*fukokukyōhei*], promoting industry and increasing products [*shokusan kōgyō*], and cultivating human intelligence and progressing civilization, all in service of competing with Western colonial powers [*bunmeikaika*] (Akita 1967; Beckman 1957; Colegrove 1937; Masatsugu 1960). Notably, these efforts also included the creation of Japan's first constitution in 1889, the Meiji Constitution, and a national legislature in 1890, the Imperial Diet. The modernizing developments of the Meiji Constitution and the Imperial Diet in particular were the result of fierce struggle in the previous two decades between social movements like the Freedom and People's Rights Movement [*Jiyū Minken Undō*],³⁵ which advocated popular participation in the political process through parliamentary government, and the cliques of former samurai from the domains of *Satsuma*, *Chōshū*, *Tosa*, and *Hizen* [*hanbatsu*] who had spearheaded the Meiji Restoration and who at the time had a virtual monopoly on political power. In face of these demands, the latter were forced to mediate between their own desires to preserve power and the insistence of the Japanese people on

³⁴ Under the Tokugawa rule, the government was a feudal military dictatorship called *bakufu*. In this political system, the emperor reigned but did not rule; instead of the emperor, the military leader, the shogun, was a *de facto* ruler of the country.

³⁵ The Freedom and People's Rights Movement was a national popular movement, from 1874 into the 1880s, which demanded both negative and positive freedoms, particularly political freedoms to participate in the political process through a national parliament. According to Matsuo Takayoshi, this movement aimed at "the establishment of a national representative parliament, that is, a constitutional political structure," "a reduction of the land tax, that is, the abolition of feudal landowning," and "the amendment of the unequal treaties, that is, the achievement of full independence for Japan" (1966, 615). See also Emura (1995) and Han (2004).

Western notions of civil liberties and a parliamentary government. Concessions to representative government, for instance in the creation of a written constitution, thus signified both elite adoption of Western constitutional ideas and preservation of a status quo elite leadership (Kawagishi 2003, 46-47).

The first constitutional committee was convened in 1883 when Itō Hirobumi, one of the *hanbatsu* leaders and the first prime minister of Japan, returned from Europe where he had studied European constitutions and constitutional theories, especially the 1850 Constitution of Prussia and German legal scholars Rudolf von Gneist and Lorenz von Stein. Itō was appointed the chairman of a consultative committee on drafting a constitution and embarked on a project to transform the imperial system into a modern system of constitutional monarchy. Sharing this elitist vision with his fellow oligarchs, Itō intended to draft a written constitution that confirms the emperor's sovereign authority:

The sovereign power of reigning over and of governing the state, is inherited by the Emperor from His Ancestors, and by Him bequeathed to His posterity. All the different legislative as well as executive power of State, by means of which He reigns over the country and governs the people [shin-min], are united in his Most Exalted Personage, who thus holds in His hands, as it were, all the ramifying threads of the political life of the country, just as the brain, in the human body, is primitive sources of all mental activity manifested through the four limbs and the different parts of the body. (1906, 7-8).

To be sure, I acknowledge that Itō's drafted constitution already contained some elements of constitutional state, as suggested by Itō (2009) and Takii (2010). For instance, Itō argues that even the emperor himself is bound by the limits of the constitution and a constitution allots the proper share of work to each and every part of the organism of the state (Ibid., 7-9). However, throughout his commentaries on the Constitution, Itō consistently uses the word *shin-min*, the subjects of the emperor, to address the existing population. In fact, as Doak notes, though Inoue Kowashi, one of the primary drafters of the Meiji Constitution, "argued that the term *shin-min* was inappropriate

and should be replaced by the term *koku-min* (2007, 192),” his drafted version of the Meiji Constitution was ultimately overruled by Itō. For this reason, while Itō might have preceded Minobe in developing an institutional framework for constitutionalism in Japan, he did not attend to the question of “the people” within it.

This, however, does not necessarily imply that Itō and his followers endorsed the emperor’s presence in politics either. Their seemingly unwavering fidelity to the emperor was merely a means to maintain their power. In order to avoid the kind of participatory government that the Freedom and People’s Rights Movement aspired to institute, they considered the invocation of a powerful monarch – whose sovereign authority is the sole source of political and legal legitimacy – necessary. A constitutional state featuring the emperor at its helm but which in practice was governed by *hanbatsu* oligarchs enabled them to maintain their *de facto* power even while transitioning to a modern system of governance. In 1900, Itō found the Friends of Constitutional Government [*Rikken Seiyūkai*], one of the first political parties of modern Japan, and further consolidated his position.

Following the Russo-Japanese War, however, *hanbatsu* dominance came under challenge. Despite the victory against the “European giant,” imperial Japan could not earn a single yen as an indemnity. The war expenses thus were imposed on the whole nation, and special taxes levied during the war continued along with an increase in general tax (Matsuo 1966, 620). Political campaigns against the heavy taxes and oligarchy ensued. Although the outbreak of WWI initially shifted Japanese people’s attention to the outside world, the public grew further disillusioned with the growing national debt and the new election laws, which retained the old minimum tax qualifications for voters (Matsuo 1994). Especially with Hara Takashi’s appointment as the first commoner to serve as prime minister in 1918, calls were raised for universal suffrage and the

dismantling of the old political party network. This transition toward constitutional “democracy” coincided with Emperor Taishō’s weak leadership. Though formally the ultimate decision maker in the Japanese state, Taishō was – unlike his father, the Meiji Emperor – an uncharismatic, inarticulate and indecisive leader. He often refrained from intervening in domestic political affairs, and this was exacerbated by his chronic health issues. In fact, after 1918, he no longer was able to participate in events that would have been expected of the emperor: attending Army or Navy maneuvers, appearing at the graduation ceremonies of the military academies, performing the annual Shinto ritual ceremonies, or even attending the official opening of sessions of the Diet of Japan (Large 1992, 11-13).

At the beginning of the Taishō period, scholarly interpretation of the Meiji Constitution was influenced heavily by conservative thinkers like Hozumi Yatsuka (see Ienaga 1967, 157-176; Nagao 1996, 36-59). This school of constitutional interpretation emphasized the emperor’s divine right to govern, referring to the phrase in the preamble of the Meiji Constitution: “The right of sovereignty of the State, We have inherited from Our Ancestors, and We shall bequeath them to our descendants” (Itō 1906, III). For Hozumi, state sovereignty did not mean that the emperor’s power was restricted by the Constitution and the Imperial Diet. Instead, Hozumi argued that the emperor not only possessed the powers stipulated in the Constitution, but also that he alone had the power to create, amend and abolish any constitution (Ienaga 1967, 161-170). In order to understand the context within which this argument is advanced, it is necessary to briefly discuss Hozumi’s definition of sovereignty.

Hozumi argues that a state is qualitatively different from a society: “There are two types of group organization, egalitarian and hierarchical. The former is created by a social contract and is characterized by relations of equality among its members. The latter is a development of the

family model and is characterized by relations of domination and obedience. Group life features common goals and common action, and groups can be distinguished by their goals. A political group is one aiming to control all society. Since power is involved, a political group is necessarily a hierarchical group. A state, then, is a hierarchical group with political goals” (cited in Minear 1970, 58). Further developing this particular definition of state, Hozumi explains that the primary political goal of every state is the preservation of society through instituting order, i.e., the hierarchical relationship between the ruler and the ruled (Nagao 1970, 9). This power to institute order, Hozumi claims, is sovereignty; it is single, supreme, unlimited, and independent (1911, 19-20).

For Hozumi, the state is not merely a collection of individuals because of its distinct political goal and function. It has its own independent will that is not identical to the sum of individual wills. A state, however, can express its will only through the voice of the sovereign. Hozumi writes: “However, the state itself is not a natural person and has no natural will; and it is impossible to imagine that a state itself could have, absolutely, will or power. Therefore, we turn to the general legal concept of group will and see that this comes into being through the legal will of the state’s being substantiated by a supreme natural will. It is the characteristic of a monarchical national body that the legal will of the state is established from the natural will of a specific individual” (cited in Minear 1970, 63). Hozumi thus concludes that the will of the emperor *is* the will of the state.

Given the conservativeness of Hozumi’s legal thought, it is not surprising that Hozumi expressed deep suspicion of the Imperial Diet as a juridical organ representing “the people.” In fact, Hozumi argued that the most ferocious despotism was realized by “the people” – not the monarch – as exemplified by the French Revolution (Kawagishi 2003, 99). Moreover, Hozumi

was skeptical of popular participation because he believed that the masses tended to demand internally incoherent or conflictual social reforms. Thus, his constitutional theory advocated an absolute emperor system. In contrast to conservatives like Hozumi, liberal thinkers such as Ichiki Kitokurō (1867-1944) developed a new and liberal interpretation of the Constitution, emphasizing the role the Constitution granted to party politics and the parliamentary system. Criticizing Hozumi's conservative reading of the Constitution, Ichiki argued that the emperor's authority is limited by the Constitution. The Imperial Diet's responsibility should be to monitor and advise the emperor (Ienaga 1964, 14).

It was this vibrant intellectual environment that Minobe entered when he began law school at Tokyo Imperial University in 1894. Under the tutelage of Ichiki, Minobe immersed himself in the liberal constitutional theory (Ibid., 3). He subsequently returned to Tokyo Imperial University as a graduate student, having entered and quickly left a subordinate position in the Ministry of Home Affairs, and in 1899 he was sent abroad to Germany, France and the United Kingdom to study European constitutionalism. Upon his return to Japan in 1902, Minobe was appointed Professor of the History of Comparative Constitution Studies at Tokyo Imperial University. Despite the intellectual proximity between Ichiki and Minobe, they had significantly different aims. While Ichiki's focus was the status of the emperor in a constitutional state, Minobe's project was much more radical: to juxtapose the emperor and a newly fashioned "people" as the two primary organs of the Japanese state. In this respect, under the Meiji constitutional system, Minobe was without any doubt a liberal democratic theorist who sought liberal constitutional possibilities *within* the Meiji system and attempted to actualize them to reconstruct a constitutional monarchy.

To Minobe, however, this ideal of constitutional state appeared to be fundamentally incompatible with the historical reality of the Japanese people as *shin-min*, subjects of the heavenly

Emperor. Though not extensively, Minobe examines this conundrum in “the Problem Regarding the Name of Jin-min in the Kellogg–Briand Pact [*Fusenjōyaku Chū “Jinmin No Na Ni Oite” No Mondai*],” which argues that Japan did not violate the Constitution, in signing the Kellogg-Briand Pact in the name of “the people” (1929, 57-58). In this piece, Minobe importantly suggests that “We, the People [of the constitution],” as an import from European constitutions, does not exist in Japanese language and culture (Ibid., 59-61). According to him, “the people” in the European tradition refers to a totality of individuals living under a democratic system. Though it has Japanese counterparts like *jin-min* and *shin-min*, these connote being “ruled” or “governed” (Ibid., 60). Thus, instead of signing the Kellogg-Briand Pact “We, the People,” Japan should have signed it in the name of “the state” as the corporate body geared toward the common interest of the entire nation.

As such, the issue of “naming” the sovereign was not merely an academic issue for Minobe. From the legal perspective, the definition of “the people” clarifies Japanese citizens’ rights and duties relative to those of the emperor within a nascent constitutional state. From the sociological perspective, a people living under this new political paradigm deserves a new identity that represents their needs for political representation and participation. As he writes,

The democratic ideas of modern politics originated in the idea that sovereign power resides with the people. Whether or not this basic idea is valid, the idea itself has become the most powerful driving force throughout the entire world. No country, not even one which technically adopts a monarchical polity, is immune in its actual politics from the ever growing tendency toward democracy. Indeed, so universal has this trend become that without a single exception, the nations of the world have come under its impact, if in varying degrees and at different speeds. This is the natural result which accompanies the advancing level of popular knowledge, the diffusion of modern civilization, and the development of world-wide communications. Given this trend, blind submission to others’ rule has become a thing of the past. The people of today have advanced to the stage that they reject the control of others and anything short of complete self-rule.... This is a corollary of the development of modern culture; it cannot be restrained by any force whatsoever (cited in Nagao 1972, 183).

Then, what should be the proper name of “the people” under a nascent constitutional state? His answer is *koku-min*, a people born *within* and *from* the constitutional state. From the late Tokugawa shogunate to the early Meiji period, *koku-min*, *shin-min* and *jin-min* all referred to some variation of “the people” and were used interchangeably in government reports and historical works. While the usage of *jin-min* declined from the mid-Meiji period, *shin-min* started to appear in treaties and the Meiji Constitution from 1881 until 1945, and *koku-min* gradually replaced *jin-min* from the mid-Meiji period and became the common reference of “the people” (Kyōgoku 1988, 262-264). Because, among these possible semantic options, Minobe used only *koku-min* in referring to the new subject of the constitutional state, his choice of *koku-min* appears deliberate. But who is this “*koku-min*”? The semantic choice of “*koku-min*” over “*jin-min*” and “*shin-min*” – both of which, as mentioned above, had a connotation of being ruled or governed – suggests that Minobe had a specific theoretical task in his constitutional writings³⁶: it was not only to reconcile the presence of the emperor with constitutionalism but also to invent *koku-min* as a political subject proper.³⁷

³⁶ For the conceptual history of *koku-min* and *min* more broadly, see Burtscher (2012); Doak (2006); Kawamura (2014).

³⁷ To be clear, I am not suggesting that Minobe was the only individual at the time who theorized about the problem of democratic transformation. For instance, when discussing Taishō Democracy, Yoshino Sakuzō is often introduced along with Minobe as the most prominent liberal intellectuals of the time who attempted to pursue “democratization.” Contra Minobe, however, Yoshino does not seem to provide a full-fledged theory of democratic transformation, one that addresses both the operation and locus of sovereignty (Duus 1978, 316). For Yoshino Sakuzō’s political thought, see Duus (1978) and Furukawa (2011).

Constitutionalizing the Emperorship

In order to understand Minobe's vision of inventing *koku-min* as a political subject proper, it is necessary to introduce and elaborate on his emperor organ theory. According to this theory, the state – rather than the emperor or the Japanese people – is the sovereign entity in Japan. It is a corporate body composed of many “organs” united by a common will, among them the emperor and the partially democratically elected legislature. In Minobe's language, “the state alone is the subject of governmental power, and the monarch is an organ of the state” (cited in Röhl 2005, 55-56). Evident here is the radical nature of emperor organ theory: the very figure who created the constitution, the emperor, is subsequently subordinated to that same constitution and the state authority that it embodies. Further, the Imperial Diet becomes a vehicle of popular representation, presenting a radical alternative to a political system in which the Japanese people had previously not figured into the state.

In developing this seemingly traitorous understanding of monarchy, Minobe was particularly influenced by German jurisprudence of the early 19th century. German constitutional theory at this time was dominated by the Hegelian theory of state, which propounded that the state is not a relation of or between persons, but is rather an independent character: the state is a personality – it is an organism. As a juridical person, the state has the ultimate right, while its organs, i.e., different branches of government, express and execute the state's will (Miller 1965, 12-14). Insofar as the state originates law and establishes legal order – there is no law which precedes the state – it is not subject to any higher power. Sovereignty is thus exclusive to the state, and importantly exclusive to the state as a whole rather than its individual organs or even their sum; in other words, sovereignty does not reside in the monarch, the people or the government, but in the state itself (Krabbe, 1922, xxxii).

Within this jurisprudential landscape, Jellinek's goal was to develop a general theory of the state, three points of which are particularly important to the present discussion. First, Jellinek approached his project by developing a two-sided theory of the state, a theory both substantive and methodological, which distinguished on the one hand between a social and empirical dimension of the state and on the other hand a juristic and normative conception of it. While the state is a juristically universal fact in organized polities, it has taken different empirical forms throughout history. These historical features ground and legitimate juristic norms. Second, Jellinek developed a theory of the self-limitation of the state. He accepted the fact of the state's sovereignty, insofar as the state determines its own actions in accordance with its own law and cannot be juridically compelled to change its own law. However, for Jellinek this sovereignty is not *de jure* absolute. The state cannot simply disregard its own law at will, because in directing its organs to act in accordance with the law it has established, the state binds itself to that same law. Third, on the relation between the individual and the state, Jellinek maintained firmly that political institutions ought to precede the political provision of natural rights. Reflecting on the relative successes and failures of the American and French Revolutions (1901), Jellinek attributed the disorder of the French Revolution to an absence of strong state institutions prior to the 1789 Declaration of the Rights of Man.

Drawing on these theoretical foundations, Minobe develops a unique reading of the Meiji Constitution that posits the state – rather than the emperor or the Japanese people – as the sovereign entity in Japan.³⁸ The state is a corporate body composed of many organs, among them the emperor

³⁸ Though Minobe himself does not employ the concept “loose constructionism” to describe the Meiji Constitution, his interpretative position is broadly compatible with it. According to Minobe, a constitution is organic and must be understood in a broad and progressive manner so as to adapt it to the changing times: “the existing constitution is the product of historical development. It is, moreover, ceaselessly chaining

and the partially democratically elected legislature, all united by the common will that is embodied in the Meiji Constitution.³⁹ In this framework, the individual wills of various organs of the government – including the emperor, the Diet and the bureaucracy – are subject to the corporate will enshrined in the Constitution.⁴⁰ While these organs may act independently, their actions serve and are constrained by that Constitution and cannot be undertaken for those organs' particular purposes. As such, the very figure who created the Constitution, the emperor, is subordinated to that same constitution and the state authority that he embodies; he thus executes sovereign power not for himself but on behalf of the state. Moreover, in this framework the Imperial Diet becomes a vehicle of popular representation, presenting an alternative to a political system in which the Japanese people had previously not figured into the state. The emperor and the legislature are thus no more than vessels expressing the will of the state as it is articulated through the Constitution.

Minobe argues that emperors historically served the state to guarantee its well-being, prosperity, and security (1935c, 64-83) and this tradition - manifest in Royal issues of the emperors and in the Meiji Constitution - differentiates the Japanese government system from the

through the effects of laws and ordinances apart from the actual constitutional text, as well as through the [actions of the] government and the parliament, the operations of which are greatly influenced by various political forces. Furthermore, since constitutional government has, to a degree, emerged as a modern universal system, its existence in any particular state is inevitably influenced by its existence in other states. Consequently, in order to discover the existing constitution, it is never enough merely to study the text of the constitution; it is essential to study the laws and ordinances which supplement and modify the constitution, to trace out the history, to investigate the precedents established by the government and the parliament, to consider the actual forces which effect the operation of the constitution, and finally to seek out the general principles of constitutional government by a comparison of the constitutions of other states” (cited in Miller 1965, 53).

³⁹ For a detailed discussion of Minobe's typology of organs, see Minobe (1923a, 689-724).

⁴⁰ According to Minobe, a constitution refers to the fundamental law of the organization and process of the state (1923a, 1045). Whether a constitution promulgated in the name of the emperor or that of “the people,” it must consist of principles that determine the territory of a country, the conditions of *koku-min*, the organization of a governing structure, and the relationship between the state and *koku-min* (ibid.).

patrimonialism or patrimonial sovereignty of medieval Europe. This Japanese feudal monarchy had prevailed until the Meiji Restoration which in its complete form manifested four characteristics: (1) proxy monarchy in which the *de facto* rulers, at least on the surface, governed Japan by commission of and in the name of the emperor; (2) a compound state in which the influence of the central government was limited to the heads of the clans; (3) feudalism, that is, the proliferation and maintenance of lord-vassal relations; and (4) government organization based on class distinction and hierarchy (1923a, 1222-1415). Prior to the Restoration, this rule of the emperor was, as Minobe puts it, “rather self-established and self-modified as a matter of historical phenomena” (cited in Miller 1965, 79). By historical phenomena, Minobe means that the authority of the emperor predates the Constitution as a *customary law*. In *Lectures on the Constitution* [*Kenpō Kōwa*], Minobe clarifies this argument: “Customary laws hold legal power, for they are practiced as customs for an extended period of time. Customary laws include political customary laws, administrative customary laws, judicial customary laws, and others. Among them, political customary laws refer to customary laws regarding constitutional principles. Prior to the promulgation of the Meiji Constitution, Japan’s constitutional principles had also been completely customary. Especially, the most important constitutional principle that Japan is governed by an unbroken line of emperors is not a written statement in a constitution but a 2500 years old political customary law” (1912, 4996-5003).

According to Minobe, however, the introduction of a written constitution in 1889 wrought a notable change in this system. “No longer was the constitution simply a matter of historical data; it was now revealed in authoritative legal texts and could be thenceforth only in accordance with the prescribed procedure” (Miller 1965, 79). Though Minobe recognizes a distinction between

Pouvoir constituant and *Pouvoirs constitués* developed during the French revolution⁴¹, he considers it unfounded, and more importantly irrelevant in the context of Japan (1935a, 828). As

Minobe writes,

In short, given that the will of the state is indivisible, it is impossible to accept a distinction between a power [*Pouvoir constituant*] that transcends the boundaries of the constitution and a power that is bound by the constitution [*Pouvoirs constitués*]. Upon constitutionalization, every state activity becomes bound by the constitution, and thus there exists no governmental power that can override it.... a national law can maintain its authority only if the one who promulgated it acknowledges his/her subordination to it. Especially, the constitution is the foundational law of the state that stipulates governmental principles. As long as the establishment of the constitution was valid, it follows that every act of governance must be in accordance with the constitution. (841-849).

Accordingly, the emperor ceases to have authority over the Constitution upon its promulgation. Upon constitutionalization, that document becomes the single source that defines, clarifies, and limits the imperial authority. Despite the fact that he or his predecessor drafted and promulgated it, the emperor cannot violate the Constitution.

However, Minobe emphasizes the emperor's status as the *supreme* organ whose role and power are unmatched by any other organs; organs that constitute and express the will of the state are not all created equal. By the supremacy of the emperor, Minobe means that the emperor is autonomous and unbounded by the orders from other organs (1912, 287-288). Although this does not imply that the emperor has the right to govern [*tōchiken*], if the emperor violates the Constitution, there are no legal measures to punish him; the Imperial Diet and public opinion can only pressure the emperor to reconsider his decision (1923a, 438). Furthermore, the Constitution

⁴¹ To be clear, Minobe was not critical of the French Revolution as a whole. Rather his concern was the artificial distinction between *Pouvoir constituant* and *Pouvoirs constitués*. In fact, he extolled the emancipatory ideal of the French Revolution (Nagao 1972, 188).

stipulates that only the emperor has the authority to propose constitutional amendments⁴², along with executive prerogatives such as powers to appoint and remove officials, determine administrative organizations, conclude treaties, bestow honors, grant pardons, command the Army and Navy, and determine military organizations (Itō H 1906, 23-37).

These imperial prerogatives, however, are not unlimited. They can be exercised only within the boundaries delineated by the terms of the Constitution or of laws and treaties. Minobe summarizes the boundaries of the emperor's sovereign authority: "According to the national law, the sovereign authority belongs to the emperor. It does not belong to his body but to his position as the emperor; it is an authority of the public position. Such authority is not created by the Constitution. Based on the ancient history of our country, this authority had already been recognized throughout our history prior to constitutionalization of our country. Thus, the Constitution merely clarifies this authority. However, upon constitutionalization, the Constitution becomes the fundamental law of the state and aims to stipulate the fundamental principle regarding the governance of the state" (1923b, 190).

In addition to the aforementioned limitation, all exercise of imperial prerogatives is subject to discussion and critique of state ministers. In one of his lectures at Kyushu Imperial University, Minobe emphasizes this point: "There is an idea current that the imperial prerogative is sacred and inviolable - that because it is executed by imperial will there can be no discussion of it nor can anyone debate its merits in any particular instance of its exercise. This idea is asserted with special

⁴² Minobe argues that even though the emperor has the sole authority to propose a constitutional amendment, he still requires consent to do so from the Imperial Diet, such that constitutional amendments rarely occur (Minobe 1935a, 825). While such rigidity might fail to reflect a changing national consciousness, the consistency of the Constitution can promote a stable sense of nation (1935a, 533-539, 689-702, and 887-894).

vigor and breadth against academic theory, so that anything may be construed as ‘discussion of the imperial prerogative’ ... this is a gross error contrary to the spirit of the constitution. Constitutional government is a responsible government. All exercise of the prerogative is made on the responsibility of state ministers and their responsibility can be debated... (cited in Miller 1965, 89).

In this respect, Minobe’s emperor organ theory primarily supplants monarchy with the sovereignty of the state, but it is important to point out that even the state is not “sovereign” in the sense of possessing absolute authority. In *Fundamental Principles of the Constitution of Japan* [*Nihon Kenpō no Kihonshugi*], Minobe argues that the understanding of sovereignty as a form of indivisible omnipotence was developed in 17th and 18th-century Europe (1935a, 293). This conception of sovereignty did not exist in Japanese culture, rendering it incompatible with Japanese political institutions. By redefining the sovereignty of the state as a *legal* right of the governing authority, Minobe contends that the Japanese state’s sovereignty is bound by contemporary customs⁴³ and practices as well as international law (Ibid., 462). On the one hand, customs reflect and constitute the life of the Japanese people. Insofar as the state’s purpose is the well-being of the nation, it must also represent and reflect its newly emerging moral standards and changing needs.⁴⁴ As he writes,

⁴³ Nagao (1972) importantly observes that the limitation imposed on the state by customary law is not *de jure* but *de facto* (181). According to him, this emphasis on the possibility of *de facto* limitation on the sovereign authority of the state is where Minobe diverges from Jellinek.

⁴⁴ To be sure, customary law is not the only form of “*de facto* limitation.” According to Minobe, all social circumstances and natural forces may influence the exercise of the sovereign authority: “In practice, the state cannot avoid being subjected to many forms of limitation both from within and without. All social circumstances and natural forces have a bearing on the exercise of the power of the state. Most important of all for the effective exercise of the power of state are the support of economic and military power. Unless

The fact that the power of the state is limited by the forces of nature by no means infringes upon the supremacy of the state. The British have a saying that there is nothing that Parliament cannot do except change male into female and vice versa. This saying is intended to dramatize the omnipotence of Parliament. But even this saying recognizes the fact that state power-for all its omnipotence-cannot convert male into female. Only the power of nature can do this. The state is helpless against limitations imposed by the power of nature. Customary law and the laws of reason are powers of nature. Their power to limit the state is no different from that represented by the distinction between male and female (cited in Nagao 1972, 181).

On the other hand, Japan coexists as a legal entity with other states within the international order. This legal status necessarily renders Japan subject to norms and treaties governing international relations (1935a, 462). Thus, Japan must respect these regulations, particularly if it seeks to fulfill its ambition to become a new world power. These restrictions thereby limit the state's absolute authority.

Moreover, the state's sovereignty is limited because it must fulfil its promises as expressed in declarations, imperial orders, and domestic law (Ibid., 462). According to Minobe, the externalization of will necessarily postulates an audience, forming a binding relation between the expressor and the recipient. When the state declares its will to its subject, this declaration is not a self-imposed rule but a promise (Ibid., 468-482). Given that acting to fulfil a promise is a fundamental principle of any legitimate constitutional state, and insofar as it seeks to establish itself as a legitimate actor, the state must follow through on its promises. In these respects, even the state itself does not enjoy limitless power or authority.

supported by economic and military power, the state power invariably be restricted by foreign states and may not effectively be exercised even within its own territory” (cited in Nagao 1972, 178).

A Democratic Transformation of Shin-min into Koku-min

As an attempt to situate Minobe's legal thought in the context of Taishō Democracy, most researches on Minobe's emperor organ theory, both Anglophone and Japanese ones, have focused on its institutional design and the emperor's status in the constitutional state (e.g., Furukawa 2011; Hayashi 2009; Ienaga 1964; Kawagishi 2003; Kawaguchi 1999; Miller 1965; Nagao 1972). Though such a scholarly focus is necessary to understand Minobe's writings within the historical context of his time, it overlooks a crucial element of his political thought: the theoretical attempt to transform *shin-min*, subjects of the emperor into "the people" of the constitutional state – *koku-min* – through the Imperial Diet as a representative institution. For instance, while *Minobe Tatsukichi: Interpreter of Constitutionalism in Japan* by Miller is an excellently documented study of the constitutional ideas of Minobe, it does not provide any plausible account of Minobe's decision to use the word "*koku-min*" instead of "*shin-min*" as a reference to people living under a constitutional state. To be fair, acknowledging Minobe's hope for democratic transformation, Miller does emphasize that "the diet existed for the purpose of representing the people" (1965, 118). However, his inattention to the distinction between *shin-min* and *koku-min* in Minobe's legal thought results in a problematic conclusion that "the very *raison d'etre* of the diet was to enable subjects of the emperor to assist in the affairs of the state" (*ibid.*). As discussed earlier, Japanese people throughout the Meiji Period were considered only imperial subjects, or *shin-min*. The Meiji Constitution, for instance, used the language of *shin-min* to refer to subjects of the Japanese state. This Imperial subject, however, made increasingly little sense in the context of Taishō's rule: a weak Emperor, a shift in power from oligarchic statesmen to a legislative assembly, the growth of political parties, and increased Western intellectual, political and cultural influences. Japan's *de facto* political shift toward constitutionalism rendered *shin-min* - conceptualized as a passive

subject of the emperor - obsolete. In this respect, it is crucial to point out that the challenge for Minobe was to reconcile this pre-constitutional *shin-min* with Japan's actual politics.

Minobe's early writings explain this theoretical project that (1) develops a new interpretation of the Meiji constitution that would *partially* liberate the Japanese people from the authority of the emperor and (2) creates a new political vehicle for the Japanese people to function - along with the emperor - as an organ of the state. Minobe does this by drawing on two elemental Japanese concepts, *koku-tai* and *sei-tai*. The concept *koku-tai* originally concerned questions of federalism and the location of sovereignty (Kawaguchi 1999, 67). Conservative constitutional scholar Hozumi understood *koku-tai* as the fundamental essence of Japanese society, an essence that had been embodied in the unbroken line of emperors who had reigned over Japan for ages eternal (Kawagishi 2003, 95-101; Minear 1970, 70). *Koku-tai* locates sovereignty, such that, if it resides in the individual, then the state is a monarchy, and if not, it is a republic (Minear 1970, 66; Kawaguchi 1999, 67). To quote Hozumi, "the usage of the word *koku-tai* is not unified. Hitherto its common usage has been to designate broadly the peculiarities of a state or a race. To be sure, the locus of sovereignty has always been one of the characteristics of a state, but the term's meaning has not always been restricted to this. However, when we consider the state solely from the viewpoint of law, the locus of sovereignty is an extremely important characteristic, and yet there is no appropriate word to express it. For this reason, I apply the term *koku-tai* to it and thus facilitate the explanation of legal principles" (cited in Minear 1970, 66-67). In contrast to *koku-tai*, Hozumi saw *sei-tai* to be the historical arrangement for the exercise of political authority or a specific governmental organization under the given *koku-tai*. While he accepted Hozumi's understanding of *sei-tai*, Minobe disagrees with Hozumi in that he saw *koku-tai* as a *nonlegal* concept (1935b, 211-243; 1948a, 937-953). For Minobe, *koku-tai* references the Japanese national

character - and, indeed, the written symbols for *koku-tai* literally mean “national body.” While the concept had historically emphasized *shin-min*’s loyalty to the emperor, this imperial authority is not intrinsic, for two reasons. First, in the framework of emperor organ theory, the emperor does not possess or embody sovereignty itself. He may have the authority to serve the state as the supreme commander of the Army and Navy, as well as the head of the state and the chief priest of Shinto (1923b, 199), but he is merely an organ of the state. Though his may be a superior organ based on customary practices prior to constitutionalization, all organs represent and execute the will of the sovereign, i.e., the state. Second, even though *shin-min*’s loyalty to the emperor is a historical fact, for Minobe this is a fact that belongs to the realm of culture rather than of law and governance. Adducing the Russian Empire and the Qing Dynasty in China as examples, Minobe argues that monarchy as a type of government has existed throughout human history (1935a, 237). Accordingly, if Japanese monarchy is part of *koku-tai*, it is illogical to contend that *koku-tai* is an intrinsic, incomparable characteristic unique to Japan. *Koku-tai* becomes uniquely Japanese only if it is founded upon the tradition of *shin-min*’s voluntary loyalty to the emperor. As Minobe writes,

Among those who advocate the uniqueness of the Japanese *kokutai*, there are some who argue that the emperor is the subject of sovereignty -a position directly opposed to ours- and who try to make it appear as though the idea were their own and unique, not something copied from Western theories. Actually, however, the theory is not particularly uncommon in the West. Indeed, the West is the place where the idea originally germinated. . . . Sir Robert Filmer of England and Jacques B. Bossuet of France advocated the divine right of kings, that ‘kings have power conferred upon them by God and rule the state on behalf of God.’ And in Germany, von Haller contended that the monarch was above the state and that the state was something built by the monarch. In more recent times, there are also theorists who maintain that the monarch himself is the subject of sovereignty. These are all Western ideas; they are not something native to Japan.... However, there are self-styled *kokutai* theorists who argue as though absolute monarchy were the *kokutai* of Japan. This is a preposterous misunderstanding; nothing could be farther from truth. Contrary to their view, I am of the opinion that the history of Japan has never been burdened with an absolute monarch, and that herein lies the wonderful thing about our *kokutai* (cited in Nagao 1972, 177).

For these two reasons, Minobe argues that *koku-tai* is compatible with constitutionalism. The constitutional state thus represents nothing more than a historically appropriate *sei-tai*, one able to accommodate theoretically the development of a liberal democracy with Japanese traditions like *koku-tai* and the emperor (1935b, 75). By drawing on this distinction between *koku-tai* and *sei-tai*, Minobe redirects attention away from the cultural tradition of *shin-min* as an imperial subject and toward *koku-min* as a political agent separate from and independent of the emperor. However, Minobe was fully aware of the socio-cultural limitations of the Taishō period where, despite educational reforms, technological developments, and institutional innovations, the Japanese people continued to embody lingering characteristics of *shin-min*. Even though he hoped the Japanese people would become a new political subject for the constitutional state, the empirical prospects for such a radical change must have been uncertain. In light of this contextual constraint, Minobe needed to invent an institutional framework which would allow for the slow but consistent maturation of the Japanese people into *koku-min*.

It is within this context that the role of the Imperial Diet becomes crucial in Minobe's theory. The Diet then consisted of two Houses, a House of Peers and a House of Representatives. The former was comprised of the members of the Imperial Family, orders of nobility, and those nominated by the emperor. The House of Representatives was comprised of members elected by the Japanese people, according to limited male suffrage in line with the provisions of the Law of Election (Itō 1906, 73).⁴⁵ As the supreme organ, the emperor has authority to (1) convoke, open, close, and prorogue the Imperial Diet, (2) dissolve the House of Representatives when he deems

⁴⁵ The 1889 Law of Election extended suffrage to men 25 years and older who paid 15 yen in taxes. Over the next several decades and in several stages, this 15-yen tax requirement was gradually relaxed and by 1925 was altogether abolished, establishing universal male suffrage.

it necessary, and (3) legislate law as the Meiji Constitution stipulates. In *Essentials of the Constitution 3* [*Kenpō Satsuyō 3*], for instance, Minobe reminds readers that, “Article 5 of the Constitution explicitly stipulates that the emperor exercises the legislative power. The Imperial Diet merely cooperates and gives consent” (1923c, 136).

Simultaneously, however, Minobe emphasizes that the Imperial Diet as an organ of the state is autonomous from the authority of the emperor because, as Article 37 of the Meiji Constitution stipulates, every law requires the consent of the Imperial Diet (Itō 1906, 75). In other words, the emperor can legislate a new law *only* with the cooperation and consent of the Imperial Diet, including “cooperat[ing] in legislation and budget control, follow[ing] an emergency order, advis[ing] the emperor, and check[ing] the executive branch” (1935c, 163). Minobe summarizes:

Constitutionalization transforms a totalitarian regime into a constitutional state. As *koku-min* is endowed with suffrage, the emperor ceases to monopolize the legislative power. Thus, it is logically natural that legislation must involve the Imperial Diet’s consent (1935a, 827).

Though he acknowledges that the emperor can dissolve the House, Minobe maintains that the emperor cannot abolish the House or the Imperial Diet more broadly. Interpreting Article 45 of the Meiji Constitution - “Members shall be caused by Imperial Order to be newly elected, and the new House shall be convoked within five months from the day of dissolution” (Itō 1906, 84) - Minobe concludes that the Diet is a check on the emperor’s authority: the Diet holds powers “to presents addresses to the emperor, to make presentations to the government, to receive petitions of subject, to review the limited state affairs, to address questions to the government, and to receive reports from the government” (Kawagishi 2003, 73). In this respect, the parliamentary system constitutes a new *sei-tai*, or form of government, and it is in this *sei-tai* that the Diet institutionalizes the will of *koku-min* as a newly constituted political subject.

As Kokubun Noriko observes, however, Minobe's conception of *koku-min* has a conservative dimension to it because the emperor remains the most powerful organ and *koku-min* has limited power to participate in politics since it cannot *oppose* (*taikō*) the emperor (1993, 44-45). While Minobe's *koku-min* can be interpreted as conservative, it is important to note Minobe's claim that the emperor must govern the country with the assistance of *koku-min* (*yokusan*) and the cooperation and consent of the Diet (*kyōsan*) (1923a, 793-806 and 842-845). In this respect, the emperor can only govern the country with the Diet and the support (or non-opposition) of *koku-min*.

To be clear, *koku-min* neither creates nor legitimates the Diet as an institution of government. The Diet originates from the Constitution, which confers upon it its legislative authority (1923c, 39); only after the Diet's inception via the constitution may *koku-min*, under conditions of eligibility, elect members to the House of Representatives. The Imperial Diet is in this sense temporally prior to the emergence of *koku-min* as a new legal, political subject. This is not because *koku-min* is unimportant in the process of legislation, but rather, as Minobe writes, because "*koku-min* becomes the subject of its own will only through the institutionalization of a parliamentary system" (Ibid., 77).⁴⁶ In that the Diet represents *koku-min* in its legislative and budgetary capacities, which is to say in representing *koku-min*'s will in the political domain, the Diet thus constitutes *koku-min* as a legal and political entity (1935b, 279-289). This is made clear in the following passage where Minobe expounds on *koku-min*:

Koku-min, as its totality, does not have the unified will. However, the notion of legal representation is not premised upon the represented's ability to express its unified will. On

⁴⁶ To be sure, the role of the Diet that Minobe articulates here is not an accurate description of how the Diet functioned at the time. Rather, it is an ideal type of the Diet in Minobe's vision of the constitutional state. In fact, Minobe criticized the Diet at the time for being unable to fulfil its expected functions (Sorai 1998, 48).

the contrary, for the reason that *koku-min* lacks such an ability or has an incomplete one, *koku-min* needs to be represented by a legal entity. . . . In the case of civil law, not to mention an infant, property without an inheritor, entities such as teenagers and incompetents are considered lacking will or having an incomplete will. These entities need to be represented and only through representation can they express a valid legal claim (1923c, 71).

Minobe here emphasizes *koku-min*'s inability or limited capacity to express itself (Nishimura 2010, 202), and his choice to compare *koku-min* to an infant suggests that *koku-min* as a legal, political agent is still in the process of development. More precisely, *koku-min* cannot be understood as a legal, political agent except through representation, for without representation, it does not have a unified will to claim self-interest. Miller aptly summarizes this point in the following way: "granted that 'the people' do not constitute a willing personality; this is not the point, for the diet does not represent an *already existing will*. It is only when the diet has already acted that the people can be said, legally speaking, to have a will" (1965, 119, italics mine). As I suggested above, Minobe may have found it unlikely that *shin-min* would have been able to transform itself into *koku-min*, the people of the constitutional state, within such a short span of time.

Here, the qualitative difference between *koku-min* and *shin-min* cannot be understated (Kokubun 1993, 56). This difference is reflected in Minobe's four principles for constitutionalism in Japan. First, the emperor governs the country with the assistance of *koku-min*. Second, Ministers of state take full responsibility for governance. Third, individuals are free and equal under the law. Finally, administration and jurisdiction are bound by the stipulations of the constitution (1935b, 119). These four principles provide *koku-min* with the framework and means to challenge maladministration and unjust laws. They thereby differentiate *koku-min* as a political actor from *shin-min*, who is merely subject to rule (Ibid., 91). It is in this sense that Minobe advocates the active involvement of *koku-min* in politics (Ibid., 84), although like other organs of the state it does not possess any absolute authority. Minobe in fact repeatedly emphasizes that the actualization of

a constitutional order depends on whether or not ordinary Japanese people realize they are one of the governing authorities of their constitutional state and must not rely passively on the government to decide the future of the nation. For him, though unwritten in the Meiji Constitution itself, the culture of self-governance is one of the fundamental principles of constitutionalism (Ienaga 1964, 61-62).

That said, Minobe's use of *koku-min* is quite slippery, referring to the people both actually and ideationally. On the one hand, *koku-min* seems to refer to the general populace at the time, for instance when Minobe criticizes the Diet for having lost the trust of the people [*koku-min*] for failing to address national interests [*kokueiki*] (Kokubun 1993, 56; Sorai 1998, 48-50). On the other hand, Minobe explicitly states that *koku-min* is the totality of individuals who constitutes the state throughout the past, present, and future (Nishimura 2010, 210). He holds this view even in his interpretation of the post-war constitution: "The preamble of the Constitution writes, '*koku-min* enjoys the benefits of the state affairs,' but *koku-min* should not be construed as the reference to the individuals who are currently living [in Japan]. As the other parts in the preamble stipulate, *koku-min* includes both 'us and our descendants'" (1948a, 630). In this respect, Minobe does not clearly differentiate *koku-min*'s referential quality from its ideational quality; *koku-min* is both a unified and future-oriented collective as well as a category of ordinary people (1923a, 769-817; Kokubun 1993, 44). This is not, however, to imply that Minobe conflated the two naively. If we understand *koku-min* to be an imagined collective in the *ongoing* process of creation and development, Minobe must have found it reasonable to synthesize the two conceptually: because *koku-min* elects the members of the Diet and is also constituted by its representation through it, *koku-min* cannot be a constative, static entity. For Minobe, the transformation of *shin-min* into *koku-min* is a temporally-extended process where *shin-min*, defined by the cultural tradition of

imperial submission, is transformed by the constitution into an increasingly active and legitimating political agent.

Emperor organ theory thus presents a model of political agency and democratic transformation which *shin-min* as a cultural body reinvents itself as *koku-min*, an expressly political subject. Put differently, while *koku-min* is newly constituted on the political plane, it is rooted in *shin-min*'s cultural tradition of fealty to the emperor. *Koku-min* is thus an ambiguous entity newly constituted as a political agent but also rooted in centuries of Japanese history - not an altogether new "people" created *ex nihilo*. And insofar as *koku-min* is directed toward democratic maturation, there is no neat transition from a pre-constitutional people to one generated by the founding act.

In this sense, *koku-min* must be differentiated from "the people" of the Western tradition. Though both refer to some political collective, broadly speaking, Minobe contends that the latter connotes "the people, the sovereign" while the former does not (1929, 59). While *jin-min* existed as a possible Japanese language equivalent of "the people, the sovereign," Japan had no political culture of acknowledging the sovereign status of "the people." *Jin-min* was therefore incompatible with the national body (Ibid., 62). Furthermore, according to Minobe, constituent power is a European myth invented by 17th century European natural law scholars who wrongly posited a hypothetical contract of pre-political people as the originating power of a constitutional state. Minobe problematizes this narrative of founding because the foundation of constitutionalism is not the romanticized vision of popular sovereignty but the culture of self-governance. As he writes,

the culture of self-governance is the primary foundation of constitutionalism. This principle is based on an idea that the execution of sovereign authority by the state should, as much as possible, accord with the will of its people, because the state is a corporation constituted by people. This theoretical position was developed by 17th century natural law scholars who formulated a theory of popular sovereignty. It argues that sovereignty belongs to people because every state comes into existence through the contract of people. Such a

view, however, is not only problematic because it considers the contract of people as the origin of the state but also implausible because popular sovereignty is not an intrinsic characteristic of every state. For the reason that the essence of the state is only that the state itself is the bearer of sovereign authority, the question of who occupies the locus of sovereign authority does not have a single answer. Only popular sovereignties accept the view that people must be sovereign, and thus monarchies do not actualize such a belief. The culture of self-governance, not popular sovereignty, is the foundation of modern constitutionalism that both monarchies and democracies share” (1923a, 888-894).

For this reason, Minobe’s constitutional state is an amalgam of constitutional monarchy and democracy; as Ienaga Saburo describes, it is a system where “the people” and the emperor govern together (1964, 108). If one understands democracy as respecting the will of *koku-min*, Minobe posits, democracy is compatible with the presence of the emperor as a symbolic authority (1935b, 75). Thus, the distinction between constitutionalism and authoritarianism lies in whether the emperor governs the country with or without the assistance of *koku-min* and the cooperation and consent of the Diet (1923a, 793-806 and 842-845).

It is important to emphasize that Minobe’s emperor organ theory indeed parallels some of the 17th and 18th-century European social contract theories such as that of John Locke. For instance, both Locke and Minobe can be seen as challenging the pre-existing scholarship on absolutism - for the former, Robert Filmer’s *Patriarcha*, and for the latter, Hozumi Yatsuka’s *Outline of the Constitution [Kenpō Teiyō]* - and developing a more democratic alternative that reflects the changing political culture of the country. Understood loosely, some might also see conceptual proximity between Minobe’s emphasis on the distinction between *koku-tai* and *sei-tai* and Montesquieu’s discussion of the relation of law to underlying principles (and the character) of the state, or the representability of *koku-min* and the Rousseauian version of the General Will. While noteworthy, elucidating these possible similarities is not the purpose of this chapter, and I allude to them to emphasize that Minobe’s theory crucially differs from its European predecessors.

Minobe's choice to use *koku-min* is thus not an ahistorical, decontextualized move rooted in some metaphysics of "the people" or universalist understanding of a democratically empowered "people." Rather, and to reiterate, the *koku-min* of emperor organ theory is a newly constituted political subject fashioned out of a culturally specific history, and as a concept it served a local and particular purpose, i.e., reconciling the presence of the emperor with the force of constitutionalization. *Koku-min* must not be understood as a replica of "the people, the sovereign" or even as a Japanese counterpart to "the people." Instead, *koku-min* is an imaginary subject - one "to come" - that is interpreted out of the Meiji Constitution for the project of building and legitimating Japan's nascent constitutional state.

The Aftermath of the Emperor-Organ Incident

For those Japanese intellectuals and political elites in the 1920s who saw in the theory a resource to undergird their calls for democratic reform, emperor organ theory was particularly influential. However, it also provoked notable controversy, immediately after it was first published and especially in the following decades as Japan tipped into fascist rule. In 1911, Minobe gave a series of lectures on the Meiji Constitution, which were compiled and published later that year. While this publication primarily addressed theoretical and institutional issues of constitutionalism, it also included a harsh criticism of Uesugi Shinkichi, a prominent disciple of and the ideological successor to the conservative Hozumi Yatsuka (Skya 2009, 158). The academic tension between Minobe and Uesugi became more visible when Minobe published a critique of Uesugi's writings on national education and the Meiji Constitution the following year (Yamazaki 2017, 74). Infuriated by Minobe's critique, Uesugi assailed that Minobe's conceptualization of *koku-tai* completely undermined the emperor's sovereignty. For him, such a problematic view of *koku-tai*

rendered the emperor nothing more than a servant of *koku-min*, who now sat in the seat of sovereignty (Kawagishi 2003, 108).

Minobe's vitriolic exchanges with Uesugi were initially relegated to the realm of scholarship. Because *koku-tai* was deeply connected to Japanese tradition and moral convictions, however, what had been no more than an academic debate between the two precipitated a hostile reaction from conservative governmental elites like Baron Kikuchi Takeo, prominent member of the House of Peers, who considered emperor organ theory threatening. Minobe excoriated Kikuchi, suggesting that the latter's "interpretation clearly demonstrates that he either did not read my work or misunderstood it" (1935c, 18-25). At this point, Prime Minister Okada Keisuke dismissed the debate as an academic matter. Controversy, however, continued to brew. Right-wing politicians and militarists who opposed emperor organ theory demanded that the Diet clarify the concept of *koku-tai*. As a preemptive measure against a possible conservative uprising, the Diet unanimously passed a proposition and resolution to clarify the true meaning of *koku-tai* (Kawagishi 2003, 110), and in 1937 the Japanese Ministry of Education, Science and Culture published *Koku-tai no hongī* [Cardinal Principles of the National Entity of Japan]. This public document explicitly defined *koku-tai* as a line of emperors unbroken for ages eternal and asserted the sovereign authority of the emperor throughout the history of Japan (Miyasawa 1970, 446-449). Despite this proclamation, the army and navy continued to criticize emperor organ theory viciously, leaving the cabinet no choice but to ban Minobe's three books on the Meiji Constitution and ordering him to modify some parts of two other books discussing political affairs. Although the Diet did not prosecute Minobe for *lèse-majesté*, he was forced to resign from the House of Peers. The following year, Minobe's liberal mentor Ichiki Kitokurō, the president of the Privy Council, resigned from his post as well.

Though emperor organ theory as a whole was challenged by the fanatic militarism and fascism of the 1930s, the democratic interpretation of the Meiji Constitution that Minobe founded and developed filtered into the discourse of *koku-tai* that circulated throughout the country's political culture in the 1930s and 1940s. Furthermore, following the Japanese government's official acceptance of the Potsdam Declaration on August 14, 1945, Minobe ultimately returned to politics after the Second World War. On October 24, 1945, Minobe was appointed to the cabinet committee for the investigation of constitutional questions [*Naikaku Kempō Mondai Chōsa Iinkai*]. Consisting of distinguished constitutional scholars and legal bureaucrats, this committee existed until February 2, 1946. Although this committee did not have any formal authority and its suggested revision of the Meiji Constitution was rejected by General Headquarters due to its conservative nature, the fact that Minobe was invited as one of its members demonstrates his academic prominence (Miller 1965, 256). Along with his involvement in the process of investigating constitutional issues, Minobe resumed writing and published four books on the new constitution until his death on May 23, 1948.

In defense of the Meiji Constitution, Minobe initially rejected a view that a new constitution is necessary for the future of Japan. In an interview reported by the Associated Press correspondent, Charles Spender, on October 19, 1945, Minobe made a following remark:

It has always been my belief that since the Japanese Constitution is quire laconic, if it were properly executed it would present no obstacle to democratic government. Accordingly, I do not believe that revision of the constitution is now necessary. It is only a matter of interpretation and good intentions. The only difficulty would be from certain forces that try to make of it a mystical thing. If it comes to amendments, then I think care must be taken to avoid its degenerating into an unscholarly, vulgar debate. For this reason, I have seen no purpose in my intervening... If the decision is made to amend the constitution then we can only get on with it, giving it our best... (cited in Miller 1965, 261).

Although Minobe altered this initial position and accepted the necessity of revising the Meiji Constitution after March 1946, he still adhered to the view that the state, not the emperor or the people, is the sovereign authority of Japan (1948a, 913-961). Consider the following passage from *A Fundamental Theory of the Constitution of Japan* [Nihonkoku Kempō Genron]:

The former constitution employed the term *tōchiken* instead of the term *shuken*; the new constitution, on the contrary, uses the term *shuken* rather than *tōchiken*. But these terms are practically synonymous; both of them mean the competence or authority to rule [*tōch no kennō*]. When it is said that *tōchiken* belongs to the emperor, or when it is said that it belongs to the people, we do not mean that either the emperor or the people is the subject of the right to govern, for the right to govern is vested always in the state itself, that is to say, the power to put in motion the governmental authority of the state, as an original direct organ of the state, was vested by the former constitution in the emperor, and by the new in the people.... The ideological foundation of the new constitution differs radically from that of the old. Under the Meiji Constitution the governmental prerogative was transmitted through an immutable line of monarchs from the founding of the state. The authority to govern was thus assigned on the basis of national historical tradition. It is assigned in the new constitution to the people.... [In either case] this accounts only for the ideological foundation, it is only a manner of thinking, for it does not tell by which organ governmental power is actually exercised.... The so-called popular-sovereignty principle does not mean that the people themselves directly perform the superintendence of governmental authority.... (cited in Miller 1965, 279).

As many have argued, Minobe's post-war writings and other published views reflect the limits of his old-school liberalism (e.g., Ienaga 1964; Miller 1965; Kawagishi 2003). At the same time, however, Minobe's emperor organ theory deeply shaped the discourse of Japan's constitutionalization process before and after the Second World War. Acknowledging this liberal tradition in the history of Japanese constitutional thought is important because it helps us to resist a reductionist view of the post-war Japanese constitution-making process, i.e., the domestic population passively accepted an externally imposed constitution (Kawagishi 2003). For instance, Andrew Arato argues that "in Japan, the reference to the popular sovereign had no content at all, as it was the American occupying authority that imposed its constitution on the defeated population" (2017, 22). Though I agree with this argument to a certain extent, there are important qualifications

to it. The reference to the popular sovereign in the post-war Constitution was not an arbitrary imposition but subtle reconciliation between the pre-existing discourse of popular sovereignty and the post-war American demand. Liberal constitutional thinkers like Minobe attempted to integrate constitutional democracy into Japan's political tradition roughly two decades prior to the post-war Constitution, and this liberal tradition must not be ignored. This is one of the primary reasons why Kawagishi rejects both the imposition theory and the internal consistency theory as an explanation of Japan's post-war constitutionalization process:

My argument of the postwar constitution as an unfinished constitutional revolution refuses to regard both imposition and continuity as its distinctive feature. A third way lies in reconsideration of the constitutional text itself and the deliberation process....The third way discovers positive participation and substantial discontinuity based upon the idea of novelty in the process of making the postwar constitution. In the process, the tradition of the *tenno* institution became an object of consideration, deliberation, and choice. Thus, the Japanese people even with help from the outsider were successful in taking the *tenno* into a constitutional framework. Despite serious limits under the occupation, in short, the Japanese people as a whole have experienced a republican moment by making the tradition in government relative. As a result, political legitimacy is no longer found in the tradition but in mutual deliberation among the people. Once popular sovereignty is declared, furthermore, the search for political legitimacy is never ending because the absolute value-giver such as the prewar *tenno* no longer exists outside the people. The establishment of the Constitution of Japan is only a beginning of beginnings (2003, 32-33).

However, despite Minobe's influence in the history of Japanese founding and the post-war constitutionalization process, the blunt rejection of emperor organ theory in the 1930s raises three interrelated issues for thinking through the implications of Minobe's project of democratic transformation. The first is that constitutional institutions and democratic peoplehood, the two pillars of constitutional democracy, do not necessarily develop simultaneously. In fact, cultivating a democratic people in certain contexts can take much more time and commitment in comparison with establishing corresponding institutions. Minobe worried that a civic culture of "the people" participating in or even resisting governmental authority - particularly the emperor's authority - did not seem to exist in early 20th century Japan. These lingering features of *shin-min* thus needed

to be transformed into *koku-min*. Such a transformation was not necessarily about encouraging civil disobedience but rather about fostering a political culture where the act of challenging the emperor's authority would be *sensible* to those involved.⁴⁷ That said, Minobe cautioned against the rise of a populism in which “the people” prioritizes partisan over national interests. It is with this caution that Minobe emphasized parliament must represent national interests (i.e., the will of the state), functioning as a check against factional politics tainted by private and group interests (Nishimura 2010, 1412). To reiterate, Minobe's task was to invent a “people” in development or to-come, where through the parliamentary system this “people” pursues national interests and checks the usurpation of power.

Second, despite Minobe's belief in its necessity for the future of Japan's constitutional state, emperor organ theory could not guarantee the unilateral and empirical transformation of *shin-min* into *koku-min*. Although the reforms of the Meiji constitutional system fostered the cultivation of democratic peoplehood to a considerable extent, the ultra-nationalist movement from 1920s to 1940s killed the momentum of such a progress and inculcated an analogy between the parent-child relationship and the emperor-shin-min relationship into the mind of Japanese people. In this respect, the gradual development of a Japanese democratic peoplehood was altogether beyond Minobe's control. The lesson of this unfortunate fate of Minobe's dream is that neither constitutional institutions nor the development of political subjecthood operates teleologically,

⁴⁷ As should be clear, I am not suggesting here that Minobe's *koku-min* was created ex nihilo: all founding preserves continuity with the past. As mentioned earlier, the modernizing developments of the Meiji Constitution and the Imperial Diet in particular were the result of fierce struggle in the previous two decades between social movements like the Freedom and People's Rights Movement.

, which advocated popular participation in the political process through parliamentary government, and *hanbatsu* oligarchs who had spearheaded the Meiji Restoration and who at the time had a virtual monopoly on political power.

moving steadily toward fuller inclusion, equality and political participation in the future (Olson 2007, 333). No founding act – including the inverted founding encapsulated in emperor organ theory – can escape from the arbitrariness of the future, whether theoretically or in political practice.

Third, even though Minobe's invention of *koku-min* held great promise for democratic peoplehood, emperor organ theory admittedly juxtaposed these democratic aspirations with elitist tendencies. Positing that *koku-min* realizes its will only through the Diet may have promoted a culture of passive citizenship instead of one defined by the active political participation that Minobe in fact expected of it. Moreover, naming the emperor the supreme organ of the state as a form of *koku-tai* may have preserved traditions of fealty to him, contrary to Minobe's intentions, thereby hindering the development of a culture of participatory citizenship (Ienaga 1964, 108). These ambivalent democratic tendencies, however, reflect Minobe's worry that such a radical societal change might destabilize the whole country altogether, dismantling the very foundation of nationhood. For Minobe, the most effective way to constitutionalize a "pre-modern" polity while preserving the essence of the nation was not through a radical revolution but rather through a *process* of constitutional learning, one initiated by retroactively interpreting the constitution and positing a gradual transformation toward a more fully democratic form of government.

Conclusion

For "non-Western" nations whose understanding of constitutional democracy was still in the process of "translation" in early 20th century, the urgent task was to invent democratic peoplehood from within their own historical and institutional conditions. As Leigh Jenco notes, however, the conceptual sources of this democratic "people" were not necessarily "always-already available" (2010, 14). What was to be created was not simply the appropriate institutions for

constitutionalism but also “the people” living under it as both its subject and its legitimator. As an attempt to achieve this democratic transformation within the historical and institutional conditions of early 20th century Japan, Minobe invents “the people” of a constitutional state, *koku-min*, out of the pre-existing Meiji Constitution - a constitution which on face had understood the Japanese people to be only *shin-min*, the presumed subject of the emperor. For Minobe, the role of the parliament is essential to this transformation. By positing the emperor as an organ alongside the Diet, and by naming the Diet the voice of a people not yet fully present – and thereby imagining it into being – emperor organ theory limits the emperor’s sovereign authority and simultaneously empowers the Diet to function autonomously, both as a check on the emperor and also as the juristic will of a *koku-min* to-come. In this framework, at stake in the Diet is not a question of political representation as re-presenting the will of an already articulated “people.” Emperor organ theory instead altogether sidesteps these thorny issues of representation in claiming that the Diet presents - it makes, and makes present - rather than re-presents the will of the people. In short, representation constitutes the people (see also Disch 2012; Pitkin 1967).

To be clear, Minobe’s emperor organ theory does not entirely escape tensions around democratic transformation, or dissolve legitimacy problems. Rather, it suggests a way to break through Rousseau's paradox and helps us approach it from a different angle, one which raises an alternative – and provocative – set of questions about the development of democratic peoplehood. In place of a model of democratic transformation that sees the nation/people as primordial sovereign creating and legitimating the constituted order of law and institutions, Minobe reads democratic transformation as consisting in three parts: first, the constituted order, second, the nation/people as extant tradition, and, third, the people as an emergent democratic force. For Minobe, the act of re-interpreting the constitution helps the second element, the traditional

nation/people, become the third element, the democratic people. The central challenge here is not the normative authority of the people, but the transformation of the nation/people as extant tradition into the democratic people, i.e., *shin-min* into *koku-min*. In this respect, if Rousseau's legislator pursues the democratic transformation of pre-political people by the act of law-giving, Minobe, on the contrary, embarks on such a project by the act of legal interpretation. In other words, emperor organ theory invents "the people" out of the Meiji Constitution as a democratically empowered subject to-come.

As explained, however, democratic peoplehood cannot be created *ex nihilo*: it must be invented and fostered incrementally, and it does not necessarily precede institutional findings. *Shin-min*'s transformation into *koku-min* relies upon developing a democratic culture where one comes into one's status as a political subject, rendering *sensible* the act of challenging authority, whether embodied in the emperor or in elites. Minobe's emperor organ theory thus prompts a vision of democratic transformation that moves constituent power away from a pre-constitutional people to the constitution itself, and more precisely to a radical reinterpretation of that constitution. This redirects our attention not to democratic transformation as a single, originary moment but instead to the core task of fostering a civic culture, here through the incremental process of political representation. In neither teleological nor unilineal fashion, this distinctive model of democratic transformation imagines out of the passive subject of authority an active democratic agent, a "people" to-come.

Chapter 4: Cho Soang's Vision of a New Democracy

Do not say that social movement excludes political movement. There is never a political movement which is not at the same time social.

- Karl Marx, *The Poverty of Philosophy*

This chapter investigates Cho's vision of democratic transformation developed in one of the most troubling times in Korea's modern history. For this purpose, the first section provides a brief sketch of socio-cultural changes that shaped the political landscape of early 20th century Korea and subsequently demonstrates how these nationwide upheavals influenced the emergence of a theme that represents Cho's political thought: the transformation of *sin-min* in the National Polity of the Great Han of 1899 into *in-min* of the 1919 Provisional Charter. The second section begins to elaborate on this theme. In his essays, political pamphlets, and telegrams, Cho argues that the transformation of *sin-min* into *in-min* would remain incomplete unless the revolutionary spirit of the March First Revolution could be translated into founding of an egalitarian polity. In an attempt to actualize this vision of democratic transformation, Cho proposes the "Principle of Three Equalities [*samgyunjuŭi*]" as the founding philosophy of a constitutional democracy to come. I conclude this chapter by highlighting the unfortunate fate of Cho's vision of founding as non-domination. Shortly after the liberation of the Korean Peninsula, Cho was abducted to North Korea during the Korean war (1950-1953), and thus he could not see the fruition of his dedication to democratic founding in South Korea.

Cho's Intellectual Context

At the turn of 20th century, imperial Japan emerged as a new locus of power in Northeast Asia by securing two consecutive victories against Qing China (1894-1895) and Russia (1904-1905). For the reason that a nascent Korean empire was incapable of protecting itself from this ambitious regional hegemon, Korean intellectuals at the time took the fall of Qing China and Russia as an event tantamount to a national crisis. When imperial Japan finally annexed the Korean peninsula in 1910, government elites and ordinary people alike single-heartedly joined independence movements and pondered the issue of national self-determination. Cho Soang, a leading academic of the time, was amongst them. Before examining in detail Cho's theory of democratic transformation, let me briefly introduce Cho's intellectual context.⁴⁸ In early 19th century Korea, commoners were referred to as *in-min*, one of the unprivileged social classes subject to the power of its ruler(s) (Kim et al. 2015, 211; Pak 2009, 125; Song 2011, 74). Following the Japan–Korea Treaty of 1876 [*Kanghwado Choyak*], however, the idea of constitutional democracy and its institutional designs were gradually introduced to government elites, and newly educated intellectuals dispatched to America and Meiji Japan began to problematize this conventional understanding of *in-min* as part of their project to found a modern nation-state (Kim 2009, 16; Song 2011, 66; Yun 2001, 58). Japan educated intellectuals, such as Pak Yŏnghyo (1861-

⁴⁸ Scholarship on Korean constitutional history, both in English and Korean, has been growing substantially in recent years (e.g., Cho 1987; Chŏng 2004; Han 1999; Han 2009; Hahm and Kim 2015; Kim 2009; Kim 2006; Kim 2017; O 2009; Shin 2004; Sŏ 2006, 2013; Song 2011, 2013). For instance, in his two volume work *The Birth of the People* [Inmin ūi T'ansaeng] and *The Birth of the Citizen* [Shimin ūi T'ansaen], Hogŭn Song develops a nuanced sociological narrative that demonstrates how *in-min* emerged through three pathways in late 19th century Korea: the advent of Christianity, the expansion of a literate population, and the revolts of peasants (Song 2011, 37-43). On the topic of Korean constitutional history more specifically, Hŭikyŏng Sŏ's and Yuhyang Kim's works are informative. My reconstruction of Cho's intellectual context is indebted to these new contributions.

1939), Kim Okkyun (1851-1894), Yun Ch'iho (1865-1945), and Yu Kilchun (1856-1914), were the vanguard of this movement (Kim et al. 2015, 168). Strongly influenced by Fukuzawa Yukichi's modernization theory, these reformers shared a conviction that Meiji Japan (even though they considered it merely a shadow of the of the Western original), not the Qing Dynasty, was the role model for Korea's modernization (Schmid 2002, 109-113). For them, as Schmid aptly puts it, "the culture targeted for expurgation was not that of the immediate colonizing power, as is so often the case with colonies of the West, but that of its neighbor, China" (Ibid., 11). Capitalizing on Japan's growing intervention in domestic affairs, they took the lead in the Kabo Reform of 1884 [*Kabogaehyök*] that urged the government to establish the modern education system for commoners and institutionalize the protection of natural rights. Commoners *qua in-min*, they insisted, were not only the *foundation of the nation* but also the *bearers of natural rights*. While initially reluctant, King (later Emperor) Kojong soon recognized the need to modernize existing institutions and implemented a series of reforms to seek national prosperity (Kim et al. 2015, 227-230).

Along with these institutional changes from above, popular uprisings from below further accelerated the nation's transition away from the centuries of Confucian rule. Following the 1894 Peasant Revolution [*Tonghak Nongmin Undong*], the Korean caste system finally collapsed and the establishment of the 1898 People's Assembly [*Manmin'gongdonghoe*] ensued. As the first civil group to encourage commoners' participation in politics, the 1898 People's Assembly demanded a new system of governance where commoners and the emperor would govern the country *together* [*kunmin'gongch'i*].⁴⁹ The emperor initially gestured to accommodate this demand, but ultimately

⁴⁹ On the 1898 People's Assembly, see See Sö (2006, 40-48) and Kim et al (2015, 257).

dissolved the 1898 People's Assembly in the fear of coup d'état and political turmoil (Sō 2006, 142-144; Kim et al. 2015, 244-249).⁵⁰ Though drafted in an attempt to appease the protestors over the issue of dissolution, the following imperial message evinces the monarch's will to modernize but not democratize the country:

You multitude, listen to Our words! Many of Our Edicts and instructions you have disobeyed, clamoring in front of the Palace through nights or congregating under tents on thoroughfares, going even so far in disorderedly excess...But since We ascended the Throne, the administration of the country has not been as good as We wished, giving rise to repeated disturbances. We alone are responsible for the sins of your people. We know this fully now, and We feel exceedingly ashamed... We have now come out to the front of the Palace *to instruct you as (parents) would their little children*. Each word represents a drop of tear...Henceforth, the Sovereign and subject ought to act on mutual confidence and attain righteousness. We shall widely search the wise and able (for officers) and accept the advice of even woodcutters. You should not raise unfounded rumors while We on Our part shall not heed unsought counsels. (*The Independent* 1898, 2, italics mine).⁵¹

Soon after the announcement of this imperial message, the emperor promulgated the "National Polity of the Great Han" of 1899 to consolidate his royal authority and in it stipulated a set of obligations and duties of commoners *qua sin-min*, a presumed subject of the emperor (Kim 2009, 214; Sō 2006, 46; Song 2013, 316). Although this imperial constitution promised that "the emperor with unlimited powers" will protect *sin-min* from the threat of both Western powers and imperial Japan, the public grew further disillusioned with such bravado, and the discourse of "popular rule" became prevalent in the public sphere (Hō et al. 2019b, 253-254 and 268-276;

⁵⁰ Founded by Korean intellectuals who received Western education, this organization functioned as a "public sphere" where ordinary Koreans, especially those of low social status, gathered to discuss and deliberate on national issues (Sō 2006, 142-144).

⁵¹ This is an English translation in *The Independent* [Tongnipshinmun].

2019c, 210-216). For instance, consider the following news article published on October 7, 1905 by *The Korean Daily News*⁵² in which an anonymous author exclaims,

Given that government officials failed to rectify their habitual greed even in the face of growing threat of foreign invasion, Korean people have no option but to seek self-protection and self-interests.... What are rights? They refer to self-protection. What is a duty? It is an effort to seek self-defense (1271).

Another news article published on June 4, 1909 by *The Korean Daily News* similarly discusses the meaning of cultivating a new people:

Who are the new people we hope to cultivate? Are they docile ones? It is wrong to cultivate passive citizenship in the world where the strong prey upon the weak. Doing so is like putting sheep out to pasture while tigers are roaming around in the area.... Anyone celebrating the cultivation of compassionate, docile people is a public enemy of all Korean people. Oh well, my beloved Korean compatriots, be fierce, proud people.... (cited in Hō et al. 2019b, 272-273).

By the time of the 1910 Japan–Korea Annexation Treaty, the emperor’s dominion over the Korean peninsula became only a titular one. At this time of unprecedented crisis, where the emperor had failed to fulfil his sovereign duties, commoners were expected to transform themselves into an active political agent. In fact, the March First Revolution, one of the earliest public displays of Korean mass resistance during Japanese colonial rule, declared commoners, not the defunct imperial family or the Japanese emperor, as a new sovereign authority. The movement was instigated by 33 Korean independence activists who drafted the Proclamation of Korean Independence [*Kimi Dongnip Sŏnŏnsŏ*] and organized a mass demonstration in Seoul for March 1, 1919, the day of the funeral procession for Emperor Kojong. On the appointed day, the 33 leaders, with the hope of bringing international pressure on the imperial government to end

⁵² The Korean Daily News was founded by Ernest Bethell in 1904 with support of anti-Japanese nationalists in Korea; Bethell was a British journalist who initially visited Korea to report on the Russo–Japanese War.

colonial rule in Korea, signed and distributed their proclamation and had coconspirators read it in townships throughout the country. Initially targeting only students and independence activists, the movement rapidly caught the ears of common people, including merchants, peasants, and workers (Ryu 2009, 182).⁵³ The suppressed anti-Japanese sentiments of the Korean people were released in one great explosion, and mass demonstrations took place throughout the nation, forming one of the largest national protest rallies against foreign domination in Korean history.

Inspired by the March First Revolution, a group of independence activists gathered in Shanghai, China to establish a provisional government.⁵⁴ The first meeting was convened on April 10, 1919, and among notable figures, Cho Soang, with the help of Yi Kwangsu and Shin Ikhi, drafted the first constitutional document of the Provisional Government of the Republic of Korea.⁵⁵ After an extended discussion and multiple rounds of revision, the “Provisional Charter of the ROK” came into existence on April 11, 1919. Inheriting the spirit of the March First Revolution, the 1919 Provisional Charter declared the establishment of the first democratic republic [*minjugonghwaguk*]

⁵³ It is estimated that before the Imperial government finally suppressed the movement 12 months later, approximately 2,000,000 Koreans had participated in the more than 1,500 demonstrations. About 7,000 people were killed by the Japanese police and soldiers, and 16,000 were wounded; 715 private houses, 47 churches, and 2 school buildings were destroyed by fire. Approximately 46,000 people were arrested, of whom some 10,000 were tried and convicted (Kim 2017, 28).

⁵⁴ To be sure, the Provisional Government of the Republic of Korea was not the only provisional government established in 1919. The Assembly of the People of the Great Han [Taehan'gungminuihoe], the first provisional government to be established, was located in Vladivostok, Russia. Independent activists who were in Korea also found the Provisional Government of Hansŏng [Hansŏngimshijŏngbu], a provisional government located in Seoul around the same time. However, these two governmental organizations were merged into the PGK in Shanghai on 11, September 1919 (Kim 2017, 35-38). Furthermore, legal documents drafted and announced by these two organizations lacked the constitutional frameworks and contents (Kim 2017, 33-38).

⁵⁵ Before its eventual abrogation in 1945, the 1919 Provisional Charter was revised five times (in 1919, 1925, 1927, 1940, and 1944).

in Korean history” (Han 1999, 44). The following are the first three Articles that define the founding philosophy of the 1919 Provisional Charter:

*Article 1. The Republic of Korea shall be a democratic republic*⁵⁶.

Article 2. The Republic of Korea shall be governed by the resolution of the Provisional Assembly.

*Article 3. The people of the Great Korea are equal regardless of sex, social status, and wealth. (cited in Han, 1999, 41).*⁵⁷

A Democratic Transformation of Sin-min into In-min

In-min of the March First Revolution was qualitatively different from *sin-min* of the National Polity of the Great Han of 1899. While the former was the sovereign authority of a constitutional democracy, the latter was the presumed subject of the emperor (Kim 2009, 78). Indeed, Cho interpreted the collective action of 1919 as a call for popular sovereignty, as most independent activists surely did (e.g., Han 2009, 180; Sō 2012, 72).⁵⁸ Considering this nationwide

⁵⁶ The word “democracy” was in circulation even before the promulgation of the 1919 Provisional Charter. When the word “democracy” was used in governmental reports and newspapers in late 19th century, it usually referred to non-monarchical governments (Yi 2010, 53-57). According to Yōngrok Yi, however, Cho was the first one to use the compound word “democratic republic” as the reference to popular sovereignty.

⁵⁷ It is crucial to note that each revision of the 1919 Provisional Charter altered the dynamics between Article 1 and 2. For instance, the word “democratic republic” was deleted from the “Provisional Constitution [Imshi Hōnbōp], the first revision issued by the united KPG on 11, September 1919. Article 2 of the Provisional Constitution instead stipulates that “the sovereignty of the Republic of Korea resides in the totality of the people of the Republic of Korea [Taehaninmin]” (cited in Han 1999, 44). In its second revision on 7, April 1925, however, “democratic republic” reappears in the document. The shifting power dynamics between the socialist factions and the nationalist factions in the PGRK was arguably the primary reason behind these rather frequent changes in the constitutional documents.

⁵⁸ Even after the March First Revolution, political movements to reinstate monarchy [Pokpyōkuntong] persisted until the 1920s (Han 2009, 179; Sō 2013, 77-78). The most influential organization was the Great Unification Association [Taedongdan]. Its members believed that the system of emperorship could function as a symbol of national solidarity and thus attempted to install a new emperor in colonial Korea (O 2009, 282-283; Sō 2013, 77). Although it is unclear whether the Great Unification Association had any substantial

celebration of the birth of a new people, one may find it curious as to why Cho initially thought that the commoners were not fully prepared for the practice of self-governance. Especially during his undergraduate years at Meiji University, Japan (1908-1912)⁵⁹, Cho was quite critical not only of the corruption of governmental officials, but of the ignorance of the masses: “Above our nation exists the corrupt government and below the selfish, ignorant masses. For this reason, we remain completely uninformed of the ongoing power dynamics between world powers...” (cited in Hong 2014, 90).⁶⁰

That said, Cho in his early years was not entirely pessimistic about the possibility of democratic transformation in colonial Korea. He believed that a visionary like himself could guide the general public to the path of enlightenment. With such conviction, Cho hastened his return to Korea upon the completion of the graduation examination in 1912 and moved to Shanghai, China to join like-minded independence activists in residence shortly after (Kim 2015, 45). Cho’s

impact on Cho when he was drafting the 1919 Provisional Charter, Article 8 does express a concern about the lingering influence of monarchy in early 20th century Korea: “the Republic of Korea provides preferential treatment to the imperial family” (cited in Han 1999, 45).

⁵⁹ Before moving to Shanghai, China in 1916, Cho studied liberalism and constitutionalism at Meiji University. Meiji University was founded in 1881 by Kishimoto Tatsuo (1851-1912), a leading scholar of liberal constitutionalism at the time.

⁶⁰ When Shin Ikhi was travelling around Meiji Japan as a student at Waseda University, Japan, he too emphasized the necessity of educating ordinary Koreans in order to fight against Japanese imperialism (Yi and O 2007, 92-94). Similarly, Yi Kwangsu in a magazine article published in 1922 claims that even though the Kabo Reform introduced new institutions and laws, it ultimately failed because those who were governed by them remained “outdated” (1993, 100). Drawing on prominent French sociologist Gustave Le Bon’s distinction between the fundamental national character which is permanent and the secondary national character which is flexible and amendable, Yi urges Koreans that they must reconstruct the latter to attain modernization. For Yi, even though the fundamental national character of Korean people is admirable, its secondary national character is problematic. Though Yi focuses primarily on the reformation of Korean national character, he implies that such a reform is one of the preconditions of democratization. See Yi (Ibid., 90-107).

involvement in the independence movement came into fruition in 1917. With the help of other notable activists, Cho drafted the “Declaration of Harmonious Unity [*Taedong Tan'gyŏl ūi Sŏnŏn*]” that laid out a detailed plan to establish a provisional government.⁶¹ Recognizing the difficulty of completing such a mission in his home country under heavy surveillance, Cho requested independence activists to consider an alternative. Even though the 1917 Declaration was not the only declaration circulated at the time, it was the first one to demand the establishment of a unified provisional government constituted of overseas activists (Han 2009; O 2009; Sŏ 2006). Notwithstanding Cho’s hope, the 1917 Declaration did not garner much attention from the general public. As Cho writes in recollection, “believing that the formation of nationwide solidarity is necessary to achieve independence, I drafted and printed out a declaration with my comrades on July 1917, one that invited people from all levels of society, both at home and abroad. Its primary purpose was to convene a representative meeting and establish the supreme institution of governance. However, although numerous associations arose for heroic purposes, none of them responded to my request. I was quite disappointed by this lack of national solidarity and lamented this situation” (1979b, 67).

Cho came to reconsider this initial pessimism approximately two years after the 1917 Declaration. In the year of 1919, the entirety of *in-min* represented by national protest rallies

⁶¹ According to Donggŏl Cho, the 1917 Declaration introduced a form of national sovereignty in which “Han” or nationhood authorizes the constitutionalization of Korea (1987, 127-129). He argues that this gesture is unique because it differs from the invocation of natural law in the Western intellectual tradition (1987, 126). For instance, consider the following excerpt from the 1917 Declaration: “Our Han, from time immemorial, has been the Han of Han people and never the Han of non-Han people. Throughout Korean history, the transfer of sovereignty between the people of Han has been our customary national law. The concession of sovereignty to non-Han people is fundamentally invalid, and Korean people will not approve it. Thus, Emperor Yungghŭi’s renouncement of the sovereignty in 1910 is an implicit consent to abdicate his sovereign authority. Accordingly, our comrades naturally have a privilege to succeed three treasures (people, territory, and sovereignty), govern the nation, and fulfil a duty to inherit the royal line” (cited in Cho 1987).

throughout the country ushered in a new era of democratic self-rule. Witnessing *Pouvoir constituant* in action, Cho became fully convinced that *sin-min* as a category of the general public was no longer appropriate.

Of course, a prudent reader is likely to disagree with this seemingly naive (or even biased) interpretation of the March First Revolution. After all, to what extent would it have been possible for *sin-min* to develop a collective consciousness as a self-governing people in such a short span of time? Cho's answer to this question can be found in "Historical Foundation of the Korean Revolution [*Han'guk Hyŏngmyŏng ūi Yŏksajŏk T'odae*]." In this revisionist writing, Cho contends that the collective action in the year of 1919 was not a singular moment of national consciousness but the culmination of four consecutive democratic revolutions in 1863, 1884, 1894, and 1896 (Cho 2019, 101 and 142). The first revolution or the "Imperial Revolution [*Hwangjok Hyŏngmyŏng*]," according to Cho, was initiated by Yi Haeung (1821-1898), Regent of *Chosŏn*⁶² during the minority of King (later Emperor) Kojong from 1863 to 1873. Although Cho highly values of a series of reforms implemented by the Regent, one that attempted to bridge the divide between conservatives and liberals, eradicate the corruption of government officials, and rectify the unfair tax system, Cho pinpoints the Regent's dictatorial attitude as the primary reason why he failed to gain firm support from newly educated governmental elites and the general public (Ibid., 135).

Cho then elaborates on what he calls the "Revolution of the Nobility [*Pŏryŏr Hyŏngmyŏng*]" in 1884. In a more favorable tone, he describes foreign educated young aristocrats who led this

⁶² Chosŏn was a Korean dynastic kingdom that lasted for approximately five centuries since it was founded in 1392. In October 1897, King Kojong officially re-designated the national title as the "Great Korean Empire" and crowned himself as its first emperor.

revolution as ambitious but naïve reformers. According to Cho, although these reformers had a pioneering vision, they lacked political power to push forward their plan and thus solicited imperial Japan's military support. Cho argues that the reformers' project failed because of this reliance on the imperial Japanese army; both the Chinese garrison stationed in the country and the general public came to see the "Revolution of the Noble" as an insidious form of Japanese intervention (Ibid., 136).

The spark of the third revolution was lit a decade after in Cho's account. This time, underprivileged peasants across the nation, not the imperial families or the nobles, were the vanguard of creating a new political order: the "Revolution of Commoners [*P'yŏngmin Hyŏngmyŏng*]." Deprived of fundamental rights for centuries, this angry mob armed themselves to protect the nation, comfort *in-min*, prohibit despotism, and eliminate the causes of evil [*Poguganmin, Chep'okkumin*] (Ibid., 101 and 137). For the first eleven months, the government attempted to suppress this nationwide "riot" without seeking any foreign support but eventually resorted to the military force of Qing China again (Ibid., 137). Though ultimately suppressed by the government, this peasant revolution, in Cho's view, was one of the watershed moments in modern Korean history. It succeeded in pressuring the government to implement egalitarian measures for the well-being of the underprivileged domestic population.

Cho's next focus is the Independence Club [*Tongnip'yŏp'oe*], the first modern civil organization to ever exist in Korean history: the "Civil Rights Revolution [*Min'gwŏn Hyŏngmyŏng*]." Founded on July 2, 1896 by Sŏ Chaep'il (1864-1951), a Korean American political activist and physician, the Independence Club embarked on a mission to establish a vital civil society in late 20th century Korea. Its achievements included the publication of *The Independent*, the first privately managed modern daily newspaper in Korea and the establishment of the 1898

People's Assembly. Unfortunately, however, the Independence Club was dissolved by the government two years after its founding. Cho attributes the cause of its dissolution to elitism, the dependence on the U.S., and internal factionalism (Ibid., 138).

After providing brief summaries and evaluations of these four "revolutions," Cho finally turns to the discussion of the March First Revolution. According to Cho, the collective action in the year of 1919 was a failure, as were its four precedents. At the same time, however, he stresses that the March First Revolution finally completed the *longue-durée* process of forming a collective identity among Koreans as *in-min*. Cho clarifies this argument in the following passage:

To sum up, the Korean revolution initiated by the imperial family subsequently invited in aristocrats, intellectuals, students, laborers, and peasants.... From the perspective of political ideology, the revolution *qua* vengeance evolved into an emancipatory movement that pursues the restoration of sovereignty, democratic independence, and the liberation of all subjugated classes.... The revolution at inception was empty, but it currently moves toward an appropriate direction to establish neo-socialism by inheriting the principle of democratic constitutionalism (Ibid., 141).

Though this historically particular and theoretically intricate passage stands in need of careful unpacking, it is relatively easy to distill from it the gist of Cho's argument. For Cho, the collective action in the year of 1919 was the culmination of one continuous project of democratic movement through which a collective consciousness as *in-min* gradually emerged among the Korean people regardless of their socio-political distinctions, such as sex, wealth, and profession. In his view, previously a hierarchized, diversified population converged on the project of founding a new political reality. The movement at beginning was exclusive, disorganized, and reactionary but in its fruition embodied the principle of inclusiveness, harmony, and voluntarism. As such, even though the March First Revolution was ultimately suppressed by the imperial Japanese armed forces, Cho sees in it the *Pouvoir constituant* in action. As he puts it in a repentant tone, "previously I lamented our nation lacks the unity [necessary to pursue a collective action]. However, this was

my premature, miscalculated judgment. The March First Revolution taught me that we are the most unified nation. We only need to *seize the moment of mental maturity*” (1979b, 67, italics mine).

In “Historical Foundation of the Korean Revolution” Cho adds another layer of complexity to this thesis of democratic transformation. According to him, it was through the shared-experience of colonial oppression that *in-min* emerged as a unified political actor in early 20th century Korea. Prior to Japanese colonial rule, Cho argues, multiple socio-political cliques had been competing with each other to seek control over the regime, but as imperial Japan “enslaved” every single Korean, these groups had no option but to form a coalition against the common enemy:

The Korean nation has been exploited and trampled under hideous despotism for ages. While *in-min* must liberate [themselves] from despotism and reinvent politics, laws, economy, education, and religion, they are still chained by it. Although there was a revolution in 1884, the cabinet lasted only for 5 days, as it was defeated by Japan and the Qing China. Another revolution, this time by the commoners, took place a decade later, but it also was crushed down by the military forces of Qing China and Japan. In my view, the period from 1895 to 1905 was the best timing for a revolutionary movement, but we ultimately failed, and the entire nation was destroyed by Japan. I believe our failure was due to *the absence of collective revolutionary consciousness*, on the one hand, and the high-handed interference from Japanese imperialism, on the other hand. Upon the annexation, the mass of the previous object of revolution exponentially increased under the tyranny of a foreign nation. To put it differently, prior to the collapse of our country, each social class pursued only group interests. However, as they were enslaved together upon the national crisis, *they had no option* but to form a coalition to expel Japan and seek solutions for the entirety of Korean people” (Cho 2019, 102, italics mine).

Providing a variety of statistical data that represents the detrimental effect of colonial oppression on the Korean people in the realm of politics, education, and economy, Cho demonstrates how this colonial oppression ironically catalyzed the culture of self-governance among the colonized who previously lacked the “collective revolutionary consciousness.” To mention a few, the data includes the number of Korean inmates from 1910 to 1929, the number of protests that took place in Seoul in the year of 1929, and the number of Korean emigrants from

1919 to 1927 (Ibid., 39-95). According to Cho, these figures are noteworthy because they are the evidence that Japanese oppression resulted in the polar opposite of what it was intended for (Cho 2019, 43-44). The more imperial Japan oppressed Koreans in the political, educational, and economic spheres, the more Koreans single-handily sought self-determination: the curtailment of freedom of expression increased the number of thought criminals [*sasangbŏm*]; the Japanization of education system begot academic boycotts; and the economic exploitation left farmers and laborers no choice but to join the independence movement.⁶³

Two clarificatory points must be made on this conclusion. Let me start with a relatively minor point. First, I am not trying to make an apologist argument that Cho found colonial experience an indispensable condition of collective action in colonial Korea. Rather my claim is that he believed that the Korean people themselves, through the shared commitment to resist tyranny and colonialism, developed a collective consciousness as a self-governing political agent. In this respect, it was not that the imperial Japan as an external force was a necessary condition of the Korean case of democratic transformation but that in her presence the Korean people formed a collective identity as *in-min* to resist tyranny and colonialism.

Second, Cho interpreted the voice of the March First Revolution as an unmistakable desire to overthrow foreign rule *and* tyranny all together. Against the mainstream Japanese view at the time that the March First Revolution was a riot incited by a small group of ignorant Koreans (Han 2004, 284), Cho sought to explain the process through which *democratic* consciousness emerged among the Korean people by creating a sequential connection among seemingly isolated events in

⁶³ To be sure, it is difficult to consider Cho's analysis of democratic transformation as a careful ethnographic study of early 20th century Korea. From 1904 to 1919, he spent most of time in Japan and China, and the bulk of information and data he based his analysis on was collected from newspapers (Cho 2019, 26).

1863, 1884, 1894, 1896, and 1919.⁶⁴ Whilst admitting that the collective action in the year of 1919 on the surface constituted a coalition of Christians, Catholics, and Buddhist leaders, Cho stresses that its driving force was grounded on “the experience of failed revolutions in the span of 60 years” (2019, 140). This understanding of the March First Revolution very much resonates with recent scholarship on modern Korean constitutional history, one that challenges popular interpretations of the event as a singular moment of *national* consciousness (e.g., Hahm and Kim 2015; Sö 2006, 2012; Song 2011, 2013). The March First Revolution indeed occupies the center of modern Korean history as the moment of collective action against colonialism, but it must be emphasized that the entire movement was also about democratic self-rule. As Hahm and Kim eloquently put it, “the organizers of the protest [the March First Revolution] decided to read the 1919 Declaration and to spark mass demonstrations throughout the land. For a document proclaimed to a funeral crowd, the text was conspicuously silent with regard to the monarchy and utterly lacking in nostalgia or any restorative outlook. Independence was being declared in the name of the ‘self-governing people’ of Korea, not the defunct dynasty. That is why the spirit of the March First Revolution could be deployed as an expression of the ardent desire for not only national independence *but also* democratic self-rule” (2015, 172, italics mine).

When approached from this perspective, we can begin to see the distinctiveness of Cho’s understanding of democratic transformation. Unlike Sieyès, Cho does not claim that “the Third

⁶⁴ Cho proposes the following definition of revolution: “a politically unified movement that pursues its goal not by treating what is given as a means of reconciliation but by completely overthrowing the status quo” (1979b, 57). Although Cho contends that the reforms of 1863, 1884, 1894, and 1896 fit into this definition of revolution (Ibid., 57-58), it is unclear to what extent this claim is plausible. Especially a series of reforms undertaken by Yi Haeung was not in any substantial sense a project of “completely overthrowing what is given.” Perhaps a more generous reading would be that Cho considered the reforms from 1863 to 1896 progressive but insufficient steps toward the March First Revolution (1979a, 111).

Estate” can represent the entirety of people in the name of the nation. Rather than invoking primordial nationhood as the sovereign authority of a newly found but yet properly functioning republic, Cho rewrites modern Korean history as a history of democratic transformation against domination. Of course, one may find this reminiscent of Marx’s idea that class consciousness is the result of immiseration and oppression or of Hegel’s master/slave dialectic where slavery and struggle are the vehicle of a new consciousness – coming to see shared humanity. Reading Cho as a Marxist or a Hegelian will be an important project in and of itself. In my view, however, it is more fruitful to consider Cho’s revisionist reading of the March First Revolution not as yet another version of Marxist historiography but as a culturally and historically sensitive understanding of a distinct democratic movement in colonial Korea. Not to mention that functional resemblance is different from conceptual homology, Cho attributes the success of the Korean case of democratic movement to historical contingency rather than to the teleology of human development. According to Cho, only when “internal and external conditions” merge together into a “hideous monster” under unusual circumstances do people see themselves as a political collective *against* domination (2019, 101). In the case of Korea, the internal conditions were imperial Japan’s colonial oppression, the presence of national identity, and the cooperation between independence activists abroad and domestic leaders (Ibid., 142). These internal conditions in turn coalesced with Wilson’s declaration of national self-determination and with the news that Emperor Kojong’s death was not a natural death but an assassination. Cho does not see the March First Revolution as progress but as a historically *contingent* achievement because the Korean case of democratic transformation was conditioned by the aforementioned factors. The collective action in the year of 1919 came as a surprise to Cho because he was keenly aware of this arbitrariness of history.

Cho Soang's Vision of a New Democracy

Despite Cho's admiration for the transformative moment in the year of 1919, however, the project of making *in-min* in colonial Korea was at best incomplete. Let alone the provisional status of the PGRK, the Korean people's collective identification of themselves as *in-min* was not necessarily translated into mass participation in constitutional institutions in the following years. Signing the Treaty of Versailles as one of the victors on June 28, 1919, Japan retained her *de facto* dominion over the peninsula despite Woodrow Wilson's Fourteen Points speech in the previous year. For the PGRK, the outcome of the Treaty of Versailles was certainly disappointing because it considered the speech as an international consensus on the principle of national self-determination. Although the PGRK sought to gain official approval from the other four members of the Allies of World War I, it ultimately failed in such an effort.

With this tacit agreement from the imperial powers, the Japanese government continued its project of assimilation. Concluding that "the disturbances in the year of 1919" was a backlash of the previous years of military rule and separationist policies, the first step taken by Japanese Prime Minister Hara Takashi was to appoint a new governor general, Saitō Makoto (1879-1928), as a replacement of Hasegawa Yoshimichi (1850-1924). With Saitō, Hara introduced a set of more lenient colonial policies that came to be known as the "Cultural Rule [*bunka seiji*]." Claiming that the cultural development of Koreans would enable self-rule, on paper this new policy aimed at the completion of the following projects: "the maintenance of public peace, the spread of education, the promotion of local rule, the development of industry and transportation, and the improvement of health" (Caprio 2009, 126). Notable reforms included the system of Japanese-Korean co-education, the exile of *kenpeitai*, the military police arm of the imperial Japanese Army whose

brutality was particularly notorious in Korea, and the establishment of three new local newspapers (the *Tongailbo*, the *Chosŏnilbo*, and the *Chungangilbo*).

That said, the transition away from the military rule did not mean granting the subjugated population the right of self-governance (Hö et al. 2019c, 266-293). For most Japanese intellectuals and government officials, the March First Revolution was merely a *transient* reaction to Japan's assimilation project (Han 2004, 194). Consider, for instance, the following passage where Torii Ryūzō, a respected Japanese anthropologist at the time, argues in favor of rejecting Korea's independence:

Some claim, from the point of view of self-determination, that we must differentiate Koreans from mainlanders and allow the former independence. However, this is certainly a flawed argument. Japanese and Korean people are of one and the same ethnic group. Why should the same people be separated into two and each seek independence? ... Such that Japanese and Korean people are of the same ethnic group, the latter's incorporation into the former is justifiable. Only through this unification is the purpose of self-determination being fulfilled for the first time (cited in Han 2004, 196).

Similarly, in his 1921 New Year's address, Saitō declares that the fundamental structure of Korean administration would remain unchanged, "namely to honor the imperial words of "impartial humaneness (*isshi dōjin*), to integrate Korea into the general world situation, and to imperialize our 20 million brethren (*dōhō*) while constructing a paradise of peace over the 3,000 *ri* of rivers and mountains (cited in Caprio 2009, 126)."

Under this "Cultural Rule," socio-economic inequality within the domestic population emerged as a central concern among early 20th century Korean intellectuals (Cho 2019, 143-144; Sō 2006, 79). On April 11, 1920, the Chosŏn Labor's Union [*Chosŏn Nodong Gongjehoe*], the first labor union to ever exist in Korean history, held an inaugural meeting and subsequently published its first official magazine, the "Mutual Aid [*Kongje*]," to promote labor culture across the country (Cho 2019, 143). Its members and other advocates of the socialist cause exhorted

fellow Koreans to realize that colonialism is merely a *symptom* of “the global capitalism” and that the rectification of socio-economic injustice is an issue that demands immediate attention (Hö et al. 2019a, 43; 2019c, 296-297; Sö 2006, 79-80). For instance, consider the following article published in the *Tonga ilbo* on May 18, 1920:

For that too many neologisms are going around in our Chosŏn recently, it is almost impossible for an ordinary mind to recollect each. To mention a few abstruse ones, “strike”, “slowdown”, “liberation”, “reformation”, “minbonjuŭi”, “radicalism”, “syndicalism” and “anarchism” Let me explain the background of these terms. People all over the world have become terrified with starvation and misery as the struggle for existence put millions of lives into suffering and squandered an enormous amount of fortune. For this reason, the unanimous voice of the underprivileged class, in determination to escape from hell and enter a bright utopia, began to clamor for the liberation from economic oppression, the eradication of tyranny like that of the Tsar [the Russian emperor], and the dethronement of the Kaiser [the German emperor]. Those who suffer from the problem of a low wage go on a strike, those who yearn for freedom follow a vision of reformative emancipation, and those who complain the consequences of maladministration seek socialism and radicalism to open up a new epoch of labor in 20th century... (Hö et al. 2019c, 295).

Although Cho himself had already been exposed to socialist ideas as early as in his undergraduate years at Meiji University in Japan, Cho became more concerned about this tide of socialism in the peninsula. As a keen critic of inequality of the time, he agreed with the gist of the demand put forward by the advocates of socialist ideas that the colonized must view the eradication of unequal socio-economic structures not as a fruit of self-rule but rather as a precondition of it (2019, 101-102). At the same time, however, Cho worried that the uncritical acceptance of socialist ideas might distort the spirit of the March First Revolution. In “Organization of the Korean Revolutionary Movement [*Han'guk Hyŏngmyŏngundong ũi Ch'egye*],” he time and again warns the general public of the danger that a divide between the nationalist and the socialist factions would create (Ibid., 143).

Much of this may look like a simple statement that the colonized must prioritize national independence over equality, but Cho is making a more nuanced argument here. Instead of

understanding the relationship between self-determination and equality as a binary choice, he sees it as a *complementary* one: self-determination without equality is incomplete, and vice versa. For Cho, the issue was not simply about preserving the national consciousness of the Korean people against an emerging divide but about translating it into founding of an egalitarian community. On the one hand, the colonized *sans* some sort of national consciousness would be an easy prey for the colonizer's strategies to incite a divide within her subject. Referring to Vladimir Lenin, Cho clarifies this point in the following passage:

Prior to a class revolution, a weak ethnic group must preserve national consciousness as to achieve a national revolution. A weak ethnic group is already a type of the proletariat, for it lacks national unity. If class struggle or class confrontation comes to prevail within the subjugated group, it will only please the exploiting class [the aggressor nation] in that the resistance of its enemy [the targeted nation] would dissipate. As ridiculous as it is for people without leather to fight over furs, the same is true for stateless people to struggle over a regime. Therefore, our task at the present stage is to unite the whole nation and drive out the enemy Japan from our soil and completely liberate our land (1979a, 213).

On the other hand, if the result of a national revolution is the establishment of yet another form of domination by a particular class, it merely perpetuates oppression by other means. As Cho writes, "some argue that we are pursuing national independence not a revolution. They insist that our goal is to separate out from the enemy Japan and achieve self-determination. In other words, we are not confronting the entirety of the oppressor class as a revolutionary force. Rather we, as one nation, are struggling for independence from Japan.... Let me explain my reservation with this position. The aforementioned notion of independence is too narrow to encompass what we are actually fighting against...." (Ibid., 111). In this line of reasoning, Cho reaches a conclusion that self-determination and equality are in fact the two pillars of what he calls a "new democracy." For Cho, only in this system could the Korean people claim that they govern themselves because national liberation without equality would be as empty as equality without national liberation. In either case, the systems of domination would persist. According to him, this vision of democracy

is “new” because “although an absolute majority of over 70 countries in the world adopted democratic politics, in most cases their practices are perfunctory and fail to secure fundamental benefits of democracy” (Ibid., 227). Cho adds the prefix “new” to the word “democracy,” so that “we do not remain satisfied with the trivial remnant of democracy but actualize the essence of democratic politics” (Ibid.).

What then makes this vision in fact “new”? Cho’s answer is the “Principle of Three Equalities.” On a cursory reading, Cho’s understanding of the word equality is confusing due to its diverse usage. Especially that it is by far the most frequently mentioned concept in Cho’s writings, a reader unfamiliar with Cho’s political thought may consider it a catch-all term. For instance, in “Historical Foundation of Korean Revolution,” Cho defines equality as a set of fundamental rights *to* political participation, the ownership of land, and elementary education in Korean (Cho 2019, 101-132). However, a closer look on Cho’s writings suggests that it does not simply stand for an idea that citizens, as the bearers of fundamental rights, should be given equal opportunities to pursue their goals. Rather as pointed out by Kang and Kwōn, a more plausible reading would be the one that understands equality as a state of stability in which all affected subjects enjoy opportunities and capabilities to perform a particular activity without domination (2018, 268).⁶⁵

⁶⁵ Recent scholarship on the “Principle of Three Equalities” includes Kim (2015), Hong (2014), and Kang and Kwōn (2018). To briefly discuss each work, Kisŭng Kim’s *Cho So-Ang, the Theorist of the Provisional Government of the ROK* [Taehanmin'guk Imshichōngbuŭi Iron'ga Chosoang] is pioneering research on Cho’s political thought, one that convincingly reconstructs Cho’s life and vision as the “theorist of the PGRK” within the historical context of early 20th century Korea. Though admirable in its depth and quality, it is more or less a work of intellectual history not a serious work of political theory. Sōnhŭi Hong’s *A Study of Cho Soang’s Principle of Three Equalities* [Chosoang ŭi Samgyunjuŭi Yōn'gu] and Chōngin Kang and Tohyōk Kwōn’s “A Reinterpretation of Cho So-Ang’s Doctrine of “Three Equalities”: Focusing on the Concept of Equality and its Relationship with Democratic Republicanism [Chosoangŭi Samgyunjuŭi Chaehaesōng: T'rykundŭngt' Kaenyōmŭi Punsōk mit Kyundŭnggwa Minjugonghwajuŭi Kwan'gyerŭl

Through a careful survey of primary sources, Kang and Kwŏn identify the functional resemblance between the “Principle of Three Equalities” and the Western conception of republicanism, especially one that Philip Pettit endorses (Ibid., 269). Understood rather loosely, both Pettit’s thesis of non-domination and Cho’s understanding of equality emphasize the instrumental value of non-domination and the institutionalization of citizens’ fundamental rights via the strategy of constitutional provision (Pettit 1997, 66-72; Kang and Kwŏn 2018, 268-269). Furthermore, they share a belief that a well-functioning constitutional democracy requires a sense of collective identity defined by the pursuit of common interest.

The evidence of this claim can be found in “Explanation of the Korean Independence Party Policies [*Han'guk Tongniptang Tangŭi Haesŏk*].” In this rather technical piece, Cho argues that the absence of equalities in the areas of politics, economy, and education has been the origin of domination of one over the other, which in turn has encouraged the use of violence among individuals, among nations, and among states. According to Cho, the Glorious Revolution, the French Revolution, the Russian Revolution, the Xinhai Revolution⁶⁶ and even the American Revolution all have failed to found authentic constitutional democracies due to the lack of equalities (Cho 1979a, 207).⁶⁷ What is striking about this revisionist reading of the history of

Chungshimŭro” are helpful in this regard because they each attempt to develop a full-fledged reading of Cho’s political thought.

⁶⁶ The Xinhai Revolution, also known as the 1911 Revolution, was a revolution that overthrew China's last imperial dynasty (the Qing Dynasty) and established the Republic of China (ROC). Korean independent activists in Shanghai, China interacted with the founding members of the ROC and were influenced by them. On this, see Shin (2004).

⁶⁷ I am not arguing that the changed mode of governance employed by Japan after the March First Revolution was the only reason behind Cho’s subscription to the instrumental conception of equality. Although it definitely pushed Cho to further systematize his political thought, the seed of the “Principle of Three Equalities” was first implanted when he was studying abroad in Japan. On various sources that served

revolution is its emphasis on the *instrumental* value of equality (cf. Pettit 1997; Skinner 1998). For Cho, the establishment of equal societies is crucial not only for a humanitarian cause but also for its *effect*, i.e., the stabilization of the relationship among all those affected by the practice of domination. The Korean case of democratic founding in accordance with the “Principle of Three Equalities” is a necessary but insufficient step toward building a cosmopolitan society because it would benefit the entire human race (2019, 285). Consider the following passage where he emphatically puts this point: “war is a disaster for mankind, and peace is the happiness of mankind. A war breaks out due the loss of equality, and peace can exist only by maintaining equality. Therefore, only by actualizing the principle of equalities in politics, economy, and education can we actualize the happiness among individuals, among nations, and among states....” (1979a, 206).

That said, if this cosmopolitan project begins at the domestic level, how do we institutionalize it? For Cho, individuals must first liberate themselves not only from colonial rule but also from the past history of tyranny because ordinary Koreans for centuries had been deprived of fundamental rights under monarchical rule. Revisiting the history of Korean nation from the era of the Three Kingdoms of Korea [*samgukshidae*]⁶⁸ to the late *Chosŏn* Dynasty, Cho reconstructs modern Korean history as a history of domination (Ibid., 102; 104-132). As a first step to break away from this tyrannical past, Cho proposes the introduction of universal suffrage, the state-ownership of key industries⁶⁹, and the establishment of a mandatory education system funded by the government (1979b, 134-141).

as inspiration of the “Principle of Three Equalities”, see Kim (2015, 39-42, 47-51, 53-54, 74-79) and Hong (2014, 40-57).

⁶⁸ The Three Kingdoms period is defined as being from 57 BC to 668 AD.

⁶⁹ Cho’s point is that at the founding stage, it is necessary to confiscate land and industrial facilities monopolized by the Japanese and pro-Japanese groups to run a centrally planned economy.

Moving on to the second and the third type of equality, Cho contends that the actualization of the first type of equality is the precondition of equality among nations and among states, the completion of which would liberate the entire human race from domination (1979a, 228; 2019, 285). Cho finds it ironic that the very act to achieve peace between nations and between states tends to result in the domination of the weak (Cho 1979a, 219). A war breaks out in the name of a greater good for the entire human race, but in its process the strong dominates the weak. Cho conjectures that the cause of this tragedy is the absence of the first type of equality because, as he puts it, “the aggregate of individuals is a nation and that of nations is a state or the international community.... Thus, individuals [*kaein*] are the smallest units of the social world and of a nation and of a state, and the disparity in knowledge, power, and wealth among them is representative of that of the entire system” (Ibid., 202). In “Explanation of the Korean Independence Party Policies,” Cho further clarifies this argument: “the absence of equal standard of living among individuals engenders disharmony in a family, nationwide revolutions in a society, and insurgencies in a country. Similarly, the unequal development among nations will precipitate ethnic wars, and the unequal status among countries could trigger world wars” (Ibid., 206; cf. Fanon 2004, 179).

This alternative vision of democratic founding raises three interrelated issues that merit further scrutiny. First, equality is one of the preconditions of democratic transformation. Rousseau has already pointed out that individuals suffering from a high degree of inequality would have difficulty occupying the standpoint of “the people” (Neuhouser 2013). It is thus unsurprising that Rousseau’s citizens under the general will prioritize their community over their private interests (Williams 2014, 24). In theorizing this ideal citizens, however, Rousseau in many respects refer to ancient models of politics found in Rome, Sparta, and the Platonic dialogues. While this affection for the classical models is not problematic in and of itself, its implication can be troubling. As

Rousseau himself notes, “the body of politic, just like the body of a man, begins to die as soon as it is born and carries within itself the causes of its destruction” (2011, 214). When citizens forget the performative meaning of their collective effort in founding a republic and seek self-interests over the common good, one must find a way to regulate their behaviors. Although Rousseau does discuss in length how to regulate the behaviors of citizens who do not act under the general will and proposes several institutional designs to this end (Ibid., 189-199; Williams 2014, 22), he ultimately relies on the general will’s capacity for self-purification. For instance, problematizing the ills of 18th century Europe, Rousseau in the *Constitutional Project for Corsica* offers the Corsicans a constitutional recipe for remaining, but not actualizing, their best selves. As Villa insightfully observes, “the best is already there, in the shape of a largely agrarian and underdeveloped land, one without big cities and without inordinate commerce and trade; one that is capable of sustaining itself agriculturally; one that is already home to a freedom-loving and relatively virtuous people (2017, 72). For critical commentators, this tendency in Rousseau’s political thought implies that Rousseau “imagine[s] a regime where time crawls slowly, so that a homogenous ethos of sovereignty can persist across generations” (Connolly, 2005, 135).

While Cho shares with Rousseau the concern about inequality, he seeks a more future-oriented and practical path toward founding and sustaining “the body of politic.” For Cho, the transformation of *sin-min* into *in-min* can be completed only by eradicating inequalities in “political power [*kwölyöök*], wealth [*puryöök*], and knowledge [*chiryöök*” (1979b, 101-103). Cho advances a bold claim that no attempt of democratic founding up to his time has escaped from what he calls the “paradox of revolution.” According to this paradox, a revolution to overthrow an oppressive regime results in the establishment of yet another form of domination (Ibid., 111).

Adducing France, the U.S. and Russia as examples, Cho clarifies this point in the following passage,

The flaw of old democracy lies in the creation of a new dictatorship by overthrowing the previous one. In other words, old democracies merely replaced one form of violence for another. Look at France, the United States, and Russia. Both France and the U.S. founded democracy to liberate themselves from tyranny, but even after a hundred years of testing, they remain dominated by the bourgeoisie. Their acclaimed parliamentary systems that ostensibly represent the entirety of their people only put the whole nation into incalculable suffering. Russia founded the Soviet system to end the tyranny of the bourgeois class, but more than 10 years of such an experiment only resulted in the proletarian dictatorship.... (cited in Sö 2006, 92).

In his political writings written in 1920s, Cho tends to oscillate between anarchism⁷⁰ and the “Principle of Three Equalities” as a solution to this paradox, but he ultimately endorses the latter. Putting forward the “Principle of Three Equalities” as the founding philosophy of a constitutional democracy to come, Cho urges Koreans to join the temporally-extended founding act that seeks to eradicate inequality that perpetuates the systems of domination. In fact, even after the Korean Peninsula was liberated by the Allies in 1945, Cho continued to stress that democratic founding would remain incomplete unless the “Principle of Three Equalities” becomes fully institutionalized (1979b, 72).

Second, the collective identity as “the people” forged through oppression is in tension with the principle of non-domination embodied in Cho’s vision of a “new democracy.” In “Summary of the Histories of Revolution [*Kakkug ŭi Hyöngmyöngundong Sayo*],” Cho argues that neither a domestic reform that targets institutional modifications at the socio-political level nor a peaceful protest that seeks to challenge the colonizer can be categorized as a revolution (1979a, 111).

⁷⁰ According to Kisŭng Kim, Cho first encountered anarchist ideas through Errico Malatesta’s *Anarchy* translated by Zhang Ji in 1907 (2015, 74). On the interaction between Cho and Zhang Ji, see Kim (2015, 74-76).

Referring to the conventional understanding of revolution developed in Chinese and European traditions, Cho claims that the Korean case of revolution must completely overthrow the existing systems of domination through violent means (cf. Fanon 2004; Frazer and Hutchings 2008). Without recourse to violence, he posits, it is impossible for colonial subjects to prevail over the colonizer and march forward to democracy (Ibid., 212). However, if democratic founding necessitates the use of violence against the oppressor, those who commit founding violence may merely perpetuate the vicious cycle of revenge and counter-revenge instead of promoting the principle of non-domination. Arendt in *On Violence* famously warns against the use of violence due to this arbitrariness (1969). For her, “all human actions (including political action) is unpredictable, but to this unpredictability violence brings a significant additional element of arbitrariness. It might ‘pay,’ but it pays indiscriminately” (Frazer and Hutchings 2008, 100). In this respect, Cho’s thesis that rectificatory violence is the only way to pursue democratic founding in the context of colonialism may belie the ideal of a cosmopolitan society Cho provides us.

This conclusion leads us to the final issue: Cho’s vision of democratic transformation necessarily encounters the problem of transmuted ethnic consciousness into civic consciousness. In order to make this point, let me briefly discuss Arendt’s critique of the French Revolution. In *On Revolution*, Arendt argues that the existence of poverty in the case of French Revolution put “men under the absolute dictate of their bodies, that is, under the absolute dictate of necessity as all men know it from their most intimate experience and outside all speculations” (1990, 60). Driven by this biological necessity, French men promoted compassion over political freedom as a public virtue. In Arendt’s view, compassion is anti-political in two respects. First, it “cannot be touched off by the sufferings of a whole class or a people, or, least of all, mankind as a whole” (Ibid., 85). The language of compassion, in the disguise of the will of the entire people, exacts an

urgent action to eradicate poverty, but it is always about the suffering of a particular group of people. Founding is a political act that builds a new political reality of collective rule. When abundance instead of freedom becomes the aim of founding, its participants can too easily prioritize the maximization of their material interests over the stability of a newly found republic. More importantly, compassion destroys “the distance, the worldly space between men where political matters, the whole realm of human affairs, are located” (Ibid., 86). For Arendt, political action has a capacity of world-building that demands a plurality of men for its fruition. Although compassion may generate a sense of comradeship that could unify a diversified population, such solidarity comes only at the cost of excessive homogenization.

Although Cho’s vision of a “new democracy” may sidestep the first critique, it is not immune to the second one. According to Arendt, the American Revolution also suffered from poverty but still succeeded in founding and maintaining a constitutional democracy. She argues that this was because American people were not driven by compassion, and thus the revolution was not overwhelmed by the fever of homogenization (Ibid., 68). In the case of the Korean founding, however, a call for compassion was rather vividly present in every piece of political writing including Cho’s. What was different from the French revolution was only that compassion in the case of Korea was aroused by nationalism. From the Arendtian perspective, this patriotic compassion is as problematic as the poverty driven compassion because of the danger it entails, i.e., “the conquest of the state by the nation” (1994, 230). This threat is at the very heart of Arendt’s claim in *The Origins of Totalitarianism* in which she problematizes the European nation states of her time for failing to secure the rights of all those living within their territories. Upon the outbreak of WWII, even liberal democracies were not safe from the tide of chauvinism and cultural

intolerance. Contrary to the ideals of freedom and equality enshrined in most European constitutions, “the people” meant only the people of a nation state.

In his influential work “Popular Sovereignty and Nationalism,” Bernard Yack persuasively argues that “the doctrine of popular sovereignty contributes to the rise and spread of nationalism by introducing a new image of political community, an image that tends to nationalize political loyalties and politicize national loyalties (2001, 523). Indeed, Cho’s theory of democratic transformation postulates the existence of the unified nation prior to the founding of the PGRK. In “Sketch of General and Cultural History of Korea [*Han'guk Kūndaesa Mit Munhwasa Sogaemun*],” Cho claims that the origin of the Korean nation dates back to *Tan'gun* period (2333 to 1122 B.C.):

Four thousand years ago in ancient Korea, nine tribes commonly called the Koo-I, with the tribal names of Kyun, U, Bhang, Whang, Paik, Chuk, Hyun, Poong, and Yang, were the aborigines. They dressed in fabrics of woven grass, and ate the natural fruits of the earth such [as] roots, nuts, fruits and berries. In summer they lived beneath the trees, and in winter in caves and in holes in the ground. They were fond of dancing and singing. These wild tribes chose Tangoon⁷¹, a very wise man, to be their king. When Tangoon became their king, he taught them the relation of king and subject, the rite of marriage, the art of cooking, and the science of house building (Cho 1979a, 383-384).⁷²

The reference to this primordial nationhood, along with the demonized image of Japan, repeatedly appears throughout Cho’s political pamphlets as a means to promote national loyalty (e.g., 2019, 53; 1979a, 196 and 228; 1979b, 101). On the one hand, this form of nationalism, or what Gi-Wook Shin calls “ethnic nationalism,” was one of the driving forces of modernization and nationwide solidarity in colonial Korea (2006, 203). As many have pointed out, Cho was neither the first nor the only intellectual at the time to invoke *Tan'gun* as a legitimate founder of the nation,

⁷¹ He is believed to be the legendary founder and god-king of Kojosŏn, the first Korean kingdom, around present-day Liaoning, Manchuria, and the northern part of the Korean Peninsula.

⁷² This is an English translation provided by Cho himself.

and more importantly, the reference to *Tan'gun* was not an attempt to *inculcate* an idea of authentic heritage into the mind of the Korean people but a rhetorical device to *invent* a national narrative, one that rejects both Japanese Asianism and Sinocentrism (e.g., Im 2007; Jo 2006; O 2014; Shin 2006, 229).

On the other hand, the binary opposition between “a nation with the history of 5000 years” and “Fascist Japan” entails the potential danger of chauvinism and cultural intolerance, which seems to contradict Cho’s emphasis on non-domination. The fantasy of homogenous community does not square with the ideal of pluralism embedded in full-fledged constitutional democracies (e.g., Habermas 2001; Markell 2000; Muller 2008). While Cho does clarify that the enemy is not the entirety of Japanese people but imperial Japanese imperialists in his relatively lengthy essays, such a careful use of language is missing in the manifestos, declarations, and pamphlets written from 1920s to 1940s (1979a, 202). Of course this discrepancy between Cho’s rhetorical writings and academic essays may have been intended by the author himself. Antagonism is an effective recipe for preserving solidarity among socio-politically disaggregated population albeit risky. One can certainly conjecture that Cho deliberately conflated the “imperial Japanese government” with “Japan” in his rhetorical writings to generate an effect of national cohesion and to protect the “unified nation” from pro-Japanese traitors [*ch'inilp'a*], on the one hand, and from misguided socialists, on the other hand. Even this generous reading, however, does not fully vindicate Cho from an allegation that he was after all a “nationalist” (Sō 2013, 94). Regardless of Cho’s intention, the colonial experience has continuously haunted Korean people in the form of national trauma. Even after independence in 1945, the issues such as comfort women [*wianbu*] and the traitorous actions of pro-Japanese groups have continued to appear in history textbooks, popular culture, and political discourse, ensuring that they remain at the forefront of Korean collective consciousness.

Although this ethnic consciousness against “Fascist Japan” in and of itself may not be a problem, Cho does not fully explain in detail under what conditions the “domestication” of nationalism becomes possible. In other words, Cho succeeded in harmonizing “the political” with “the social” only by reducing the former into “the national.”

The Divided Nation and the Founding of Two Koreas

Shortly after the liberation of the Korean Peninsula, the Moscow Agreement marked the beginning of a new world order. The Allied powers decided to put in place a four-power trusteeship (under the United States, the United Kingdom, China, and the Soviet Union) up to five years until Korea would become fully prepared for independence and established a U.S.-Soviet Joint Commission to facilitate such a transition (Hahm and Kim 2015, 252). Following the two consecutive meetings with the Soviet Union, the U.S. decided to delegate the issue of founding a unified Korean government to the United Nation. In September 1947, the UN drafted a resolution to hold a general election in South and North Korea and organized the United Nations Temporary Commission on Korea (UNTCOK) for this task. Anticipating an unfavorable outcome, however, Kim Il-sŏng, the chairman of the Provisional People's Committee for North Korea, refused the UNTCOK's entry into North Korea, and thus the UN had no other option but to hold an election only in South Korea. On May 10, 1948, the first general election to organize the Constitutional Assembly took place in South Korea, and the Constitution Drafting Committee was convened shortly after. Approximately 3 months later, the Founding Constitution of the Republic of Korea was finally promulgated.

It is crucial to point out that the drafters of the 1948 Constitution replaced the term “*in-min*” with the term “*kung-min*” as the reference to the sovereign authority of the Republic of Korea.

According to Yu Chino, one of the primary drafters of the 1948 Constitution,⁷³ several committee members showed repulsion against the former, which pressured him to choose the latter over the former. In *Recollections on the Drafting of the Constitution [Hönpöp Kich'o Hoegorok]*, Yu expresses his regret:

The term *in-min* was widely used during the Empire of Great Han under absolute monarchy, and even the U.S. Constitution distinguishes the expression 'We the people' from the term 'citizens.' The term "the people of the state [*kung-min*]" implies that the state is superior to individuals, and thus it is definitely inappropriate as the reference to individuals - the subject of freedom and rights - who must not be infringed upon even by the state. After all, we unfortunately lost a good term to communists (Yu 1980, 65).⁷⁴

Although it is unclear how Cho reacted to the Committee's decision, he certainly was not fully satisfied with it. In fact, he mostly sticks to the term "*in-min*" as the reference to the sovereign authority of Korean democracy even after the promulgation of the 1948 Constitution (e.g., 1979a, 122-141). To clear, this does not mean that Cho did not approve of the 1948 Constitution. On the contrary, he firmly supported it and accepted the rule of a pro-U.S. administration whose members were mostly from the opposite faction (Kim 2015, 173). Although Cho was definitely critical of Yi Süngman, the first president of South Korea, he believed that the actualization of the "Principle

⁷³ Yu Chino was a professor of law at Bosung College (later Korea University) in 1945. Upon independence, he was approached by multiple political groups who sought their own draft constitutions. In the fall of 1947, Yu prepared a draft constitution at the request of the USAMGIK (United States Army Military Government in Korea) Code Drafting Commission and completed it with the help of Hwang Tongchun, Yun Kilchung, Chöng Yunhwan, and others around the time of the 1948 South Korean Constitutional Assembly election (Sö 2013, 285). Shortly after the election, he was invited by the Administration Research Association [Haengjöng Yön'guhoe] to draft yet another draft constitution. This draft is the one adopted by the Constitution Drafting Committee. On the details of the drafting process, see Sö (2013, 255-353) and Hahm and Kim (2015, 162-192 and 258-264). On Yu's legal thought, see (Yi, 2006).

⁷⁴ The North Korean Constitution was drafted and promulgated in 1948 as well. However, it put forward *in-min*, instead of *kung-min*, as the sovereign authority of the "republic." On the comparison between the South Korean and North Korean Constitution, see Sö (2013, 361-407).

of Three Equalities” must be pursued via the newly invented legislative system. As a man of action, Cho found a socialist political party with other left-wing politicians and took office as the party leader on December 1, 1948. The following passage from “Declaration of the Socialist Party Forming Convention [*Sahoedang Kyöltangdaehoe Sönönsö*],” reflects Cho’s determination to continue the project of building a “new” democracy:

What our people aspire to is neither a proletarian dictatorship nor a pseudo-democracy of the privileged capitalist class. Rather it is the actualization of an equal society [*kyundöngsahoe*] enshrined in the Founding Constitution of the Republic of Korea... (cited in Kim 2015, 174).

Unfortunately, however, Cho was abducted to North Korea during the Korean War shortly after being elected as a member of the second National Assembly. Despite his continued effort to bridge the ideological gap between the South and the North, Cho could not see the unified Korea. According to Kim Kisöng, Cho left the following will before he passed away in Pyongyang, North Korea in 1958: “Tell future generations that I have dedicated myself to the altar of independence and the reunification of the South and the North. It is a pity that I will not be able to see the heirs of my Principle of Three Equalities. Please pass down its philosophy and idea to posterity” (cited in Kim 2015, 175).

Conclusion

When Pusan, Wönju, and Inch’ön were opened to Japanese vessels following the Japan–Korea Treaty of 1876, Korea could no longer retreat into isolation. At this time of unprecedented crisis, young government officials, especially those dispatched to Meiji Japan, attempted to transform the presumed subject of the emperor, *sin-min* into an active political agent capable of self-rule. By the time of the 1910 Japan–Korea Annexation Treaty when Korean peninsula was no longer independent, ordinary Koreans *qua in-min* finally emerged as a new sovereign authority of

the nation. However, the cultivation of democratic peoplehood, let alone the institutional founding of a constitutional democracy, was a demanding task for independent activists in colonial Korea. Viewed from this historical context, one can begin to see the complexity of the project Cho embarked on.

At the institutional level, the PGRK could not claim “authorization.” A democratic republic is by definition one in which “the people” (or *in-min* in the context of the PGRK) is sovereign. Even though the word “republic” in Article 1 and “the Provisional Assembly” in Article 2 seem to suggest that a constitutional democracy envisioned in the 1919 Provisional Charter is one in which *in-min* does not necessarily govern the country *directly*, the word “democratic” clearly signals that *in-min* is sovereign, and the Provisional Assembly [*Imshiiijŏngwŏn*] is only its delegate. However, if *in-min* refers to the existing population who had not authorized the Provisional Assembly to govern the country, it seems problematic to claim that the sovereign authority of the PGRK was legitimate. In short, the act of delegation could not actually have been authorized by *in-min* prior to the promulgation of the constitution itself.

One way to address this problem of legitimacy is by focusing on the performative meaning of “the *Provisional* Charter of the Republic of Korea.” For the reason that the prospect of national independence was at best uncertain, the founding members of the PGRK conceptualized the establishment of constitutional democracy as a multistage process in which each constitutional amendment aimed at achieving more participation, deeper deliberation, and fuller inclusion. In this respect, my reading of the founding moment in early 20th century Korea has a theoretical affinity with the proceduralist paradigm; the Korean founding shares with the proceduralist paradigm the emphasis on the bootstrapping process and the establishment and modification of necessary institutions to augment the legitimacy of a constitutional order.

However, the culture of self-rule must also be fostered within the historical reality of the given community over time. In order to demonstrate how this socio-cultural making of a democratic people takes place in a concrete socio-cultural setting, I began this chapter by providing the intellectual context of Cho's political writings. In the following section, I elaborated on how Cho construed the March First Revolution as the evidence of emerging democratic consciousness in early 20th century colonial Korea. In the eyes of Cho, the people marching on the street on March 1, 1919 was no more the presumed subject of the emperor but a normative authority of a constitutional democracy to come. Cho's political thought is distinctive because it unpacks the mechanisms of this collective identity formation by revisiting modern Korean history as a history of democratic movement. As discussed above, Cho believed that the democratic movement in the peninsula, though first initiated by the imperial family in 1863, gradually expanded the boundaries of "the people" and marked its culmination in the year of 1919. Rather than invoking primordial nationhood as the sovereign authority of a nascent constitutional order, Cho instead focused on tracing signs of an emerging democratic consciousness within modern Korean history and sought to elaborate on the process through which *in-min* emerged as a new political actor. Although the idea that democratic identity is forged through struggle and oppression may sound similar to Marx's historical materialism or to Hegel's master/slave dialectic, Cho forcefully claims that the Korean case of democratic transformation was not the product of human development but a historically *contingent* achievement that could have gone otherwise.

Modern founding consists of two stages – a revolution that subverts the traditional authority of nondemocratic regime and a subsequent process of institutionalizing the spirit of democratic self-rule embodied in the collective action (Arendt 1990; Ackerman 2019). However, the transition from the former to the latter is not an easy task (Jenco 2010). Although the presumed solidarity of “the people” may have been vividly alive at the stage of collective action, such foundation tends to shake when the question of “who” and “how” to govern a new polity becomes an urgent agenda. The French Revolution and the American Revolution, two of the most widely cited examples of modern founding, both faced this challenge of translating a revolutionary spirit into a system of constitutional democracy. In the case of early 19th century France, the “Third Estate” was soon divided into the Montagnards and the Girondins. Likewise, post-revolutionary America saw an escalating tension between federalist and anti-federalists. In both cases, the respective revolutionary body was expected to become institutionally separated but ideologically unified.

This was also the case for the Korean founding. Although the collective action in the year of 1919 ushered in the first unified provisional government of Korean people in Shanghai, China, this government was in exile, and thus its nascent constitutional institutions could not provide most Koreans in the peninsula an opportunity to participate in the making of a constitutional order. More importantly, independence activists were divided into the nationalists and the socialists following the failure of the March First Revolution, and thus the solidarity of the Korean people was on the verge of collapse. In such a situation in which constitutional institutions could not properly perform their designated roles and the revolutionary force was fraught with conflicting political visions, Cho proposed an alternative model of democratic transformation, one that sought to harmonize self-determination with equality over time.

Conclusion

In all these views, I believe, there is a marked (and, in my opinion, ahistorical) discomfort with non-Western societies acquiring national independence, which is believed to be “foreign” to their ethos. Hence the repeated insistence on the Western provenance of nationalist philosophies that are therefore ill-suited to, and likely to be abused by Arabs, Zulus, Indonesians, Irish, or Jamaicans.... But the history of all cultures is the history of cultural borrowings.

- Edward W. Said, *Culture and Imperialism*

From Southern Europe to the Arab world, the making of a sustainable constitution has been an urgent issue. As a reaction to recurring military dictatorship following democratic revolutions, important new works on constitutionalism emerged from the radical perspective, on the one hand, and from the constitutionalist perspective, on the other hand. According to radical democrats, the idea of the popular sovereign, despite its ambiguous boundaries and non-empirical existence, is the essence of democratic founding. The revolutionary zeal that catalyzes the collective action against dictatorship and the usurpation of power is founded on the singular will of “the people.” Although such a revolutionary spirit may be ephemeral, it ought not be rendered symbolic into institutional channels but remain vividly present in the constituted order. On the contrary, constitutionalists stress that the very idea of a unified people is suspect. In their view, the problem is not simply that an imposition of a single political category on a diverse population cannot be justified but that the invocation of “the people” by demagogues can easily jeopardize political and civil liberties enshrined in the constitution. Without institutional safeguards against the indiscriminate invocation of “the people,” constitutionalism is an easy prey to partisanship and political turmoil.

This tension between the two theoretical paradigms centers around the following two issues: redefining core concepts that constitute our practice of constitutional democracy and inventing more sustainable institutional designs of a constitutional order. On the first issue, there exists an ongoing effort to define anew conceptual building blocks of constitutional democracy – sovereignty, constituent power, founding, legitimacy, and authority, to mention a few (e.g., Arato 2017; Chambers 2019; Colón-Ríos 2020; Frank 2008, 2010; Kalyvas 2013; Ochoa Espejo 2011; Olson 2016). On the second issue, scholars from diverse fields, including those from political theory and constitutional studies, theorize about the possibility of developing normatively sound and institutionally feasible designs of a constitutional order (e.g., Ackerman 2019; Arato 2016; Colón-Ríos 2012; Loughlin 2015); the rules of constitutional amendments, the distinction between constitutional assembly and round table, and the function of an interim constitution at the initial stage of negotiations are some of the topics that animate this academic discourse.

Partaking in this growing trend within constitutional studies, a group of notable political theorists and legal scholars has recently proposed an alternative and certainly more sophisticated model of democratic founding, one that anchors the legitimacy of a constitution in a promise regarding a collective project that extends to the future rather than in a single revolutionary act that occurred in the past. Indeed, from the historical perspective, many written constitutions in liberal democracies when written could not claim legitimacy but gradually augmented it through amendments and institutional modifications that promised broader inclusion, greater equality and more enlightened political participation over time. For instance, the U.S. Constitution when first written in the year of 1787 arguably lacked legitimacy. Only after ratification could it claim legitimacy, and even then was challenged by the anti-federalists and later by civil rights activists. These challenges to the existing constitutional order augmented the legitimacy of the Constitution

by problematizing the boundaries of “We the people,” which in turn pressured the government to guarantee political equality of all “Americans.” Taking into consideration of this diachronic dimension of the American founding, the legitimacy of the U.S. Constitution is perhaps best understood as a work in progress.

Similarly, in the case of early 20th century Japan, the transition from a monarchy to a more democratic form of polity involved the problem of legitimacy deficit. Not to mention that the Meiji Constitution was authorized by the emperor himself, the entire process of constitutionalization was elite driven with the minimum participation from ordinary Japanese people (Seizaburō 1954, 1958; Matsuo 1966, 1994). The democratic aspirations of the Freedom and People’s Rights Movement were abandoned by the conservative governmental elites, and the Meiji Constitution, albeit with some elements of constitutionalism, consistently used the word *shin-min*, the subjects of the emperor, to address the existing population. As Matsuo Takayoshi writes, the Meiji Constitutional system “was a semi-absolute political system, though its outward appearance was that of a constitutional monarchy” (1966, 617). However, Minobe thought that it would be possible to transform this semi-absolutist system into a more democratic one by actualizing the ideal embedded in the Constitution itself. His emperor organ theory was considered radical by contemporaries precisely because of this reason.

The Korean case of democratic founding in early 20th also suffered from the problem of legitimacy. Following the March First Revolution, the founding members of the PGRK convened a constitutional assembly to promulgate the 1919 Provisional Charter. Despite their ambition to usher in a new era of popular sovereignty, however, most Koreans were unable to partake in this process either in the form of representation or of direct participation. If we understand *in-min* as the reference to the pre-existing population who, in its entirety, did not (or perhaps

phenomenologically could not) authorize the Provisional Assembly to govern the country, it is clearly problematic to claim that the sovereign authority of the Provisional Assembly was legitimate at the moment of founding. One way to understand this lack of legitimacy is by differentiating the content of the 1919 Provisional Charter from its function. Given that the members of the PGRK were uncertain of (a) an immediate prospect of national independence and (b) nationwide support, it is possible that they intended the 1919 Provisional Charter to function as a proclamation instead of as a constitution document. While the *content* of the 1919 Provisional Charter announced and stipulated the fundamentals of a new republic, its *function* might have been to invite an audience, requesting their full attention and participation in a founding project (cf. Frost 2017). The legitimacy of the 1919 Provisional Charter, therefore, was contingent upon the critical role of audience reception and participation.⁷⁵

However, even though we may be able to set aside the issue of lacking legitimacy at the moment of democratic founding by considering it as the understandable expression of the future-oriented character of constitutional democracy, the emergence of “the people” as a self-governing political collective does not necessarily ensue the maturation of institutional frameworks. Despite

⁷⁵ According to Hyangmi O (2009), a full expansion of this reading suggests that the drafters of the 1919 Provisional Charter relinquished the founding legitimacy in order to continue independence movement. As O writes, “one possible interpretation is that the Provisional Government of Republic of Korea renounced its status of government and converted itself into an organization of independence activists, thus relegating its founding document to a ‘charter of an organization’ (2009, 295).” In this line of reasoning, O argues that one must provide a plausible explanation as to why the drafters of the 1919 Provisional Charter deliberately accepted the discrepancy between the content of the 1919 Provisional Charter and its function. However, her critique is based on a problematic assumption that the drafters must have envisioned the 1919 Provisional Charter as a fully legitimized legal document in the first place. If we understand the problem of legitimacy posed in the 1919 Provisional Charter as a case of bootstrapping process, the discrepancy between the content of the 1919 Provisional Charter and its function could have been an invitation to augment the legitimacy the 1919 Provisional Charter.

their differences in theoretical commitments, Bruce Ackerman's strong version of constitutionalism (1991, 1998), Colón-Ríos's weak constitutionalism (2012), and Andrew Arato's post-sovereign constitutionalism (2016) all agree that creating a virtuous circle between the self-corrective process of constitutional institutions that incrementally augments the legitimacy of a nascent constitutional order and the cultivation of democratic peoplehood that enables the people's self-governance is necessary. However, what if this ideal is far from becoming the reality because the culture of self-rule is either undeveloped or entirely missing? At the heart of democracy is the culture of self-governance. Institutions may last longer than a generation, but it is ultimately people who move them. Without some sort of undergirding political culture that enable people to perceive themselves as a self-governing collective, they may too easily become subject to constitutional institutions that should presumably of their own creation.

Rousseau's *Social Contract* famously articulates this socio-cultural dimension of democratic founding. In an attempt to solve a seemingly irresolvable tension between pre-political people and a self-governing people at the moment of founding, Rousseau introduces a wise legislator into the picture. Although Rousseau's invention of a wise legislator suggests a way out of his identified paradox, its implication is quite problematic: "the people" can be *present* as the end product of democratic founding.

Derrida in his later political writings directly engages this issue. Through his deconstructive reading of Rousseau, Derrida comes to a conclusion that if "the people" refers to the perfect unity between the referential people and the sovereign, it can never be fully reified as an empirical entity. Whether one considers this indeterminacy as the essence of modern democracy (e.g., Bernal 2017; Derrida 2011a; Frank 2010; Honig 1991; Lefort 1998) or seek an alternative way to legitimate a constitutional order (e.g., Arato 2016, 2017; Chambers 2004, 2018; Tekin 2016), it seems evident

to me that a more fruitful way of breaking through the paradox of founding is to understand democratic founding as a long-term oriented process of identity making over time.

That said, while this proposal to reconceptualize democratic founding as a transformative process *in action* may sound persuasive, it can hold validity only by demonstrating in detail how such a process unfolds in concrete socio-cultural settings. Just like how the American case of founding benefited from “republican” institutions (Arendt 1990), other liberal democracies around the world had distinct intellectual resources to draw on in their quests to building new political realities. Investigating these understudied cases is an important academic project because it can provide us new conceptual vocabularies that have potential to enrich our understanding of democratic founding. From this vantage point, it is unfortunate that few studies, at least in the Anglophone academic world, have investigated the ideas of “the people” in the early 20th century Japanese and Korean contexts in relation to the constitution-making process.

My dissertation began filling this gap by introducing Minobe and Cho as two noteworthy political theorists who illuminate contemporary discussions about democratic founding. Despite the differences in their historical backgrounds and political views, Minobe and Cho were similarly prompted to figure out the question of democratic transformation. Theorizing within the context of early 20th century Japan and Korea, as much as the issue of democratic founding was about the institutional design and legitimacy, the possibility of democratic transformation was an equally or even more urgent task to be undertaken by both thinkers; they were primarily concerned with the project of inventing a self-consciously political people more than they were with the logical conundrum of founding.

Lessons from Minobe Tatsukichi

Although Minobe's emperor organ theory and Cho's vision of a "new democracy" are not immune to Derrida's critique of the metaphysics of presence discussed in Chapter 1, they present us alternative configurations of democratic transformation with distinct lessons as well as conspicuous limitations. To start with Minobe, central to his emperor organ theory is a historically and culturally distinct mode of inventing "the people" within the existing monarchical institutions. Influenced by the German jurisprudence theory, Minobe understood himself as a constitutionalist not a popular sovereigntist. Throughout his career, Minobe developed a sustained critique of popular sovereignty and of constituent power. It is not that he rejected the idea of the rule by "the people" entirely but that he adhered to a theoretical position that upon constitutionalization, the right to govern is vested in the state itself and expressed in the form of a constitution. An ideal modern state Minobe dreamed of was not in which ordinary Japanese people govern themselves only because they were given an opportunity to do so, but in which they gradually realize the performative meaning of self-governance and thus become capable of prioritizing "national interest" over overtly private interests. In this respect, Minobe's emperor organ theory centers around the issue of cultivating democratic peoplehood through political representation that would allow ordinary Japanese people's *gradual* transformation into a self-governing political agent. If Minobe were to be remembered by political theorists, it is because he, in the subtlest way possible, attempted to synthesize the system of emperorship with constitutionalism, which in turn opened up a way for early 20th century Japanese people to emerge as a new political actor. Although he was not the only intellectual at the time who sought to pursue this project, Minobe systematized it in a way that his contemporaries could not.

To be clear, even though Minobe's emperor organ theory softens the paradox of founding, it raises just as many more tensions. For instance, the theory's emphasis on the institutional representation as the precondition of democratic transformation may have canceled out democratic aspirations embodied in Minobe's proposal. Moreover, although retaining the emperor as the supreme organ of the state preserved the presumed unity of the nation, contrary to Minobe's intentions, such an attachment to the tradition may have hindered the development of a culture of participatory citizenship. In short, Minobe's emperor organ theory has both liberal and conservative sides to it. When compared to his ideological opponents, Minobe was clearly a radical thinker. Although the precarious coexistence between *koku-min* and the emperor appears as the confines of old school liberalism to our contemporary eyes, Minobe was accused of *lese-majesty* for the academic position he held in the works like *Lectures on the Constitution*. That said, these ambivalent democratic tendencies in Minobe's political thought remind us of an important lesson that a radical societal change might dismantle the very foundation of constitutionalism. For Minobe, the most effective way to constitutionalize a "pre-modern" polity while preserving the essence of the nation was not through a radical revolution exemplified by the French Revolution but rather through a *process* of constitutional learning. Minobe himself initiated this process by retroactively interpreting the constitution and positing a gradual transformation toward a more fully democratic form of government.

Lessons from Cho Soang

In contrast to Minobe's non-revolutionary model of democratic transformation, Cho's proposal was much more radical. Drawing on modern Korean history, Cho claimed that it was through the March First Revolution that early 20th century Korean people could develop a

collective consciousness as a self-governing political agent. Although this nationwide movement was ultimately suppressed by the imperial Japanese army, Cho understood it as an unmistakable call for popular sovereignty. Following the March First Revolution, however, the revolutionary forces were divided into the nationalist and the socialist factions. From the perspective of the nationalists, the colonized *sans* some sort of national consciousness would be an easy prey for the colonizer's strategies to incite a divide within her subject. For the socialists, on the other hand, if the result of national independence were the establishment of yet another form of domination by a particular class, it would merely perpetuate oppression by other means. Against the mainstream view at the time that these two visions were incompatible, Cho advanced an argument that self-determination and equality *complement* each other. For Cho, self-determination and equality were the two pillars of what he called a "new democracy" defined by its adherence to the principle of non-domination. Cho believed that only in this system could Korean people claim that they govern themselves because self-determination without equality would be as empty as equality without self-determination. In either case, the relationship of domination would persist. This partially explains why Cho favored the word *in-min* over the word *kung-min*. In contrast to the latter that had a connotation of being ruled by the state, the former was free from such a nuance. As the 1919 Provisional Chapter stipulated, *in-min* referred to the sovereign *and* egalitarian people unified in their collective effort against domination.

That said, while this understanding of democratic transformation as an ongoing process of actualizing the principle of non-domination suggests that "the political question" and "the social question" are not necessarily incompatible but rather complementary to each other (cf. Arendt 1990), it also reveals an uneasy tension between the two. *On Revolution*, Arendt famously holds that the failure of the French Revolution was due to "the social question" (or more precisely the

existence of poverty) that drove the multitude of the poor to seek socio-economic equality over political freedom (1990, 68-114). According to her, this preoccupation with “the social question” was not a distinct feature of the French Revolution per se but one that all revolutions shared throughout human history (112). As such, one may consider Cho’s proposal of the “Principle of Three Equalities” as a partial but still noteworthy solution to the Arendtian conundrum, i.e., how to solve the social question with political means? Rather than juxtaposing “the social” and “the political” as a binary choice, Cho sought an alternative path of incorporating both of them into his vision of founding as non-domination. As discussed in Chapter 4, however, it is difficult to see how such a vision squares with Cho’s endorsement of rectificatory violence. Without recourse to violence, Cho posits, it is impossible for colonial subjects to prevail over the colonizer and march forward to democracy. This instrumental view of violence as a means to achieve the principle of non-domination is understandable, given that he experienced the failure of the March First Revolution, but a binary opposition between “We, the subjugated Koreans” and “Fascist Japan” and the former’s use of violence to overthrow the latter may have exacerbated the antagonism between the two instead of promoting the principle of non-domination. In fact, the colonial experience continues to haunt Korean people in the form of national trauma. The issues such as comfort women and the traitorous actions of pro-Japanese groups continue to ignite a transtemporal conflict between Japan and Korea and orients contemporary Koreans to differentiate, ever more clearly and easily, which objects, names, faces, and movements constitute Koreanness and deserve an appropriate emotional connection: “Korea” is a protagonist to be empathized with, while “Japan” is a constitutive adversary of Koreanness. Although this ethnic consciousness against “Fascist Japan” in and of itself may not be a problem, Cho does not fully explain in detail under what conditions the “domestication” of nationalism becomes possible. In the case of post-

war Germany, citizens' critical reflection on national traditions could have motivated them to envisage an emergence of civic solidarity and constitutional patriotism (Muller 2008, 16-45), but such a critical use of national memory may not have yielded the same outcome in post-colonial Korea.

Concluding Remarks

Leigh Jenco's *Changing Referents* (2015) is a difficult read for Anglophone audiences. Much of its discussion pivots around the Chinese origin thesis developed by Chinese Yangwu reformers, and its historical and intellectual background is not quite accessible even with Jenco's eloquence narrative. We do not feel any urgency to familiarize ourselves with the 19th century Chinese thinkers because their ideas and practices do not matter to "us." But it is an important work of political theory precisely because of this inaccessibility. Why do we find their ideas and practices difficult to digest? Does not this imply that we perhaps are complacent with whatever understanding we have for ourselves? Comparative political theory has become one of the most vigorous subfields in political theory and many path-breaking studies in constitutionalism have incorporated various "non-Western" cases to enrich "our" understanding of politics. However, key figures that animate the issue of democratic transformation and constitutionalism still remain predominantly "Western," ranging from the classical thinkers (Jean-Jacques Rousseau, Carl Schmitt, Hannah Arendt, Emmanuel-Joseph Sieyès, etc.) to new inclusions (Raymond Carré de Malberg, Georges Vedel, Claude Lefort, Maurice Hauriou, etc.).

To borrow Jenco's parlance, the motive behind this dissertation was to "change referents" of democratic founding. For this purpose, I have presented Minobe Tatsukichi and Cho Soang as two noteworthy thinkers of democratic transformation and distilled from their writings distinct

lessons that merit further scrutiny by political scientists. However, my interpretation of their writings does not represent the entirety of their political thoughts. As much as I have attempted to situate their ideas and arguments within their immediate contexts, the very act of translating (both in the literal and symbolic sense) them into what is being presented in this dissertation involved my own intervention. In fact, Minobe is often considered a legal theorist and most academic attention has been paid to his legal thought not to his political thought, that is, the transformation of *shin-min* into *koku-min* via the medium of institutional representation. Accordingly, one of the primary purposes of this dissertation was to develop an alternative reading of Minobe, one that recasts him as a political thinker. Similarly, but for a different reason, Cho's political thought is largely unknown even to many contemporary Koreanists and has never been given an introduction in any Western language. My dissertation is the first ever attempt to develop a coherent reading of Cho's thought in relation to the research question formulated in the beginning of the dissertation – the issue of democratic transformation at the moment of founding. Although it may be a limitation of my dissertation that I have interpreted Minobe's and Cho's ideas of democratic transformation for the purpose of incorporating them into the existing literature on democratic founding rather than presenting their overall theoretical paradigms, I think this is also an invitation for future research on their complex but insightful understandings of the political.

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