Democracy and Constitution-Making: Postwar Japan and South Korea

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Thematic Outline:

It is commonly taken for granted that “We the People” are the ultimate fount of political legitimacy and legal authority in a democratic constitutional order. According to this credo, the people have such a sovereign power because they wrote and sanctioned the constitution they live under. But, both theoretically and historically, who are those “We the People”? What does it mean to say that people’s alleged authorship creates the ultimate authority and legitimacy in a democratic polity? Can a constitution be made in such a democratic way, and if so, in what sense and to what extent? This seminar seeks to answer these conceptual questions by revisiting constitution-making experiences of postwar Japan and postcolonial Korea under U.S. military occupation in the wake of World War II.

The seminar consists of three parts. The first section will review various theoretical and conceptual perspectives on democratic constitution-making. Some of the salient themes for common discussion are – revolutions and constitutions, constituent power and popular sovereignty, constitutional identity, democratic boundary-setting, imposed constitutions, and transitional justice. Using these concepts as our primary toolkit, we will proceed to explore the making of Japan’s “Peace Constitution” (1946) and South Korea’s “Founding Constitution” (1948), respectively, in the second and third section of this seminar. For Japan, our discussion will focus, among others, on the peace provision and the so-called “symbol emperor system.” For Korea, discussion topics will include socioeconomic rights, colonial lustration, legal continuity, and nationality.

Through a theoretically informed investigation into the democratic constitution-making processes of postwar Japan and South Korea, in short, this seminar aims to deepen students’ understanding of the way in which constitutional democracies were designed and expected to work in Japan and Korea. Based on these historical reflections, more important, students will be encouraged to think about the theoretical relationship between constitutionalism and democracy in a fresh light.
It will be helpful to have some prior exposure to the theories of constitutionalism and democracy as well as political, legal, and diplomatic histories of modern Japan and Korea. No such knowledge will be presumed, however, and nor is there any language requirement.

**Requirements:**

Active and informed participation in the common discussion is the most crucial component of this seminar. Needless to say, punctual attendance and thorough preparation for each and every seminar is required. To facilitate your participation, you will write a response note, no longer or shorter than one page, about the assigned reading and send it to me one day prior to the scheduled seminar. For example, this assignment will begin with the seminar on 13 September, so your first note will have to reach me (via email) by 4pm, 12 September. Your notes will form the basis of your discussion in the classroom as well as my weekly evaluation of your performance. In addition to participation and weekly notes, final evaluation will be based on a research paper. By research paper is meant a 15-20 page long investigative report on a topic of your choice as long as it falls within the thematic parameters of this seminar and meets my approval by no later than 15 November. For those of you who do not come up with a coherent research agenda of one’s own, I will consider giving take-home exams during the final week.

**Final Evaluation:**

Attendance/Participation: 10%
Weekly Notes: 30%
Research Paper/Take-home Exam: 60%

*Note that research papers will be read in a more positive light. This means that there will be a premium for those papers over take-homes when giving out final marks. Exact scale will be determined later.
* Also note that auditing/sitting-in will be permitted only to those who are willing to do all the above requirements except the research paper/final take-home.

**Academic Integrity Policy**

Students should be aware that in this course collaboration of any sort on any work submitted for formal evaluation is not permitted. This means that you may not discuss your problem sets, paper assignments, exams, or any other assignments with other students. All work should be entirely your own and must use appropriate citation practices to acknowledge the use of books, articles, websites, lectures, discussions, etc., that you have consulted to complete your assignments.
Reading Materials:

Those listed below, both required and recommended, will be reserved in the library. Recommended readings are listed for your further research interest. They are by no means comprehensive; but, they will be good place to start up your research.

Also for your reference, primary historical documents for the Japanese case can be found at the National Diet Library site (http://www.ndl.go.jp/constitution/e/index.html). In case of Korea, no comparable online source is available in English.

*Note that the reading list is still tentative (as of 19 August). The adjustment will be made as the class progresses, and, if any, change will come in the direction of reducing the weekly load.

Reading Schedule:

6 September  **Democracy and Constitutionalism**

Required:


Recommended:


13 September  **Constitution-making: Nuts and Bolts (or Nooks and Crannies?)**

Required:


Recommended:


20 September **Democratic Constitution-making: Popular Sovereignty (or Political Theology?)**

**Required:**


**Recommended:**


27 September **“We the People”: Autonomy, Past, Boundaries**

**Required:**


**Recommended:**


Jean-Jacques Rousseau, *Social Contract* (Lawgiver chapter)

Arthur L. Stinchcombe, “Lustration as a Problem of the Social Basis of

4 October  **Japan I: Defeat, Dismemberment, and Occupation [No Required Reading]**

Recommended (for general historical overview):


11 October  **Japan II: Imposed Peace**

Required:

Koseki, *The Birth of Japan’s Postwar Constitution*, Chapter 9 (pp. 192-211).

Recommended:


18 October  **Japan III: Emperor’s New Cloth**

Required:


Recommended:

Takashi Fujitani, Splendid Monarchy: Power and Pageantry in Modern Japan (California UP, 1996), esp. concluding chapter.

25 October  Japan IV: We the People of Japan

Required:

Chaihark Hahm and Sung Ho Kim, Making We the People: Democratic Constitutional Founding in Postwar Japan and South Korea (Cambridge UP, 2015), Chapter 4 (pp. 199-244 only).
Koseki, The Birth of Japan’s Postwar Constitution, Chapter 8 and 12.

1 November  Korea I: Liberation, Division, and War [No Reading]

Recommended (for general historical overview):

Gregg Brazinsky, Nation Building in South Korea: Koreans, Americans, and the Making of a Democracy (North Carolina UP, 2007)
Bruce Cumings, Korea’s Place in the Sun: A Modern History (Norton, 1997)
Carter Eckert, Offspring of Empire (Washington UP, 1991)
Gi-wook Shin and Michael Robinson (eds.), Colonial Modernity in Korea (Harvard University Asia Center, 1999)

8 November  Korea II: Socialist Economy
Required:

Cumings, *Korea’s Place in the Sun*, Chapter 5 (pp. 185-217 only; rest of the chapter recommended).
Hahm and Kim, *Making We the People*, Chapter 2 (pp. 96-127 only)

15 November  **Korea III: Democratic Republic**

Required:

Hahm and Kim, *Making We the People*, Chapter 3 (pp. 162-93 only)

22 November  **Korea IV: We the People of Korea**

Required:

Hahm and Kim, *Making We the People*, Chapter 4 (pp. 244-71 only)

Recommended:


29 November  **Final Wrap-up**