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978-1-107-01882-2 - Making We the People: Democratic Constitutional Founding in
Postwar Japan and South Korea
Chaihark Hahm and Sung Ho Kim
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MAKING WE THE PEOPLE

What does it mean to say that it is “We the People” who “ordain and establish” a constitution? Who are those sovereign people, and how can they do so?

Interweaving history and theory, constitutional scholar Chaihark Hahm and political theorist Sung Ho Kim attempt to answer these perennial questions by revisiting the constitutional politics of postwar Japan and Korea. Together, these experiences demonstrate the infeasibility of the conventional assumption that there is a clearly bounded sovereign “people” prior to constitution-making that stands apart from both outside influence and troubled historical legacies. The authors argue that “We the People” only emerges through a deeply transformative politics of constitutional founding and, as such, a democratic constitution and its putative author are mutually constitutive. Highly original and genuinely multidisciplinary, this book will be of interest to democratic theorists, scholars of comparative constitutionalism as well as observers of ongoing constitutional debates in Japan and Korea.

Chaihark Hahm is Professor of Constitutional Law at Yonsei University Law School (Seoul, Korea) and an editorial board member of *I•CON: International Journal of Constitutional Law*. He holds law degrees from Yale, Columbia, and Harvard.

Sung Ho Kim is Professor of Political Science and Director of the Social Science Research Institute at Yonsei University (Seoul, Korea). He is the author of *Max Weber's Politics of Civil Society*, which was also published by Cambridge University Press.

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Tai Young Hahm (1873–1964) and Rin Suh Kim (1894–1964)

Patriots for the Nation
Pastors to the People
Founders of the Republic

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Acknowledgments

The origins of this book can be traced back to a long, late-evening conversation with the late Il-Young Kim and Chulwoo Lee sometime in 2008. As the topic of our discussion shifted freely from history and culture to politics and law, we at one point asked ourselves who “We the People” – the putative authors of a democratic constitution – really are, especially in a context defined by strong ethnic nationalism. What would be a definition of the people that is both historically accurate and normatively attractive? That evening’s question proved to be the beginning of a long journey that has come to a close with the completion of this book.

It was, however, not until we took our sabbatical leaves, both in 2009–2010, that we were able to embark on the project in earnest. Once settled in at the Harvard-Yenching Institute (HYI) and The Hague Institute for the Internationalization of Law (HiiL)/The Netherlands Institute for Advanced Study (NIAS), respectively, we started sharing ideas and drafts across the Atlantic. Upon returning to Seoul, we were ready to engage in serious writing, only to find our efforts hampered by our teaching, administrative, and other responsibilities. We found out the hard way that a sabbatical year is better used to finish a book project rather than to start one. It has thus taken many more years than we had anticipated before our reflections on that evening’s question finally coalesced into the book as it stands now. Along this long journey, we have incurred many debts.

We have benefited from various conversations and correspondences with numerous friends and colleagues regarding different versions of the ideas contained in this book. We thank William Alford, Sung-joon Cho, Bruce Cumings, Carter Eckert, David Gerber, Andrew Gordon, Ran Hirschl, Ken Ishida, Jonathan Kang, Chikako Kashiwazaki, the late Il-Young Kim, Keigo Komamura, Chulwoo Lee, Hans Lindahl, Barak Medina, Bert van Roermund, Rogers Smith, Thio Li-ann, Mark Tushnet, Joseph Weiler, and Jiunn-rong Yeh.

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We especially would like to note our gratitude to Tom Ginsburg who invited us to contribute to the Cambridge series on Comparative Constitutional Law and Policy, and to Gary Jacobsohn for years of encouragement and friendship. Needless to add, any fault that this book may contain is entirely our own.

At various stages, different parts of this book were presented at conferences, workshops, and public lectures. To list them in chronological order: National University of Singapore, Harvard-Yenching Institute, 2010 Annual Meeting of the Law and Society Association (Chicago), University of Texas at Austin, the Netherlands Institute for Advanced Studies, 2011 Annual Meeting of the Association for Asian Studies (Honolulu), Asan Institute for Policy Studies (Seoul), East Asia Institute (Seoul), Yonsei University, Seoul National University, Korea University, Keio Gijuku University (Tokyo), Chicago-Kent College of Law, the University of Chicago Law School, City University of Hong Kong, and Harvard Law School. We thank all who shared their comments with us at these venues.

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