

Constitution and Citizenship in a Multicultural Korea: *Limitations of a Republican Approach*

Kim Nam-Kook

Abstract

The current Constitution of Korea is marked by two important changes: the direct presidential elections and the establishment of the Constitutional Court. These two experiments are the origin of recent conflict between the republican restoration of political participation and the liberal judicialization of politics, which is a critical issue in Korean politics today. The flourishing discussion on republicanism in Korean society can be understood as an attempt to recover the superiority of politics against the rule of law and the influence of the judiciary in the stage of democratic consolidation. The author argues that in the state-centered Korean society, the emphasis on republican virtues can include totalitarianism and distort reality due to the abstraction of the debate. Consequently, attempts to restore political superiority should be handled more carefully, and emphasis on liberal depoliticization should come prior to it. The author stresses the limitations of republicanism in the ongoing multicultural trend in Korean society, and supports consensual democracy as a proper system of representation in this pluralistic world. Although reinvigorated politics is vital for consensual democracy, the role of the judiciary still remains crucial for protecting the rights of minorities.

Keywords: constitution, judicial review, judicialization of politics, Republicanism, multicultural society, social minority, consensual democracy

Kim Nam-Kook (Kim, Nam-guk) is a lecturer at Seoul National University. He received his Ph.D. in political science from The University of Chicago. His publications include "The End of Britain: Challenge from Devolution, European Integration, and Multiculturalism" (2005). E-mail: nkim98@gmail.com.

www.kci.go.kr

Introduction: Constitution, Citizen, and Republicanism

The foremost element constituting a political community is the citizen. In a normative sense, political communities are formed by first collecting individuals' political will regarding what kind of community they desire, then regimenting their opinions to create a constitution to serve as the blueprint. Finally, a state apparatus is established based on this constitution. Such political community grounded on citizens' consent and participation acquires a democratic legitimacy. But in reality, the contrary case is frequently observed. That is, a state instrument is first established by an external agency or an elite planning, and then the constitution is made, and last comes the citizen that will solve the problem of legitimacy. A reversed process like this is called the statist shortcut. This method is effective for building a community in a short period of time, but spontaneously attributes to the self the task of solving the problem of legitimacy by eventually making a participating citizen.¹

Korea might be susceptible to the prejudiced assumption that it followed the route of the statist shortcut. But studies today largely prove that it did not. The fact that, prior to the establishment of the first Constitution in 1948, seventeen drafts were in existence in Korean civil society; the April 1960 revolution, which removed president Syngman Rhee from power; the "Spring of Seoul" in 1980, beginning with the murder of president Park Chung-hee and ending with a military coup and the June Uprising in 1987 that resulted in direct presidential elections—these are examples proving the existence of voluntary and widespread participation from civil society regarding the

1. Citizens are people who legally constitute a political community. Citizenship from a legal perspective is the status or right of belonging to the modern nation-state. In contrast, citizenship from a philosophical perspective is the status through which we can perceive our relationships with each other and to the state. It can be classified as passive or active, inclusive or exclusive, even among people legally entitled citizenship of one nation. I use the concept of citizenship in both ways according to the context of this paper.

construction of a political community.² The doubt over whether such citizen participation and popular opinion were sufficiently reflected in the process of establishing the constitution surely remains. This means that the explosive debate that took place within civil society was often excluded or distorted in the aggregation process or the final stage of legislation at the National Assembly.

The current Constitution of Korea, known as the product of the 1987 regime, also demonstrated such limitations, namely, the replacement of extensive participation on the part of the citizenry in the early stage by the existing political party and the elites in the final process of legislation. The 1987 Constitution, however, contains two important elements: the direct presidential election and the establishment of the Constitutional Court. These two experiments were significant historical events in the sense that they constituted the origin of conflict between the republican restoration of political participation and the liberal judicialization of politics, which is being raised as a critical issue in Korean politics today.

Political decision took in many cases a superior position vis-à-vis legal procedure in the Korean political process. This phenomenal tendency deepened with the military regime, and the superiority of politics in the process of democratization had become more and more obvious. However, at the stage of democratic transition and consolidation, all political processes converged into strife over the enactment of the new constitution and emphasis on establishment of the rule of law. The event that proved the definite superiority of law over politics was the decision of the Constitutional Court in 2004. The court declared that the capital relocation was unconstitutional.

This decision completely reversed the duly fixed policy process by judicial judgment, which comprises at least four political stages: the president presented the issue of capital relocation as a campaign pledge; with the final election victory, the candidate's pledge was adopted as policy, the opposition party found mutual consent on the issue in parliament, and the policy was executed by the administra-

2. Suh (2007, 47-76).

tion. All this was reversed through the 2004 judicial decision.³ This development went far beyond the two roles attributed to the judiciary in the traditional political theories, i.e. that of neutral coordinator and passive law interpreter. The judiciary in Korea has demonstrated its clear position of judicial activism in policy making, going beyond the passive interpretation of law in keeping with judicial minimalism.

Many political scientists in Korea today are apprehensive about the judicialization of politics, and such worries are reasonable. With the accentuation of the rule of law at the stage of democratic consolidation, the superiority of politics has faded away. The role of politics is denied and the existence of the citizen itself is dwarfed. Lawyers usurp the place of politicians, and political arenas become places of disputes over legal procedure. Under these circumstances, interests in so-called republicanism are blossoming in an attempt to restore the superiority of politics to the domination of law.

The recent revival of the discussion on republicanism in Korea is composed of two major streams: the first is the debate among political scientists who emphasize republicanism in their search for the fundamental principle needed for the future of Korean democracy. The second is a constitutionalist discussion on the matter of understanding paragraph 1 from Article 1 of the Korean Constitution, which states “the Republic of Korea shall be a democratic republic.”

Some political scientists see the emergence of the individual in Korean society following the establishment of democracy from the viewpoint of a degradation of civic virtue. Witnessing all the agencies of Korean society (formerly under the oppressive predominance of the state) flying out in a centrifugal direction, they tend to conclude that common introspection focusing on republican virtue has been absent. For instance, the argument that Korean society was oblivious of the “republican principles needed for a healthy management of the state such as patriotism, devotion, abstinence, etc.,”⁴ or that it is important to “consolidate the elements of equality and participation

3. Park M. (2005, 253-276).

4. Chung (2005).

in liberal democracy through the achievement of socioeconomic equality and expansion of participatory democracy,”⁵ or the assertion that the “deliberative politics of republicanism has been heckled as if it were hostile to democracy, and the political participation of citizens has been denied and criticized as a form of populism”⁶ are representative cases that stress the need for republican values in our society.

On the other side, discussion of Paragraph 1 of Article 1 of the Korean Constitution “the Republic of Korea shall be a democratic republic,” ultimately seeks to examine the meaning this sentence should carry in the future. Article 1 of the Korean Constitution has so far lain outside the public’s interest, as well as being interpreted simply to mean that Korea is no longer a monarchy, and has been at the center of impractical discussions of “democracy” as a governmental system and “republic” as its structure. But new debates interpret Paragraphs 1 and 2 in Article 1, the latter of which is “the sovereignty of the Republic of Korea shall reside in the people and all state authority shall emanate from the people,” as premising a republican public that “obtains its position through continuous participation and education in common life,”⁷ or suggest a focus on the “freedom from arbitrary dominance of the other”⁸ and on acquiring the factors postulating this republican liberty in order to properly define the meaning of Article 1.⁹

How then can such interest in republicanism be understood from the perspective of relations between law and politics? In this paper,

5. Kang (2001, 10-11).

6. Kim D. (2004, 80-81).

7. Han (1999, 13-14).

8. Kwak (2005, 33-57).

9. The debates on republicanism cited in this text share the commonality of republicanism in terms of the range of state intervention, the responsibility of society, and the due liberty of the individual. They all support either recognizing the active role of the state or emphasizing the priority of the common good and the responsibility of the community, or the freedom of the individual achieved through participation in self-government.

I will address the current republican concern as an attempt to restore political predominance against the judicialization of politics in Korean society, and to discuss the meaning that this attempt carries as strife against the predominance of law. I shall first try to understand the definition of republicanism in the Greek-Roman and French experiences, and then examine the limitations of republicanism as a standard to the amendment of the constitution and to the role of the citizen in the context of increasing multicultural trends in Korea.

The transition into a multicultural era, a phenomenon in conformity with the flow of globalization, has revealed certain limitations embodied in the Constitution of Korea: first, the content has remained at a nation-state dimension in which universal human rights and cosmopolitan ideals are lacking; second, the issue of gender equality has been skipped over in articles, which are mostly male-centric; third, the constitution is oriented toward a majoritarian democracy premising one single ethnic group and one homogeneous cultural community.¹⁰

Under these circumstances, the emphasis on republicanism will result, in my opinion, not in constituting a new futuristic frame, but will rather reinforce the existing limitations of a nation-state. More specifically, under the circumstances of rapid transition into a multicultural society, the republican debates on checking the rule of law and judicialization of politics can in no case abate the possibility of conjunction between the negative effects of republicanism—tyranny of the majority and ethical overburden—with the state-centered vestiges remaining in Korea. Development in this direction signifies a return to the past, running counter to the flow of a multicultural era.

10. The concept of multiculturalism is used in two ways: as a descriptive term to describe actual changes in society in terms of cultural, ethnic, and religious diversity; and as a normative term to prescribe the problems of an increasingly diverse society through positive recognition of different identities in the public sphere. I confine my usage to the former, thus every society can now be said to have multicultural characteristics regardless of how such changes are dealt with.

Greek and Roman Tradition: Civic Virtue and the Rule of Law¹¹

How can we define the tradition of classical republicanism with regard to restoration of politics? Classical republicanism means not simply antonym for monarchy, but a political entity based on prudence and non-arbitrary power. It is different from contemporary liberalism which emphasizes state neutrality, void of arbitrariness, and priority of the individual. It stresses instead the active role of the state and the responsibility of the community, as well as the duty of the citizen. The formative politics premised in the republican tradition argues for the positive role of the state as an important actor in the political process in order to protect and develop the values of a political community. The republican state should stand at the center of all necessary policies for fostering the qualities of the citizen and protecting the community. If the state does not take charge of such a role, penury of political debates and degradation of social integration are inevitable.

Accordingly, politics in the republican tradition cannot be independent from the values and goals pursued by the citizens, nor is it desirable. Individual liberty also differs following the degree to which one is involved in self-government. A republican citizen is supposed to discuss the society's destiny with other members of the community and share common responsibilities in making decisions concerning the community's future. An individual as a citizen of a political community can achieve freedom only through such active participation in public activities.¹²

The republican tradition is divided into two streams, the Greek tradition that aspires to consolidate the community again through abstract exaltation of civic virtue and the Roman tradition that seeks to achieve a republican state through a legal and systematic frame. Aristotle and Hegel are considered the representative theorists of the

11. For a full discussion of this topic, please refer to this author's paper (Kim N. 2005).

12. Sandel (1996).

Greek tradition, while Cicero and Machiavelli represent the Roman tradition.

Quentin Skinner, Philip Pettit, and Maurizio Viroli stand on the side of the Roman tradition in the matter of harmony of individual liberty and common good, arguing that the way to maximize one's liberty is to become actively involved in political activities and thus fulfill one's duty as a citizen before achieving individual rights.¹³ In Skinner's view, all citizens should be equipped with solid civic virtues and satisfy their common duties in order to preserve and maximize individual liberty. This argument frontally refutes the position that the best way to guarantee one's liberty is to minimize all social duty that is attributed to an individual.¹⁴

To give an example, Skinner mentions three civic virtues that an appropriate republican citizen should bear, primarily advanced by Machiavelli. First, no citizens should in any case take bribes. Historically, society infested by incessant bribery always ended up in slavery. Second, citizens should always be firm in fighting against external aggressors eager to conquer their community. Third, all citizens should make efforts to protect their government from falling into the hands of some ambitious individuals or an oligarchy group in pursuit of their own interests.¹⁵

These debates emphasize the fact that a secure source of freedom is far more important than the extent of one's own liberty. Moreover, republicans think of social duties not as a violation of freedom, but as a shortcut to increasing individual liberty. Thus, the republican tradition sees that the free life of the citizen is guaranteed when all participate actively in activities of the public domain to protect their political community, an indispensable source of freedom.

While Skinner supports the republican theory of the Roman tradition, Michael Sandel and Alasdair MacIntyre stand on the side of the Greek tradition and develop their points based on Aristotelian

13. Skinner (1998); Pettit (1997); Viroli (2002).

14. Skinner (1998, 85-86).

15. Machiavelli (1983, 153-165).

theory. Perfectionist theory of the Aristotelian tradition, assuming a close political system, tends to decide first the essential nature of a desirable life in order to examine next the figure of an ideal constitutional government or define people's right. If the definition of an ideal life is not clear enough, the content of an ideal constitutional government remains obscure in its turn.¹⁶

From the viewpoint of strongly Greek-oriented republicanism, civic virtues and participation in politics are fundamental elements to acquire freedom, and the political nature of human beings makes us free only when we engage in active discussion for the common good and participate in the community's public activities.¹⁷ Civic virtues in Greek republicanism refer to public activities, devotion to the community, and patriotism. Sandel argues that these virtues are by themselves necessary to achieve human dignity. So, they do not serve in ensuring political superiority uniquely. Of course, Aristotle himself did not use the republic in his classification of political entity. Probably "politeia," which consists of majority citizens' will and aristocracy's wisdom can be said to be similar. Nevertheless, Sandel argues that strong Greek-traditional republicanism is the ideal form to adopt and pursue, in which all citizens are armed with civic virtues that attribute absolute values to the individual and allow all kinds of political topics for debate, and realize upon this a society full of moral and civic energy.¹⁸

To sum up, the modern interpretations of the Greek and Roman traditions coincide in the sense that they both conceive that individual liberty can be achieved through active political participation of the citizen, and they all recognize the leading role of the state in this process. However, while Sandel's strong republicanism embodies the essential nature of liberty recognizing the immanent value of civic virtue and political involvement, Skinner's moderate republicanism recognizes their importance to the extent of supporting the rule of

16. MacIntyre (1981); Sandel (1998, x-xi).

17. Sandel (1996, 7).

18. Sandel (1996, 9-26).

law and preventing the arbitrary exercise of power by the individual. Certainly the difference between the two traditions is insignificant when compared to liberalism and libertarian principle, which perceives individual liberty and civic duty as totally different domains, and understands social duties and state interference as limiting the freedom of choice of individuals. There classical republican traditions can surely give a good implication for those who desire the restoration of politics these days.

The French Experience: Secularism and Patriotism¹⁹

Another example that shows superiority of the “political” through a republican approach is France. France is a representative country that advocates republicanism as the principle of social integration, bringing together the social majority and the minority, as well as the original citizens and newcomers. French republicanism is composed of such values as secularism, patriotism, freedom, equality, charity, tolerance, etc. It was first established as a political doctrine advocating secularism after experiencing conflict with Catholicism during the French Revolution. During the Third Republic (1885-1940), it became the political model for the country, excluding the extreme right and the extreme left.

The religious conflict interspersed throughout France’s modern era was dampened by Henry IV’s Edict of Nantes in 1598, which advocated protection of the rights of religious minorities. However, after Louis XIV abolished the Edict in 1685, the Huguenots were sent into asylum, and the Catholics took power in the political system, constituting the so-called *ancien régime*. The republicans were confronted by the clannish empowerment of the Catholics during the French Revolution in 1789, and the Jacobin revolutionists eliminated the dominating power of the Catholics from the public domain and allowed them only circumferential influence, declaring secularism to

19. This topic was discussed more intensively in this author’s paper (Kim N. 2004).

be tied up within the private domain. Around this period, the Catholic Church was admitted to be hostile to republicanism, arguing for the ancient rule of order and opposing political liberalism and secularism. Republicans made efforts to completely destroy the influence of Catholicism in the French sociopolitical order through the separation of church and the state, which was laid out as a fundamental principle of French republicanism.²⁰

Apart from secularism, French republicanism pursued the values of patriotism. A patriotic citizen of the political community is required to actively participate in public activities. The state, as an important actor as well, should be actively involved in the protection and development of the values that are commonly pursued. The Republic of France declared that all persons who swear allegiance to the republic are entitled to become French citizens regardless of their origin, nationality, gender, and religion. In other words, the opportunity to become a citizen of a republic is given to anyone regardless of the person's particular racial or religious or cultural identity.

The principles of republicanism meant also that all the powers within the French boundaries were integrated upon a single basis called republican political culture. Consequently, relationships external to the republic and the citizen, that is, the existence of an intermediate organization mediating individual and state was not approved. The famous Chapelier Law in 1791 totally restricted the liberty of creating any intermediate association, negatively valuing the influences of those associations on the connection and/or identity built between the state and the individual. The French government mitigated the Chapelier Law by approving the freedom of labor unions, adopting the Waldeck-Rousseau Law in 1884, but the freedom of association was not accorded to minority ethnic groups before 1981.

This kind of dominance of republicanism as the main principle of social integration continues to exist in French society. The spirit of

20. Roberts (1978).

territoriality in the Nationality Act of 1891 and the act of separation of church and state of 1905 is still valid today. François Mitterrand, from the Socialist Party, spoke for multiculturalism during his election campaign in 1981, a more general point of view than republicanism, but breached it after coming to power. In 1986, the rightist prime minister Jacques Chirac attempted to pass an amendment to implement a more clannish Nationality Act based on republicanism, but abandoned it when studied by opposing forces. Still today, the republican principle prohibits the exposition of one's religious identity in public. The exceptional tradition of France, which totally ignores religious and cultural differences rather than positively admitting to them and considers it more appropriate to find the basis of integration of equal individuals in republican principles, is again verified in the debates on the prohibition of headscarves in public schools.

Despite continuous arguments throughout the 1980s and the 1990s over the prohibition on wearing headscarves in public schools, the Stasi report presented by the French government in 2003 was followed by the maintenance of secular principles and a law prohibiting all exposition of religious symbols.²¹ On February 10, 2004, the French National Assembly passed a law prohibiting the wearing of the Islamic headscarf, the cross, the Jewish yarmulke, and the Sikh turban in public schools. The content of this law defined school as the most important institution for implanting republican ideals, and emphasized absolute equality in physical education.

Since the French government has not recognized the role of religion in the public sphere, the debates on the Islamic headscarf have been perceived as a serious challenge to the republican tradition of the country. According to a quote by Jose Casanova, Islam is leading the attempt at deprivatization of religion, which was formerly tied up in the private domain.²² For the French republicans who firmly believe that the religious bloodshed of the Middle Ages was solved

21. Stasi (2003 appendix).

22. Casanova (1994).

with secular principles, a situation like this would appear to be a dull attempt to repeat the same failure of the past. Evidently for them, the best way to avoid a fall into a jungle of darkness where primitive tribalism and religious conviction are engaged in struggle is to stubbornly hold on to republican principles.

Social Integration in a Multicultural Era and Limitations of Republicanism

How can these discussions on republicanism against a backdrop of classical and French experiences hold significance in Korea? What kind of implication can this discussion have for the restoration of politics in our society? The continuously diverging situation of Korea raises the fundamental question of a fair principle of social formation upon which every member of the society can agree. Republicanism in itself embodies numerous advantages: it recognizes the role of the state as the subject of formative politics, enlarges the extent of social responsibility, and achieves individual freedom through civic virtues. However, the republican argument emphasizing the boundaries between communities and the homogeneity within those boundaries tends to underestimate the uncontrollable divergence Korean society is going through. Particularly, considering the solid community-oriented and state-centered tradition remaining in the highest rank of this society, such arguments need a more careful approach.

To offer an example, every time debates are brought up concerning social minorities, such as conscientious objectors to military service or gays and lesbians, the majority of Koreans would show deep concern for the safety of the nation prior to the rights of individuals. While respecting differences has become an important topic of discussion in Korean society, when Article 11 of the constitution states "all citizens are equal before the law," the scope of such plurality is limited to gender, religion, and social status. Certainly, Korean society is now in a state in which it should ponder not only those three criteria, but also geographical origin, age, ethnicity, and culture as

well. Furthermore, Paragraph 2 of Article 37 of the Constitution clearly states “freedoms and rights of citizens may be restricted by law when necessary for national security, maintenance of law and order or for public welfare. . . .” Such cases especially show that the Constitution of Korea emphasizes being a “member of a nation-state” and the homogeneity within the nation, rather than stressing universal humanity or world-citizen ideals.

The state-centered conception of Korean society can be confirmed in its attitude towards new immigrants. Besides being a familial descendent, foreigners willing to become a citizen of Korea (so-called naturalization) must have resided more than five years in Korea, shown proper conduct, and possess a basic knowledge of the Korean language and tradition. In order to acquire a permit to sojourn in Korea without naturalizing or becoming a Korean citizen, one must have resided more than seven years in Korea. Earn a certificate of permanent residence requires an additional five years of stay.²³

Two major significances are understood from these conditions: first, through the relatively easy conditions for naturalization compared to that of permanent residence, the Korean government encourages foreigners to become a Korean citizen rather than opt for simple residence; second, considering, however, that the employment regulations for foreign laborers allow only a maximum period of three years of legal stay, these conditions clearly imply that the Korean government does not provide opportunities for foreign laborers to apply for naturalization or permanent residence.

Under this circumstance where closed state-centered tradition still prevails, excessive interest in republicanism is not desirable. States can solve the problem of legitimacy through citizen participation and the revitalization of politics, but citizens would always carry the dangers of ethical overburden and tyranny of the majority. In

23. Enforcement ordinance of immigration control law, Article 12 on permission for the sojourn of foreigners in Korea. <http://www.moleg.go.kr> (accessed on July 9, 2007).

other words, minority groups in a republican society can suffer eventual threat to their identities, under the patriotism of a majority-oriented community, and the individual can be afflicted with penury of liberal imagination, being constantly exposed to the political domain.

The negative effects of republicanism can be observed even within Korea's own experience. Since 1960, the republican tradition in the Korean social movement has been very similar to that of the western tradition, advocating participation, morality, passion and romance. By "idealizing the aftermath of a democratized society," they "took for granted the excessive moral duties of the individual," and interest in the meaning of the individual during this process was relatively minimal. This was followed by a "denial of the self history after realization of democracy" and frustration, and finally disruption. In other words, the Korean social movement exhibited a process in which the individuals who were diminished under the influence of ethical overburdens and macro-level discourse were facing an identity crisis and lost the meaning of individual devotion to democratization after the realization of democracy.²⁴

Such attempts to put pressure on republican civic virtues from the perspective of voluntarism accompanied an extreme attempt at restoration of political superiority. In my judgment, Korean society should spend more time on drawing out the meaning of life from individuals' inner values and achieving the liberation of the individual. The social atmosphere that pressures individuals to locate motivation not in their inner selves but external selves is easily brought to a state of panic when this impetus is dried up. Likewise, the individual would be diminished when s/he is too subject to others' perceptions and vulnerable to changes.

Positively or negatively, the current appearance of the individual after democratization is formed around figures of pleasure or consumption deriving from inner desire, and it can be said that the future of democracy depends on how to draw a universal agreement

24. Choi (2002, 229-230).

on the basis of subjective and emotional individuals. For some scholars, this situation is simply defined as the atrophy of civic virtue and the depravity of the individual. Certainly, the positive aspect of democratization, that is, the emancipation of the individual has been countered by its negative aspect, the depravity of the individual. However, what we need in the current situation where state-centered tradition remains is not to reinforce republican civic virtue, but to enhance individual freedom and dignity by eliminating inhumane habits and customs that oppress and extort individuals. It can be better achieved through the baptism of liberal universal human rights rather than republican state-oriented virtue.

In addition, the supporters of republicanism should draw attention to examining society's fundamental changes. The notion of multiculturalism has become more and more familiar to Korean society. Aside from traditional cleavage lines of political powers or economic redistribution, Korean society has recently been experiencing diversification upon the initiative of social minorities. Numerous statistical indices support these changes. For instance, 35,447 marriages in Korea, or 11.4 percent of the total number of marriages in 2004, was a marriage with a foreigner, and in 2005, 43,121 cases, or 13.6 percent, was an international marriage. Twenty-seven point four percent of men living in rural areas married foreigners, and the problem of education for the children of these couples is a serious issue frequently addressed in the media. The largest minority group in Korean society, migrant workers, reached more than 350,000 in 2005. Currently in 2007, the total number of minorities and foreigners in Korean society, including migrant workers, internationally married couples and their offspring, is about 850,000, or 1.7 percent of the total Korean population. This is similar to Europe in the 1960s, where new ethnic, cultural and religious inflows began to be regarded as a serious social problem.

The advent of multiculturalism in Korean society implies a further process than simple implementation of multicultural policies. A changing social structure requires necessary change in the system of representation based on new principles. In other words, that society,

diversifying from the bottom up, must pursue necessary change in the political system, and judging by the European experience, this need is indeed a transfer from majoritarian democracy to consensual democracy. Introduction of consensual democracy is surely to support the restoration of politics, but it does not mean to support restoration of republicanism.

Consensual Democracy as a New System of Representation

Majoritarian democracy is premised upon a relatively homogeneous society, culture, and historical experience. In a relatively homogeneous society, people easily consent to the majority principle for non-violent conflict resolutions. This consent presupposes two things: first the belief that I, currently in the minority, can eventually become the majority; second, the belief that the majority will endeavor to protect my rights as a minority, even if I disagree with the majority's opinion.

The fact that the members of a political community consent to the majority principle means the existence of trust, or enough social solidarity that enables the minority to sacrifice themselves on the assumption of these two beliefs. Decisions based on the majority principle cannot exist without premising a mutual trust between the minority and the majority. It may be expected that people will accept an existing system because of established authority, but a society forced to a mechanical renunciation without any trust in the majority's opinion cannot be a desirable political community. Especially when there is no sign of one group becoming the majority in a society where diverse ethnic, cultural, and religious groups coexist, decisions made by the majority are nothing but a form of constant violence compelling the minority groups to make sacrifices.

Consequently, if a political community branches out into diverse standards, and if the number of minority groups unlikely to become the social majority keeps increasing, the majority principle that requires a simple majority of fifty-one percent on the premise of a

homogeneous society should be changed to a consensus principle, reflecting the opinion of as many people as possible. Consociational democracy, the representative form of the consensus system, is composed of four principles: first, recognizing the autonomy of the society's diverse sub-segments; second, establishing the government through a grand coalition where approved leaders of different groups are involved; third, respecting the principle of proportionality based on the size of the participating group as a rule in establishing the grand coalition; and fourth, each group's having access to mutual veto rights. All policy-making processes might be suspended by the exercise of the mutual veto right, but the European experience shows that most groups handle political situations through dialogue and negotiation rather than exercising the veto right.²⁵

Of course, Korean society does not currently show serious fissures, to the extent that it needs an immediate transfer into a consociational democracy. However, long-term orientation toward it seems to be clear enough. Korean society is already increasing in number of underrepresented groups due to the deepening polarization of socio-economic standards. This trend is unlikely to change in the near future. In addition to this, the number of ethnic, cultural, and religious minorities is growing rapidly as well.

Korea has no national minorities that were annexed through war or treaty in history. It also has no indigenous people who are different from the national minority in the sense that they were not major contenders in the nation building process. But both have their own territorial base unlike ethnic minorities.²⁶ Korea's ethnic minorities only consist of voluntary migrants from at least three different sources: migrant workers, marriage migrants, and North Korean defectors.

With the increasing number of social minorities according to regional and socio-economical conflicts, those ethnic minorities also constitute the future ground for eroding majoritarian democracy. The

25. Lijphart (1999).

26. Kymlicka and He (2005).

transition into a multicultural society requires assorted multicultural policies, and politics in a diversifying society must change its fundamental paradigm to derive the maximum consent of the people. When we think about possible unification with North Korea, such change, including a grand coalition, is more desperately needed. If one guesses at the root of development toward consensus democracy in Korea, it would be first lessening the predominant majoritarian democracy, then moving to moderate majoritarian democracy, and eventually reaching centripetal consensus democracy.²⁷

Considering the two variables of “fair representation” and “governability” for a properly working democracy, the extreme consociational model is not the answer yet at the current stage for Korean society. The consociational model is the right choice for European countries that have one or more groups of national minorities, but for Korean society, which has relatively less complicated cleavage lines without national minorities and indigenous people, social integration under a centripetal consensus model would be a proper alternative. Although every social minority should be represented fairly in the central and local decision-making process, such a represented body must be able to govern properly in an efficient manner. Striking a balance between these two points of “fair representation” and “governability” is not an easy task that the consensus model should go through.

If majoritarian democracy is a linear equation, consensual democracy can be understood as a more complex form of equation. The complex problem of reflecting the diversifying social structure has to be solved with a more complicated political system. In a multicultural society, there is no one overarching solution that can satisfy all social groups. Politics in such a society is more likely to become a monotonous routine during which each side gives and takes benefits through dialogue and negotiation based on their interests. We should now get accustomed to multicultural politics, in which the illusion of possibility of solving all problems through one unique election or one

27. Park C. (2005).

great politician has faded away. Such a development can no longer be handled with a republican approach premised on belonging to one single community and macro-discourses such as patriotism, devotion, and abstinence.

Conclusion: Balance between Judicialization of Politics and the Republican Approach

One may ask whether republicanism, contrary to all expectations, could be advantageous for consensual democracy as representative system for the minority. My position is not. In fact, consensual democracy is founded not on virtue, but on interest. It is true that consensual democracy sets forth sub-segmental groups, but the management of those groups is based not on virtuous principles, but on interests relying on a common identity. I certainly think that virtue is necessary in politics, but the degree of it should be minimized. Particularly, the civic virtue emphasized in republicanism is an agreement without any clear form of expression among the social majority. Such virtue, as tacit as it is, presents difficulties of decoding for the social minority. Hence, thoughtful concern for social minorities should be concretized through identifiable articles of law rather than relying on the influence of informal virtues.

For those who support republicanism as the best way to restore political superiority and negatively perceive the active role of the judiciary, they should argue those claims with caution in terms of protecting the rights of minorities. The extreme position of the political superiority goes further to the abolishment of the Constitutional Court or the negation of judicial authority. Nevertheless, the institutions that can eventually solve the problems of republican practice of direct democracy will be the parliament and the judiciary. If consensual democracy should be settled as the system of representation in a multicultural era, the role of the judiciary is still necessary as the final systematic apparatus checking the failure of this consensual politics.

The advantage of a parliament is that elected elites can maintain

distance from the direct interest of individuals in the viewpoint of public interest. No one can deny the legitimacy of parliament as a traditional apparatus elected by the public. In the *Federalist Papers*, Madison points out that parliament acquires dominant power in a republican government, and suggests separating it into two branches, the Upper and the Lower House, as a method of checking this empowering parliament.²⁸ But Madison did not mention what alternative can be adopted when a parliament, revitalized by the citizens' active participation, fails to reach an appropriate agreement: such an alternative only arose in 1803 when the U.S. Supreme Court established the principle of judicial review in the *Marbury vs. Madison* case. This event, enlarging the role of the judiciary from interpretation of law and neutral coordinator to participation in policy-making through judicial review has evolved from being an American anomaly to being a global phenomenon.²⁹

The judiciary is in charge of two conflicting roles. The first concerns checking the executive and the legislature from speaking for the majority in order to protect minorities' rights. Second, however, the judiciary is responsible for ensuring legal stability by properly reflecting the majority citizens' average legal feeling. That is, the core point of the role of the judiciary is to best harmonize the two conflicting roles of which it is in charge. The judiciary sometimes makes progressive judgment in order to protect minorities' right before the majority's legal aspiration. For example, the decision of the *Brown vs. Board of Education* case that abolished racial segregation in schools in 1954 was a historic decision that broke the cartel shared by the political majority. It was a measure made to protect the rights of minorities ten years before the enactment of the Civil Rights Act in 1964.³⁰

The restoration of politics and political debates is an important issue for Korean politics, but the process of achieving it does not

28. Madison, Hamilton, and Jay (1987, 318-322).

29. Shapiro and Stone (2002).

30. Bickel (1973).

have to succeed in the extreme attempt to restore political superiority and in disdain for the role of law and the role of the judiciary. If the emphasis on republicanism targets the restoration of the political superiority, such arguments face some limitations. Two main reasons can be attributed: first, the emphasis on republican tradition in a society where state-oriented discourses are still strong will only lead to another abstract discourse. A discourse on an “abstract, formal subject” based on citizens’ virtue and devotion, and not one on a “concrete and practical subject” based on individual interests will deprive the social legitimacy of the discourse itself by distorting the realistic existence of the individual into an abstract human being transcending private interests.³¹

Second, praising republican civic virtues without pursuing the values of individual liberty carries the risk of driving our society into the infernality of totalitarianism. Participation and discourse advocated by the republican tradition are significant only when they are proportional in size to the private space in which individual freedom breathes and individual control of the inner self is in operation. Especially, the emphasis on republican tradition can be finally legitimized when they are proportional to the degree of individual liberty, including the voices of the diversifying minorities. In consequence, people who excessively emphasize the republican approach of political superiority should be more careful in their debates on the future amendment of the Korean Constitution and the role of the citizen.

Republicans may argue that the restoration of political superiority does not necessarily oppress one’s individual liberty. This argument largely makes sense if one considers that the republican concept of liberty presupposes active participation in self-government. Evidently, this paper is not about whether republicanism is transcendently good or bad. Republicanism in itself is an excellent principle constituting society. A political community can be subject to diverse principles of social formation, and a republican approach would be somewhat needed at a certain moment of social development. I do

31. Park D. (2001, 212-214).

not seek to criticize the defects in logic of republicanism as a normative theory. My criticism of republicanism comes from the viewpoint of balance in the Korean context. In terms of balance, the negative effects of the excessive concern for republicanism can be brought into Korean society where influences of state-centered discourses still remain strong. Therefore, I emphasize the priority of the emancipation of the individual through universal discourses of liberalism. The restoration of political dominance should be in proportion to liberal depoliticization and secure private space for the individual. In this process, the role of law and the judiciary can be reinforced in order to protect social minorities' rights. If one asks how social integration should be realized in this increasingly diverse world, I argue that it should be based on common interest of individuals with basic degree of civic virtues added to it.

REFERENCES

- Bickel, Alexander. 1973. *Politics and Warren Court*. New York: Da Capo Press.
- Casanova, Jose. 1994. *Public Religion in the Modern World*. Chicago: University of Chicago Press.
- Choi, Jang Jip (Choe, Jang-jip). 2002. *Minjuhwa ihu-ui minjujuui* (Democracy after Democratization). Seoul: Humanitas.
- Chung, Yoonjae (Jeong, Yun-jae). 2005. "Hanguk jeongchi, gukga gyeongyeong geurigo hangukhak" (Political Criticism, Korean Politics, and Korean Democracy). Paper presented at the fall symposium of Jeongchi pyeongron hakhoe (Korean Politics Criticism Association).
- Han, Sang-Hie (Han, Sang-hui). 1999. "Minju gonghwaguk-ui heonbeopjeok hamui: gonghwajuuijeok nonjaeng-gwa dongtaejeok jugwon ron" (Constitutional Implication of a Democratic Republic: Debates on Republicanism and Dynamic Sovereignty). *Ilgam beophak* (Ilgam Law Review) 3.
- Harrington, James. 1998. *The Commonwealth of Oceana and A System of Politics*. Cambridge: Cambridge University Press.
- Hobbes, Thomas. 1996. *Leviathan*. Cambridge: Cambridge University Press.
- Kang, Jung In (Kang, Jeong-in). 2001. *Minjujuui-ui hangukjeok suyong*

- (Democracy in the Korean Context). Seoul: Bookworld.
- Kim Dae-Young (Kim, Dae-yeong). 2004. *Gongnonhwa-wa jeongchi damnon* (Public Discourse and Political Criticism). Seoul: Bookworld.
- Kim, Nam-Kook (Kim, Nam-guk). 2004. "Yeongguk-gwa peurangseu-eseo jeongchi-wa jonggyo" (Politics and Religion in France and Britain). *Gukje jeongchihak nonchong* (Korean Journal of International Relations) 44.4.
- _____. 2005. "Damunhwa sidae-ui simin" (Citizen in the Multicultural Era: Comments on the Korean Society). *Gukje jeongchihak nonchong* (Korean Journal of International Relations) 45.4.
- Kwak, Jun-Hyeok. 2005. "Minjujuui-wa gonghwajuui: heonjeong cheje-ui dugaji wonchik" (Democracy and Republicanism: Two Principles of Constitutional Regime). *Hanguk jeongchihak hoebo* (Korean Political Science Review) 39.3.
- Kymlicka, Will, and Baogang He. 2005. *Multiculturalism in Asia*. Oxford: Oxford University Press.
- Lijphart, Arend. 1999. *Patterns of Democracy*. New York: Yale University Press.
- Machiavelli, Niccolo. 1983. *The Discourses*. London: Penguin Books.
- MacIntyre, Alasdair. 1981. *After Virtue*. South Bend: University of Notre Dame Press.
- Madison, James, Alexander Hamilton, and John Jay. 1987. *The Federalist Papers*. London: Penguin Books.
- Park Chan Wook (Bak, Chan-uk). 2005. "Solution for Regional Cleavage and Politics of Balance." *Journal of Korean Studies* 14.2.
- Park, Dong-chun (Bak, Dong-cheon). 2001. "Yeongguk minjuhwa gwajeong, hangukjeok gyeongheom-e daehan hamui" (The Process of Democratization in Britain, an Implication of the Korean Experience." In *Minjujuui-ui hangukjeok suyong* (Democracy in the Korean Context), edited by Kang Jung In. Seoul: Bookworld.
- Park, Myung-Lim (Bak, Myeong-rim). 2005. "Heonbeop, heonbeopjuui geuri-go hanguk minjujuui" (Constitution, Constitutionalism, and Korean Democracy). *Hanguk jeongchihak hoebo* (Korean Political Science Review) 39.1.
- Pettit, Philip. 1997. *Republicanism: A Theory of Freedom and Government*. New York: Oxford University Press.
- Roberts, John. 1978. *The French Revolution*. Oxford: Oxford University Press.
- Rousseau, Jean-Jacques. 1762/1997. "Of the Social Contract." In *The Social Contract and Other Later Political Writings*. Cambridge: Cambridge Uni-

- versity Press.
- Sandel, Michael. 1996. *Democracy's Discontent*. Cambridge: Harvard University Press.
- _____. 1998. *Liberalism and the Limits of Justice*. Cambridge: Cambridge University Press.
- Shapiro, Martin, and Alec Stone. 2002. *On Law, Politics, and Judicialization*. Oxford: Oxford University Press.
- Skinner, Quentin. 1998. *Liberty before Liberalism*. Cambridge: Cambridge University Press.
- Stasi, Bernard. 2003. "Le Rapport de la Commission Stasi sur La Laïcité." *Le Monde*, December 12.
- Suh, Hee Kyung (Seo, Hui-gyeong). 2007. "Namhan-gwa bukhan heonbeop jejeong-ui bigyo yeongu, 1947-1948" (Comparative Analysis on North Korea and South Korea's Enactment of Constitution, 1947-1948). *Hanguk jeongchihak hoebo* (Korean Political Science Review) 41.2.
- Viroli, Maurizio. 2002. *Republicanism*. New York: Hill and Wang.