

The Controversy over the Legitimacy of the Korean Provisional Government during the Period of the National Representative Conference in Shanghai

OH Hyang Mi

Abstract

This paper sees the core problem faced by the Provisional Government of the Republic of Korea as one of legitimacy and attempts to examine the National Representative Conference held in Shanghai in 1923 in consideration of the controversy over the Provisional Government's legitimacy. Activists of the Korean independence movement founded the Provisional Government as a government in exile amidst this vacuum of legitimate authority, in line with the spirit of the March First Movement of 1919. However, the Provisional Government proved unable to establish supreme authority. Efforts to build the legitimacy of the Provisional Government culminated in the organization of the National Representative Conference (NRC), which brought together various independence movement activists. During the NRC, the legitimacy of the Provisional Government's supreme authority was approached from four different perspectives: historical, constitutional, democratic, and value-oriented.

Keywords: Provisional Government of the Republic of Korea, Provisional Congress, March First Independence Movement, National Representative Conference (NRC), *Dongnip sinmun* (Independence News), democratic republic, Japanese colonial regime, legitimacy, popular will

OH Hyang Mi is a lecturer at Korea University. She obtained her Ph.D. in Political Science from the Free University of Berlin in 1999. Her publications include "Daehan minguk imsi jeongbu-ui ipheonjuui: heonbeop gukga-roseoui jeongdangseong hwakbo-wa dillema" (Constitutionalism of the Korean Provisional Government: Its Legitimatization and Dilemma as Constitutional State) (2009). E-mail: hmoh99@yahoo.co.kr.

Problem: Legitimacy Crisis of the Provisional Government of the Republic of Korea

Although abundant research is available on the Provisional Government of the Republic of Korea (hereafter the Provisional Government), there is no accepted understanding of its impact. One group of researchers claims that as its establishment and operation was heavily influenced by factionalism and regionalism, the Provisional Government did not significantly contribute to liberation from the Japanese colonial regime.¹ Nonetheless, the Provisional Government's attempt to implement the first republican system in Korean history should not be discarded out of hand. Recent studies on the Provisional Government² reflect a more positive interpretation and focus on its attempt to implement a democratic system in Korea (H. Kim 2004, 388); the "constitutional democratic republic" (Y. Shin 2006, 158), the development of "modern political theory" (D. Cho 2007, 311); and importantly, the pioneering role of the Provisional Congress in the formation of Korean democracy and party system (H. Lee 2007, 174). However, such scholars also have failed to provide a consistent description of the Provisional Government's activities in relation to the implementation of a democratic republican system. While the Provisional Government can be examined as the first attempt at a democratic republic in Korean history, its significance must be assessed in light of its performance.

The March First Independence Movement of 1919 led to the establishment of the Provisional Government, which was expected to exercise supreme political authority. In turn, the authority of the Provisional Government relied entirely on the legitimacy it garnered from this movement. However, the legitimacy of the organization was chal-

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1. Various studies on the Provisional Government published during the 1980s demonstrate this particular line of criticism. For examples, see Kang (1982, 106); C. Shin (1988); and Roh (1989).
 2. As other recent evaluations of the Provisional Government, see D. Cho (1999), H. Kim (2005, 2009), Yun (2006). The latter two seek to set up objective criteria to assess the Provisional Government.

lenged, and its authority diminished with claims and declarations that called for its reform or abolition. It was against this backdrop that activists called for a national conference of various political and regional factions within the independence movement in hopes of devising an adequate structure for a central political organization as well as a blueprint for the exercise of supreme authority. The resulting event, entitled the National Representative Conference (NRC; Gungmin Daepyo Hoeui 國民代表會議), not only indicated the advent of a legitimacy crisis for the Provisional Government that had served as the supreme governing body so far, but also signified an attempt to overcome the question of legitimacy in and of itself. During the NRC, representatives clearly exposed the characteristics and limitations of the Provisional Government's legitimacy.

Most studies on the NRC³ have focused on the construction of a "national united front"⁴ as the main purpose behind the convening of the NRC. However, this group of diverse political and regional factions eventually encountered an obstacle within the objective of the conference itself. How could the Korean citizens, and at the very least the independence movement activists, be expected to obey a supreme authority at all? In this regard, this paper argues that the NRC must be understood as a controversy over the legitimacy of the Provisional Government, and that its deficient conception of legitimate authority must be further examined.

The NRC was held from January to June 1923 but this paper attributes its beginning to the "Announcement to the Korean People," issued by Bak Eun-sik in February 1921. The announcement officially called for a representative conference to discuss the Provisional Government's reform, and gave way to a wide array of arguments about the Provisional Government's legitimacy and the necessity of a repre-

3. Researches which directly investigate the NRC include: H. Lee (1979), Y. Park (1982, 1990), H. Kim (1995), C. Cho (1995, 2001), Y. Park (1996), M. Lee (1999), and Yun (2006).

4. J. Kim (1967, 378ff.), Y. Park (1996), and C. Cho (2001, 84) examine the NRC from the viewpoint of an attempt to unify the various political camps within the movement.

sentative conference. After two-year period of preparation prolonged by financial problems and an international situation fraught with conflict,⁵ the NRC was finally held in Shanghai in 1923.⁶ The conference represented “the largest congress of representatives”⁷ held in the history of the independence movement. In line with such scale and significance, arguments that emerged among diverse factions during the NRC period were carefully reported in the *Dongnip sinmun* (Independence News)⁸ published in Shanghai. *Dongnip sinmun* played a crucial role for the Provisional Government because it was the primary source of information on the state of the independence movement for Koreans, domestically and internationally (Choi 1999, 384). Even matters that could not be addressed at the NRC due to meeting regulations were discussed in depth by this newspaper, which in effect allowed Koreans at home and abroad to experience the proceedings of the NRC. Koreans with an interest in the NRC as well as the participants themselves contributed articles on the topics at hand to the *Dongnip sinmun*. To avoid Japanese sabotage, the NRC assembled at a confidential location, and participants submitted articles to the *Dongnip sinmun* using pen names or maintaining anonymity. Consequently, except for a few special cases, nearly all citations from *Dongnip sinmun* discussed here were written anonymously.⁹

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5. International conferences regarded as crucial to Korean independence took place in the United States and Soviet Union during this period, namely “Washington Conference” held from November 12, 1921 to February 6, 1922 and the “First Congress of the Oppressed Peoples of the Far East” held from January 21 to February 2, 1922 in Moscow.
 6. *Dongnip sinmun*, “Last Year of the Provisional Government” (우리의 過去一年), December 13, 1922. See J. Kim (1967, 378ff.) and H. Kim (1995, ch. 2) for the background and process leading to the NRC.
 7. *Dongnip sinmun*, “On the National Representative Conference” (國民代表會議에 對하야) (part 3.2), August 22, 1922.
 8. The newspaper was published from August 21, 1919 to November 3, 1926 in Shanghai. See Choi (1999) and Y. Lee (1983) for more about the *Dongnip sinmun*.
 9. Most excerpts from the *Dongnip sinmun* employed in this paper are anonymous. The reference materials employed in conjunction with this paper are limited to the articles of *Dongnip sinmun* dealing with the legitimacy of the Provisional Govern-

At the NRC, the authoritative legitimacy of the Provisional Government was examined through four standpoints: historical, constitutional, democratic, and value-oriented. Generally, those who approached the debate from the standpoints of constitutional and democratic legitimacy supported the preservation and reform of the Provisional Government respectively, while those who viewed the issue through the standpoint of value-oriented legitimacy denied not only the founding of the Provisional Government, but also the founding of any form of governing body.¹⁰

The next section begins by examining how the Provisional Government justified its own right to supreme authority. This discussion is followed by an overview of the major criticisms of the Provisional Government that surfaced at the NRC, with a particular emphasis on the standpoints of democratic and value-oriented legitimacy. Finally, the conclusion evaluates the significance and limitations of the various legitimacy controversies that emerged at the NRC.

The Provisional Government's Efforts to Justify Its Status as a Supreme Authority

The issue of legitimacy becomes apparent in times of political crisis, like when a sovereign power is no more recognized as such and cannot gain active obedience from the people. The rule of the monarchy was based on a conventional form of legitimacy rooted in religion and tradition (Gusy 1987, 9-10). The legitimization of the supreme authority becomes a core issue in democratic republics where the

ment, including those that arose as part of the debate within the Provisional Congress itself during the NRC. Sources are also limited to legitimacy controversies published in the newspaper, including those that arose as part of the debate within the Provisional Congress during the tenure of the NRC.

10. *Dongnip sinmun* articles point to the formation of three factions amongst the NRC representatives when it came to the Provisional Government: "supporters," "reformers," and "revolutionaries." *Dongnip sinmun*, "Report on the NRC" (繼統論者, 創造論者), March 14, 1923; *Dongnip sinmun*, "The Truth about the Split at the NRC" (改造派, 創造派), June 13, 1923.

basis of conventional legitimacy has been lost (Würtenberger 1982, 679). This paper defines the notion of legitimacy as the source of a political authority that draws voluntary obedience from the people. For this reason, a government can no longer remain intact if its legitimacy is questioned.

The founding of the Provisional Government in Shanghai occurred at a time in which monarchical sovereignty had been inoperative since the Japanese annexation of Korea in 1910 and Japanese colonial power possessed essentially no legitimacy amongst the Korean people. Put differently, the previous government was extinct, and the current administration was a subject of resistance. Amidst such circumstances, the March First Independence Movement effectively provided the basis for the establishment of a legitimate government. Based on its alleged connections to the movement, the Provisional Government insisted that it be granted authority as the supreme governing body for the Korean people. In order to reach the objective of national independence, the Provisional Government took on not only the trappings of an independence movement organization, but also those of a form of a government. More importantly, this new government defined itself as a democratic republic that represented the popular will demonstrated by the March First Movement.

The self-legitimizing efforts of the Provisional Government are evident in the Proclamation of the Provisional Charter (*Imsi heonjang seonpomun* 臨時憲章宣布文), announced in April 1919. The Proclamation was intended to identify the grounds for establishing and managing the Provisional Government:

Thirty days have now passed since Koreans shouted out in unanimity for independence in Seoul. A peaceful independence movement has now taken root throughout the land. In keeping with this spirit and the popular trust placed in all, we hereby organize a Provisional Government and announce our Provisional Charter. With an eye towards ensuring that the happiness and benefits that eternal and complete liberation entail are passed down to future generations, this Proclamation is hereby decreed in the name of the Provisional Congress (National Institute of Korean History 2005a).

The March First Movement symbolized a widespread political will for independence and thus led to the conceptualization of Koreans as a sovereign people. Accordingly, the proclamation stresses the fact that the founding of the Provisional Government was authorized by a historical and democratic legitimacy rooted in the March First Movement.¹¹ In addition, the Provisional Government also promulgated a constitution for the Provisional Congress.

Above all, the legitimacy of the Provisional Government lay in the establishment of a political system based on popular will. The political will embedded in the March First Movement had called for the establishment of a national organization that would result in the cessation of Japanese colonial rule. The Proclamation No. 1 of the Korean Provisional Government (臨時政府國務院佈告 第1號) issued in January 1920 declared that year as the first year of the war for independence and outlined the Provisional Government's identity as a governing state and source of political authority.

Would we be able to rule all Koreans at home and ask the entire world for official approval if we merely had the status of an individual or group? This is precisely why we established the Provisional Government. We desire to prove that the Korean Republic is a sovereign state, and that our independence movement is a national task. The Provisional Government is a supreme organization endowed with sovereignty as well as the center for all tasks related to the independence movement. The Provisional Government is not a government of current authorities, but a public institution of the state and its people. Consequently, the members of the Provisional Government must be public servants who have the right to exercise sovereignty and to lead the independence movement in a manner that reflects popular will.¹²

11. Regardless of their stance on the Provisional Government, most scholars agree that the March First Movement in effect granted it historical legitimacy. In this regard, Cho's assertion that the "founding value" of the Provisional Government was derived from the March First Movement has been widely accepted (D. Cho 1999, 288-289; H. Kim 2004, 25, 109; 2008, 306-307; Yun 2007, 116).

12. This declaration was published in *Dongnip sinmun*, February 5, 1920 in the name of the premier Yi Dong-hui and all cabinet members.

According to this declaration, the Provisional Government, in its capacity as the “supreme organization,” had two rights: to exercise sovereignty and to lead the independence movement in accordance with popular will. The Provisional Government emphasized that liberation and recovery were “national tasks” and that the means employed by the movement had to be based on a state structure and governing process, for which the Provisional Government would be responsible. Its formation thus in essence represented the rebuilding of a lost state.

The reasons why the direction and aims of such a movement should be exclusively “national” are readily apparent. To this end, in order to govern Koreans on the Korean peninsula and obtain international approval, the Provisional Government had to both be endowed with sovereignty and serve as a supreme organization. Sovereign status as a state was required to ensure command of domestic affairs and diplomacy. In summation, the March First Movement generated the legitimacy needed to form a national organization that could function as a democratic republic. As it was perceived as inheriting the spirit of the March First Movement, the Provisional Government claimed to possess the status of a state, i.e. a supreme authority, and thus justified its political legitimacy to speak for and act on behalf of the Korean people.

Controversies over the Legitimacy of the Provisional Government

Historical Legitimacy

Confronted by a legitimacy crisis triggered by the NRC, the Provisional Government sought to reinforce the historical legitimacy that had been emphasized during its founding phase. Representatives at the NRC understood that the March First Movement had been a historical event that constituted an expression of all Koreans’ desire for independence and an organized independence movement. Therefore, widespread consensus was reached with regards to the Provisional

Government's historical legitimacy established through its connection to the March First Movement. More to the point, the Provisional Government had already existed as "a government established by many Koreans"¹³ for five years.¹⁴ Thus, the Provisional Government was perceived as having been endowed with historical legitimacy and as an entity that should be maintained.

Constitutional Legitimacy

Advocates of constitutional legitimacy claimed that if reform of the Provisional Government was in any way necessary, it should take place within the Korean Provisional Constitution (*Daehan minguk imsi heonbeop* 大韓民國 臨時憲法).¹⁵ During preparations for the NRC, the Provisional Congress held its 10th regular session in 1922, during which a petition¹⁶ was presented by 102 Koreans in Shanghai, urging the government and the congress to support the NRC. The petition sparked a debate over the question of whether the convention of the NRC was in fact constitutional. Deputy Head of the Department of Internal Affairs, Jo Wan-gu, insisted that "the convening of another congress is unconstitutional because such an action would in effect disregard the existence of the Provisional Congress."¹⁷ Furthermore, he argued that any such petition urging support for an unconstitutional meeting was unacceptable. Jo's perception of the Provisional Congress as the sole legislature¹⁸ in effect precluded the possibility of

13. *Dongnip sinmun*, "Report on the NRC" (國民代表會議記事), March 14, 1923.

14. *Dongnip sinmun*, "Report on the NRC" (國民代表會議記事), March 14, 1923.

15. See Oh (2009, 287ff.) about the constitutionalism of the Provisional Government.

16. The right to present a petition was included in Article 9, Clause 4, which stated the people have "the right to petition the legislature." According to Article 21, Clause 9 of the Constitution, the legislature, namely the Provisional Congress, also had the right to discuss and accept petitions. The popular petition submitted by Cheon Se-heon on behalf of himself and 101 other Koreans living in Shanghai (April 3, 1922) was discussed at the Provisional Congress from April 5 to 13.

17. *Dongnip sinmun*, "Report on the 10th regular meeting of the Provisional Congress" (第十回 臨時議政院會議記事), May 27, 1922.

18. *Dongnip sinmun*, "Report on the 10th regular meeting of the Provisional Congress" (第十回 臨時議政院會議記事), June 14, 1922.

forming another representative body.

On the other hand, supporters of the NRC argued that the NRC “is not unconstitutional although it cannot be regarded as a constitutional organization.”¹⁹ To them, the NRC should not be regarded as a constitutional organization or a legislature, because it was neither an “congress” (*uihoe* 議會) nor an “association.” It was merely a “meeting” (*hoeui* 會議).

The NRC is a temporary meeting, not a permanent association with definite objectives. It does not matter whether the NRC is referred to as an Association of Representatives or a National Conference, because the NRC is not an association, but a meeting. The NRC is a kind of rally, not a legal association. It is a convention where representatives gather voluntarily, not an organization established to separate legal order. Once again, the NRC is a meeting, not a form of national congress.²⁰

However, it is clearly contradictory to claim that the NRC was not a congress but rather a meeting, and therefore did not challenge the authority of the Provisional Congress. The constitutionality of the NRC was not a question that could be determined by assessing its organizational legality. The purpose and the content of the NRC make it obvious that the intention was to establish an alternative organization that could function as a substitute for the Provisional Congress.

Anti-NRC activists, mostly the Provisional Government supporters who advocated for the latter’s constitutional legitimacy, faced strong opposition. The revolutionaries opposed to the Provisional Government insisted that it was inadequate for an independence movement to discuss matters such as constitution and supreme organization. However, even those reformers who approved of the Provisional Government had only a loose understanding of constitutional legality.

19. Statement of Yi Yu-pil, a member of the Provisional Congress (*Dongnip sinmun*, “Report on the 10th regular meeting of the Provisional Congress” [第十回 臨時議政院會議記事], May 27, 1922).

20. *Dongnip sinmun*, “On the NRC” (國民代表會議記事) (pt. 1), August 1, 1922.

Although the Provisional Government had been established via a constitutional proclamation, very few independence movement activists were in fact interested in reforming the Provisional Government based on this constitution. Those who insisted on the Provisional Government's constitutional legitimacy were, in some quarters, condemned as "constitutional addicts."²¹ Given that many activists possessed a keen awareness of the trappings of a democratic republic, it is remarkable how few deliberated the notion of constitutionalism. As most could not grasp the concept of "unconstitutional," attempts to defend the Provisional Government's legitimacy on constitutional grounds were not very persuasive. Such lack of concern for the constitution paved the way for debates over the creation of a second congress²² and sustained overall objections to the Provisional Government.

Democratic Legitimacy

The democratic legitimacy of the Provisional Government's claim of supreme authority was also rooted in the March First Movement. As a democratic republic opposed to the traditional monarchical regime, the Provisional Government drew its authority from popular will. Consequently, the best means for the Provisional Government to overcome its crisis of legitimacy was to verify the popular will through a representative congress. Pro-NRC activists did not outright deny the Provisional Government's legitimacy, but rather judged it as insufficient for effective political authority. Hence, any reform to increase the Provisional Government's usefulness had to be based on the political will of Koreans at home and abroad. When Bak Eun-sik and other activists officially called for a convention of national representatives in their

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21. *Dongnip sinmun*, "Thoughts after Reading a Report on the Provisional Congress" (議政院會議記事를讀하고), July 1, 1922. This article was contributed under the assumed name of "Jeok Seong" (赤星), meaning "red star." As such, the author might be a revolutionary who denied the legitimacy of any supreme organization, let alone the Provisional Government.
 22. *Dongnip sinmun*, "Report on the 10th Regular Meeting of the Provisional Congress" (第十回臨時議政院會議記事), March 1, 1922.

“Announcement to the Korean People” (February 1921), they averred that only a representative conference could reform the Provisional Government and unite the fractious political groups within the movement.

The only way to achieve a breakthrough in the crisis faced by the independence movement is by obeying the popular will, on the basis of which we can implement fundamental reforms and unite diverse organizations. We, Koreans, must make vigorous efforts! We must make a decision and see it through! To this end, we call for the convention of national representatives! (National Assembly Library 1976, 276-277).

This argument not only declared fundamental reform of the Provisional Government to be inevitable, but professed that the best means of reform was by ascertaining the will of the people through a representatives’ convention. The “large-scale reform” of the Provisional Government referred to an amalgamation of the various camps within the independence movement, specifically the formation of a supreme authority with binding force. The February 21st announcement claimed that bringing the diverse political orientations within the movement together into a unified organization depended on how the will of all Koreans was manifested and how a single movement leader with supreme authority was selected. Popular will inevitably had to be regarded as the source of political legitimacy. As previously mentioned, the establishment of the Provisional Government had sprung from the expression of popular will known as the March First Movement. Furthermore, the Provisional Government justly proclaimed itself to be a democratic republic formed in the name of the March First Movement. Nevertheless, how to actualize the spirit of a movement that now existed only as a historical event remained unresolved. Independence movement activists engaged in lengthy and intense disagreements over how to realize this spirit without damaging the Provisional Government’s authority. For their part, the signatories of the announcement came to the conclusion that the popular will could be embodied by convening a representative conference.

Given these appeals to popular will and representation as grounds for legitimacy, the so-called reformers found themselves in a situation where they could not reject either the Constitution or the Provisional Government. However, although they sought to reform the Provisional Government in the name of the Korean people, they did not do so in the name of the Constitution. Leading reformer An Chang-ho believed it was possible to employ democratic principles to both secure the legitimacy of the NRC and oppose the Provisional Government. He thought that the NRC could challenge the Provisional Congress to become the representative organization while circumventing the issue of constitutionality and argued that any true legislative body would represent popular will.

It has been argued that the convening of the NRC as another representative organization would be an act of denying the Provisional Congress's status as the legislature. I, for one, do not believe this to be the case. In a republican system, the supreme organization must obey the opinion of the people, and each individual must obey the supreme organization. Public opinion must already exist because the supreme organization must obey public opinion. Therefore, such an organization cannot be established before the popular will has been presented by representatives from all regions and groups. It is neither illegal nor a denial of the Provisional Congress to convene the NRC as a means to collect public opinion.²³

According to An, under a “republican regime” the supreme organization was expected to obey “public opinion.” Put differently, the “representatives must express the will of the majority” and the supreme organization must obey it. Therefore, the reform of the Provisional Government required the determination of popular will through the holding of a representatives’ conference. Even the Provisional Congress had been created by “public opinion,” i.e., the will of the Korean people as expressed in the March First Movement. Consequently, the Provisional Congress was expected to abide by public

23. *Dongnip sinmun*, “Address by An Chang-ho” (安昌浩氏演說) (pt. 3), May 21, 1921.

opinion collected via another conference, which seemed to exhibit more representational authenticity than itself. This represents the logic of a democratic state in which popular will outweighs a supreme organization's authority. An went on to argue that if the "public opinion" reflected at the NRC denied the legitimacy of the Provisional Congress, then the latter could in fact be dissolved in the name of the Korean people. In other words, while the NRC itself did not necessarily oppose the Provisional Congress, it was highly possible that the public opinion expressed during this gathering would. This argument overcomes the issue of the unconstitutional nature of the NRC by giving priority to public and majority opinion, or what can be referred to as the primacy of the popular will over the constitution and the supreme organization. Under this line of reasoning, democratic legitimacy takes precedence over constitutional legitimacy. The persuasiveness of this particular argument is of course dependent on whether one accepts the Provisional Government as a democratic republic. Furthermore, the concept of democratic legitimacy was meaningless to those who did not approve of the Provisional Government as a democratic republican system or did not accept the notion of a democratic republic at all.

An Chang-ho insisted that, according to the republican principles on which the Provisional Government was based, popular will should come before the constitution and the supreme organization. Accordingly, he sought to substitute the Provisional Government in a republican²⁴ procedure. While the so-called revolutionaries monopolized popular will as an absolute value rather than a process, An tried to develop reasonable procedures that could verify the popular will. By utilizing the democratic character of the Provisional Government, An planned to influence the reform process without damaging the notion of supreme authority. This strategy was evidently based on the assumption that an effective independence movement required a

24. *Dongnip sinmun*, "Address by An Chang-ho during the Second Round of Speeches" (第二回 演說會에서 述한 安島山先生의 演說), May 31, 1921. During this address, An pointed out "the grand idea of republicanism."

supreme political authority capable of creating obligations to obey, which in turn necessitated the justification of the supreme authority.

In turn, this concept of democratic legitimacy could also be used to delegitimize the NRC, the logic behind which was identical to the rationale of the Provisional Congress. Legitimizing the NRC by appealing to popular will could easily be reversed as the NRC itself could be overturned by appeals to the same democratic legitimacy. Bak Eun-sik, a proponent of the “Announcement to the Korean People” which directly led to the convening of the NRC, pointed out the logical contradiction of democratic legitimacy.

It is very strange that the issue of approval or disapproval has arisen amongst us, the various groups advocating for independence! How will you, who now say that the present government cannot be sanctioned and a new government must be founded, react when another representative conference rejects the current NRC?²⁵

While Bak’s immediate intention was to criticize the revolutionaries who sought to supplant the Provisional Government, he was not aware that the logic of democratic legitimacy could also ultimately be used to call for another representative conference, which meant an overturning of the supreme organization’s authority. Before long, Bak’s concerns became a reality. Having failed to reform the Provisional Government, the NRC called for the formation of a new government in June 1923. The NRC’s proclamation of a new organization and constitution was met with condemnation by the Provisional Government advocates, who argued that the decision was “traitorous” and demanded that the NRC be dissolved on the grounds that the Provisional Government was the only body “entrusted” by the Korean nation.

The NRC passed a resolution regarding the matter of the reign and

25. *Dongnip sinmun*, “Announcement Made to 20 Million Koreans with a Heavy Heart” (通告 二千萬 同胞), March 1, 1923.

the name of the state on June 3. This resolution is a betrayal of the Republic of Korea. In spite of our earnest advice, the NRC has revolted against the authority of our motherland by enacting a new constitution. The Internal Affairs Department opposes this act of betrayal and demands that the resolution issued by the minority within the NRC after June 2 be revoked, and the NRC dissolved at once.²⁶

The Provisional Government condemned this “act of betrayal” not because it went against the constitution, but rather because it ran contrary to popular will. The Provisional Government also sought to defend itself based on the logic of popular will, the same logic with which it had been attacked by anti-Provisional Government activists.

Value-Oriented Legitimacy

Value-oriented legitimacy is based on moral or political values that are deemed absolute and therefore beyond the power struggle (Gusy 1987, 42-43). The Provisional Government’s value-oriented legitimacy was also rooted in the March First Movement, which labeled the liberation of the nation from Japanese colonial rule as a national task. Those who identified themselves as “revolutionaries” used the absolute goal of the independence movement as the justification for the supremacy of their political ideology and strategies over those of other movement activists. An absolute value generally denotes an idea that community members can accept without question. The revolutionaries insisted that as no Korean could deny the absolute value of independence, this goal must be both the starting point and the destination. Based on this value-oriented legitimacy, the revolutionaries fundamentally denied the legitimacy of the Provisional Government and rejected its political underpinnings.

Among articles published in the *Dongnip sinmun* during the NRC

26. Initial proclamation of the cabinet issued by the Secretary of the Interior, Kim Gu, on June 6, 1923 (National Assembly Library 1976, 320).

period, one particular series titled “On the NRC”²⁷ focused heavily on the concept of value-oriented legitimacy. In the series, the author set forth his ideas about the independence movement, the Provisional Government, and the NRC itself. This article addressed some of the fundamental problems faced by the NRC, such as those of its “spirit” and “character” as well as its absolute authority. The starting point of the argument developed in the article was that the political will of Koreans had been “exclusively united” in the Proclamation of the March First Movement.²⁸ The editorial writer, a revolutionary, also claimed that the March First Movement was a decisive historical event that showed the Korean desire for independence. However, the author perceived the independence movement not as a political and diplomatic activity, but as a military struggle against an enemy with the goal of “retaking lost territory.” The determination of the Provisional Government’s value, the author maintained, should be based on whether its actions targeted the reclamation of the Korean peninsula. Although issues such as the political system, the governmental structure, the constitution discussed by the Provisional Government, and the problem of a supreme organization might be relevant to the discussion, they were certainly not relevant to the Provisional Government’s level of activity in foreign territory. Such problems could be adequately discussed at a later representative conference, held in Seoul once the lost territory had been retaken. Disputes over the continuation, reform, or abolition of the Provisional Government consequently became disputes over supreme authority, and as such held no meaning during the military struggle for independence.

27. As this series of articles published in August 1922 in four parts flatly denied the legitimacy of the Provisional Government, there is a strong likelihood that its author was a “revolutionary.” Park (1996, 162n128) argues that based on the timeframe and points raised in these articles, the articles were probably penned by Yun Hae, the former chair of the NRC and then chief editor of *Dongnip sinmun*. See *Dongnip sinmun*, “Mr. Yun Hae and This Newspaper” (尹海先生과 本社), July 8, 1922.

28. *Dongnip sinmun*, “On the National Representative Conference” (國民代表會議에 對하야) (pt. 1), August 1, 1922.

Problems such as those related to the political system, the form of government, the constitution, the head of state, as well as the supreme organization could be discussed during an NRC held in Seoul after we have retaken our territory. These problems would then of course be high on the agenda. However, our territory is unfortunately occupied by foreign forces; our sovereignty is not our own. As a result, we cannot even announce the location of our meetings in a foreign country. It is a grievous error of judgment to focus on the idea of a supreme organization under such circumstances!²⁹

The assumption that the reclaiming of territory was the ultimate goal of the independence movement effectively precludes the Provisional Government from enjoying the status of an established state. For the article's author, the Provisional Government was neither a state nor a government, and as such did not exercise supreme authority. Most problems of the present independence movement sprang from the Provisional Government's pretensions to being "an established state" despite the fact that it merely held "refugee" status. Despite its extraterritorial exile, the Provisional Government longed for the "centralization of power," "self-governing administration," and "Japanese-style penal administration," demanding "unconditional obedience."³⁰ As independence was ultimately equated with the "retaking of the national territory," the proclamation of the Provisional Government as a "state" was regarded as fundamentally invalid as long as the Korean homeland remained under Japanese colonial rule. Moreover, as the "retaking of territory" was the primary goal, only an armed struggle for independence could be regarded as a real independence movement. Discussions of organizational political structure were not relevant at this juncture.³¹ In particular, the author argued

29. *Dongnip sinmun*, "On the National Representative Conference" (國民代表會議에 對하
야) (pt. 1), August 1, 1922.

30. *Dongnip sinmun*, "On the National Representative Conference" (國民代表會議에 對하
야) (pt. 2), August 12, 1922.

31. *Dongnip sinmun*, "The Goal of the National Representative Conference" (國民代表會
의 目標), December 23, 1922.

that while a supreme organization might be necessary for political activity, such political activities should be carried out in the homeland after the national territory had been reclaimed; the independence movement was solely a struggle against the enemy. Therefore, the NRC had no reason to discuss the Provisional Government's reform or the direction of the movement.

Viewed from the standpoint of value-oriented legitimacy, the Provisional Government's lack of representativeness caused by its regional unbalance can be seen as having contradicted the spirit of the March First Movement. The spirit of the movement calls for the "destiny of Koreans"³² to be determined by "the will of Koreans." The revolutionaries appear to have focused on the notion of democratic legitimacy. According to the editorial writer of the "On the NRC" series, the nomination of regional representatives at a time when elections were impossible within the Korean territory was nothing short of nonsensical. Electing representatives while exiled to a foreign territory was dismissed as an act designed to do little more than simulate the appearance of an established state. Meanwhile, the groups represented within the NRC were to be limited to those groups fully dedicated to the independence movement. Representatives were expected never to have acted in a manner that ran counter to the spirit of the independence movement.³³ The editorial's author asserted that the qualifications of a representative would be determined by the degree of his devotion to the independence movement. This rubric for selection is in accordance with the absolute value of reclaiming the national territory. The rights of the representatives to the NRC also derived from the concept of representativeness.

32. *Dongnip sinmun*, "On the National Representative Conference" (國民代表會議에 對하야) (pt. 2), August 12, 1922.

33. This special condition conformed to a resolution adopted by the Independence Association of Hawaii. Article 2 reads as follows: "Membership in associations supporting the NRC is exclusively limited to those Koreans who have devoted their property and life to activities related to the achievement of complete independence" (*Dongnip sinmun*, "On the National Representative Conference" [國民代表會議에 對하야] [pt. 3.1], August 22, 1922).

A representative stands, as the name suggests, for the people and the will of the people. Under the current conditions, in this particular phase of the independence movement, everything is more complex than it is in an established state where voters and elected officials are bound together and seek to obey each other's responses. However, we, the representatives at the NRC, have no way of knowing the extent to which our rights and responsibilities are limited. It is important that we always keep this in mind! The enhancement of the future of our nation is just the condition under which we should do our best and devise means. This responsibility, which differs from, and is not comparable with, that of an assemblyperson in an established state, is our primary responsibility as representatives.³⁴

Thus, according to this article, a representative to the NRC was fundamentally distinct from an assemblyperson in an "established state." During the independence movement phase, there could be no "obvious bond" between voters and elected persons arising from an election, and the limits of representatives' responsibilities were unclear. However, one criterion for representativeness was the realization of the absolute value, namely the development of the future of the nation. This, the author argues, was an essential difference between legislators in established states and representatives of the NRC in this particular phase of the independence movement.

Moreover, the Proclamation of the NRC was based on the premise that the will of the representatives was the same as that of the "20 million Korean people."

This NRC will achieve the complete unity of Koreans in the name of the supreme authority in which the public will (*gongui* 公意) of 20 million people is embodied, and will establish a basic policy for the great task of independence. . . . Mental unity has already been achieved via the March First Movement, and the proclamations of

34. *Dongnip sinmun*, "On the National Representative Conference" (國民代表會議에 對하
여) (pt. 3.1), August 22, 1922.

independence and waving of flags of liberation stand as pure expressions of the national will. Furthermore, calls for justice, humanitarianism, and national self-determination have captured international attention.³⁵

In order to ensure representational validity, the NRC determined the qualifications that the representatives should have and established detailed seat distribution methods.³⁶ However, the belief that a representative could be selected through a precise screening process rather than popular election required a leap of logic from conventional democratic thought. This ideological stretch was accepted via the implied assumption that the popular will was united in the absolute value of “independence.” Moreover, the Provisional Government established in 1919 was comprised of cabinet members highly reputed within the independence movement. Thus, representation was not the result of a democratic process, but of an implicit evaluation of individual contributions to the independence movement.

For those who supported this absolute value as the source of authority, the representativeness and legitimacy of independence movement organizations were not logically determined, but rather practically realized.³⁷ Therefore, popular will was not defined as the will of the majority ascertained based on democratic principles. The focus of those who insisted on armed struggle was thus not on creating a supreme organization, but rather on obtaining supreme power which could be determined solely by force. In the end, according to those who supported this value-oriented view, the Provisional Government could not be justified by any kind of theoretical arguments.

35. *Dongnip sinmun*, “Proclamation of the NRC” (宣言書), March 1, 1923.

36. *Dongnip sinmun*, “News from the NRC” (國民代表會消息), October 5, 1921. See H. Kim (1995, 168) for more information on the criteria used to select representatives.

37. See J. Kim (1967, 384) for more on the three programs introduced by the so-called revolutionaries who insisted on armed struggle at the NRC.

The Meaning and Limitations of the Legitimacy Controversy

The legitimacy controversies that erupted at the NRC involved the dismissal or avowal of the Provisional Government's supreme authority from the following four standpoints: historical fact, constitutionality, democratic principles, and absolute values. Remarkably, the constitutional legitimacy of the Provisional Government received very little attention despite the fact that its founding was based on the Provisional Constitution. Arguments on the constitutional legitimacy at the NRC failed to persuade both the reformers and revolutionaries who viewed the Provisional Government as having been established on the bona fides of the March First Movement, which was interpreted as a source of historical and democratic legitimacy, not of constitutional legitimacy. However, the Provisional Government was not only a democratic republic but also, according to its building process, a constitutional representative system; unfortunately, this fact was ignored by the NRC participants and has also been ignored by historical studies. The other reason for the Provisional Government's inability to be regarded as a constitutional state is rooted in the lack of an effective judicial authority. As such, violations of the constitution could not be properly sanctioned.

Historical and constitutional legitimacy served as ammunition for the argument to maintain the Provisional Government. While supporters regarded the NRC as unconstitutional, others proffered strong claims that the NRC was not unconstitutional, but rather democratic in its purpose. Wielding the logic of democratic legitimacy could easily counter arguments that the NRC was unconstitutional in nature. As argued by the reformer An Chang-ho, popular will takes precedence over a representative organ because any such body cannot be established until the popular will is represented. Thus, the NRC could rationally contradict the Provisional Government with the argument that only popular will, obeying democratic principles and processes, could grant legitimacy to the supreme organization and that the Provisional Government, as a democratic republic, must follow this democratic principle and permit the NRC's convening. According to

the Provisional Government's self-justification, we should pay special attention to the reformers who employed the frame of democratic legitimacy. This is because they were the only faction to respect the democratic principles that constituted the political bedrock of the Provisional Government, and sought to reform the Provisional Government through a democratic process of collecting public opinion.

However, democratic legitimacy was characterized by a limitation in that arguments about democratic legitimacy created a cycle of rebuttal and replacement. The reformers could use such a line of reasoning to argue the replacement of the Provisional Congress with the NRC, but by doing so, they effectively allowed the possibility of the NRC itself being replaced by another representative congress. In other words, democratic legitimacy is a contradiction of itself when not founded upon a constitutional system. The reformist camp felt that the convening of the NRC, which neither denied the Provisional Government's legitimacy nor pursued constitutionality, was the ideal opportunity for unifying independence activists with clashing views, including, in particular, the factions that rejected the *raison d'être* of the Provisional Government. In the end, any attempt to reform the Provisional Government appears to have been possible only on the basis of the democratic principle. In light of this dilemma, historical legitimacy, which granted special status to "the first unique event," seemed to present the most rational alternative. Such reasoning was even more alluring because the unique event in this case was the March First Movement, which Koreans accepted as the historical basis for a supreme political organization.

The most important implication of the NRC is that it instigated discussion over the status of the Provisional Government, over the question of whether the Provisional Government was a legitimate government with supreme authority or merely an organization established to improve the effectiveness of the independence movement. The debate over legitimacy is intricately related to the Provisional Government's status. While the debate over historical and constitutional legitimacy originated in the view that the Provisional Government was a supreme organization, arguments in favor of its democratic legitimacy were

based on the supposition that it was a democratic republic. Meanwhile, evaluation of its value-oriented legitimacy stemmed from the fact that the Provisional Government's authority could be proved by the effective fulfillment of the absolute value, i.e. the achievement of independence, irrespective of the means. Supporters and reformers were interested in the legitimate authority of the supreme organization, which they believed to be of utmost importance for the independence movement, whereas revolutionaries stressed that an effective, rather than legitimate, authority should in fact be prioritized.

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