

**The Art of Constitutional Legitimation:
A Genealogy of Modern Japanese Political Thought**

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This dissertation examines rhetorical and historical issues of the two Japanese constitutions, the Meiji constitution (1889 – 1946) and the postwar constitution (1946 –). It examines a rhetorical issue of how persuasive narratives ground a constitution. It also examines a historical issue of modern Japan, that is to say, the re-emerging issue of whether or not, how, and how much Japan needed to domesticate foreign paradigms, a core of which was a modern constitution. The dissertation’s analysis of the two issues shows how the scholarly discourse in modern Japan (1868-) responded to the re-emerging issue of political/constitutional legitimacy across both the Meiji constitution and the postwar constitution. It uses the concept of “the rhetorical art of legitimization” to observe the distinctive methods through which leading scholars engaged in establishing political/constitutional legitimacy during different historical periods (the mid-late 19th century, the early 20th century, and the mid 20th century). In doing so, it argues that contemporary debates on constitutional revision in Japan have deep historical roots in the issue of political/constitutional legitimacy with which modern Japanese political thought constantly engaged.

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Preface

This research was prompted by my encounter with social movements against the collective self-defense bills in Japan in 2015. In the summer of 2015, led by student activists joined by multiple civil political groups, hundreds of thousands of people gathered in front of the National Diet to protest the bills which would allow Japan to participate in a joint force with its allied countries in warzones.

Article 9, which declares the permanent renunciation of war, was the main target of the dispute. For the liberals, the bills are clearly against the most sacred text in the Constitution of Japan enacted in 1946. For the Liberal Democratic Party (a.k.a LDP), Japan's major conservative party, and its supporters, Article 9 is an antediluvian obstacle to prevent Japan's international cooperation as well as its strategic defense against China's growing threat.

As a result, the topic of constitutional revision provided a broader framework to the apparent political divide. On a series of hot summer days in 2015, from the young to the old, people with the placards of "*Kenpō Kyūjō to Demokurashi wo Mamore* (Protect Article 9 and Democracy)" occupied the streets around the National Diet. In contrast, politicians in the LDP and intellectuals in favor fervently discussed the necessity of the bills and constitutional revision in the media.

I wondered what preoccupied the people so passionately about constitutional revision. It was not the first time that constitutional revision became a popular topic in postwar Japan. It was historically *re-emerging*. What does this reoccurrence mean? Why is it still happening? What is the cause of this reoccurrence? (In the Freudian sense, a traumatic experience is a cause of impulsive reoccurrence. What then has constituted the historical trauma regarding the constitution in Japan)? Why does "protecting Article 9" simultaneously mean "protecting democracy" for the

liberals? Why do the conservatives seem obsessed with stigmatizing the postwar constitution as being “imposed”? All these questions led me to hypothesize that the entire disputes over constitutional revision had evolved around the issue of “legitimacy,” which is the ultimate ground upon which Japan as a unified political community is founded.

The dispute over constitutional revision has been postwar Japan’s significant ideological battle of history, memory, identity, all of which serve for the construction of legitimacy. At the same time, postwar Japan’s inability to agree on the basic principle of the postwar constitution epitomizes an extremely fragile foundation of its liberal constitutionalism. It appears as judicial passivism, the government’s lack of self-accountability and transparency, the practice of the rule by law instead of the rule of law, and the violation of human rights.

Amid the ongoing pandemic of COVID-19 (as of May 2020), we can observe the same-old story with possible worst scenarios. The LDP has laid the blame for its political inability to handle the pandemic crisis on the current constitution. It has advocated constitutional revision in order to add a state of emergency clause. This resembles the familiar tragedy of the Weimar constitution, whose state of emergency clause let Hitler seize absolute political power.¹ The LDP tries to take advantage of grave socio-political crises such as COVID-19 as an opportunity to gain absolute political power through constitutional revision.

In this context, my dissertation examines how the scholarly discourse in modern Japan (1868-) responded to the re-emerging issue of political/constitutional legitimacy across both the Meiji constitution and the postwar constitution. My research uses the concept of “the rhetorical art

¹ Marc de Wilde, “The state of emergency in the Weimar Republic Legal disputes over Article 48 of the Weimar Constitution,” *The Legal History Review* 78, no. 1-2 (2010): 135-158.

of legitimization” to show the distinctive methods through which leading scholars engaged in making political/constitutional legitimacy at different historical phases (the mid-late 19th century, the early 20th century, and the mid 20th century).

My research supports *neither* the above position of the conservatives nor that of the liberals. In other words, it does not make a normative claim that we need a way “back” (like the conservatives’ emphasis on tradition) or have to stick with a single way “ahead” (like the liberals’ emphasis on Western paradigms). Rather, this dissertation is a modest attempt to describe some historical roots of their debates on constitutional revision.

This dissertation refers to Japanese names by “last name - first name” order. It follows the Hepburn romanization system based on the guideline of the Library of Congress (<https://www.loc.gov/catdir/cpsd/romanization/japanese.pdf>). The English translations of Japanese sources are mine except when using existing translation works in English. Except for a few significant and untranslatable words such as *kokutai* and *kokka*, after the first introduction of a Japanese concept with an English translation, I use the English translation.

1.0 Introduction: The Rhetorical Issue of Constitutional Legitimacy in Modern Japan

This dissertation examines both rhetorical and historical issues of the two Japanese constitutions, including the Meiji constitution (1889 – 1946) and the postwar constitution (1946 –). As a rhetorical issue, it examines how persuasive narratives ground a constitution. A constitution, as the self-founding ground of a political community, is essentially conditioned by the logical impossibility of claiming its own ultimate legitimacy. Based on the close textual analysis of the key debates from three periods in modern Japan (1868 –), I observe how leading scholars gave distinctive answers to the rhetorical question of Japan's political/constitutional legitimacy by the lens of rhetorical perspectives, including myth, common topics, imagination, invention, faith, and reconciliation. In general, their responses have two kinds. One is to find an immemorial common ethos underneath a contingent political situation in order to build a stable social order. The other is to assert a break with traditions and emphasize the complete novelty of a constitution. Both methods have been contested throughout modern Japanese political thought.²

As a historical issue, the dissertation examines the re-emerging issue of modern Japan, that is to say, whether or not, how and how much Japan should domesticate Western legal-political paradigms, a core of which was a modern constitution. Responses varied from total rejection and half-domestication to total assimilation in the fields of law, politics, economy and culture. The

² This is of course not a unique phenomenon to modern Japan. See, for example, For example, J.G.A Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century*, (Cambridge: Cambridge University Press, 1987).

complexity of constitutional legitimacy rests on the ways in which Japanese intellectuals domesticated a modern constitution and its values in its local context. As the first state to adopt a constitution in Asia, Japan's intellectual efforts in both re-inventing its tradition and transplanting modern Western political concepts epitomizes the complexity of constructing constitutional legitimacy in non-Western states.³

In particular, one can observe the scholarly significance of the two issues in Japan's recent debates on constitutional revision. In 2012, the new constitutional draft of the ruling party, the Liberal Democratic Party (the LDP), caused much controversy because it aimed to restore the political and cultural spirit of the imperial Meiji Constitution, the Constitution of the Empire of Japan enacted from 1889 until 1947.⁴ The LDP attempted to add "the head of the state" to the emperor's status (Article 1), a prescription for the use of the national flag and anthem (Article 3), the obligation of the Japanese people to respect family as a *natural* basic unit (Article 24), a state of emergency clause (Article 98), and the establishment of a national defense force in place of the current self-defense force (Article 9).

³ For example, see Nagao Ryuichi 長尾龍一, *Nihon Kenpou Shisoshi* 日本憲法思想史 [The History of Japanese Constitutional Thought] (Tokyo: Kodansha, 1996).

⁴ The Liberal Democratic Party of Japan 自由民主党, "Kenpo Kaisei Soan" 憲法改正草 [Draft for the Amendment of the Constitution of Japan], last modified April 27, 2012, <http://www.news-pj.net/npj/katsura-keiichi/pdf/20130322-1.pdf>

Lawrence Repeta, Japan's Democracy at Risk – The LDP's Ten Most Dangerous Proposals for Constitutional Change 危機に瀕する日本の民主主義 自民党憲法改正案、最も危険な 10 項目, *The Asia-Pacific Journal* 11, no.28 (2013). <http://apjif.org/2013/11/28/Lawrence-Repeta/3969/article.html>.

These contemporary debates have taken place between liberals who oppose the revision and advocates “the protection of the constitution” (*goken* 護憲), and conservatives who support revision (*kaiken* 改憲).⁵ Liberal scholars argue that postwar Japan has successfully internalized the current democratic constitution, the Constitution of Japan (a.k.a. the postwar constitution) made by SCAP (The Supreme Commander for the Allied Powers) in the postwar period. For example, Karatani Kojin argues that the post-war constitution has functioned as Japan’s new democratic super-ego which broke away from the previous imperial Meiji constitution.⁶ Shirai Satoru also suggests that the conservatives’ long-term negation of Japan’s defeat during the war leads them not to accept the postwar constitution.⁷

On the other hand, conservatives who support revision argue that the constitution should not be “imposed” by an external party; Japanese people must reconstruct it instead.⁸ The LDP’s

⁵ The divide is also seen between constitutional scholars (*goken*) and scholars on international politics (*kaiken*).

⁶ Karatani Kojin 柄谷行人, *Kenpo no Muishiki* 憲法の無意識 [The Unconsciousness of the Constitution] (Tokyo: Iwanami Shoten, 2016).

⁷ Shirai Satoru 白井聡, *Eizoku Haisenron — Sengonihon no Kakushin* 永続敗戦論 — 戦後日本の核心 [Theory on the Permanent Defeat of the War — The Core of Post War Japan] (Tokyo: Ohta Shupan, 2013).

⁸ Nakanishi Terumasa 中西輝政, “Abe Shusho ga Yasukuni Sanpai de Kirihiraita Kenpou Kaisei heno Michi” 安倍首相が靖国参拝で切り拓いた憲法改正への道 [The way towards constitutional amendment, opened up by Prime Minister Abe’s Pilgrimage to the Yasukuni Shrine] *Seiron* 正論 (March 2014).

draft and the conservative scholars attempt to restore the prewar “traditional” ideologies, including the myth of *kokutai* (国体) by skeletonizing some aspects of liberal democracy.⁹ Literally translated as “the national body,” *kokutai*, a dominant political ideology in prewar Japan, signified the emperor’s eternal reign of Japan. During the war period, in particular between 1935-45, *kokutai* served as an ideological device for the totalitarian regime centered upon the emperor. In short, while the LDP and its supporters delegitimize the postwar constitution because it does not reflect a genuine Japanese tradition, the liberal discourse defends the liberal democratic values of the postwar constitution.

These seemingly irreconcilable debates point to the deep-rooted rhetorical and historical nature of political/constitutional legitimacy. In other words, the construction of political/constitutional legitimacy is not only a rhetorical product composed of collective memory, history and imagination but also a historical project continuously in the making. It is important, then, to historicize Japan’s contemporary debates on constitutional revision by using rhetorical concepts. Thus, this dissertation primarily asks how leading scholars in different historical periods

⁹ The conservatives’ movements towards the ideological “restoration” are under the influence of The Nippon Kaigi 日本会議 [Japan Conference], which includes many of influential conservative scholars and politicians. Economist describes the Nippon Kaigi as “a nationalist think-tank that advocates a return to “traditional values” and rejects Japan’s “apology diplomacy” for its wartime misdeeds.” “Back to the Future, the Economist, Jan 5th 2013 <https://www.economist.com/news/asia/21569046-shinzo-abes-appointment-scarily-right-wing-cabinet-bodes-ill-region-back-future>. For more details, see Sachie Mizohata, “Nippon Kaigi: Empire, Contradiction, and Japan’s Future,” *The Asia-Pacific Journal* 14, no.21 (Number 4, 2016): 1-21. <http://apjif.org/2016/21/Mizohata.html>.

framed and answered the rhetorical issue of political/constitutional legitimacy via historically contextualized themes?

This dissertation is built on the premise that political/constitutional legitimacy is a rhetorical product. Generally speaking, rhetoric as a discursive practice is a method of making a plausible truth in human affairs. Following Aristotle, scholars have studied rhetoric as the available means of persuasion. Furthermore, rhetoric as an academic discipline has historically moved beyond the analysis of public oralities to examining forms of persuasion in numerous other areas including religious rituals, social movements, cultural artifacts, and legal-political ideology.¹⁰ Scholars' interest in rhetoric rests on its mode of discourse which makes plausible or possible "truth" in contingent socio-political circumstances, which appears as *endoxa* (communal/credible opinions).¹¹

In this sense, political/constitutional legitimacy is a matter of how a political community as a whole internalizes certain norms, customs, structure and organization as a regulating principle. Rhetorical techniques are evident in all three dimensions of political legitimacy described by Joseph Chan et.al.¹² : 1) the justifiability of established norms, 2) the legally valid procedure of governance in accordance with a constitution, 3) the substantive outcome that the government

¹⁰ For example, *Contemporary Rhetorical Theory*: A Raeder Guilford Press, ed. Mark J. Porrovecchio and Celeste Michelle Condit (New York: The Guilford Press, 2016).

¹¹ Aristotle, *Nicomachean Ethics*, trans. J.A.K. Thomas (London: Penguin, 1955), 1145b2-7.

¹² Melissa S. Williams, Joseph Chan, and Doh Chull Shin, "Political Legitimacy in East Asia: Bridging Normative and Empirical Analysis" in *East Asian Perspectives on Political Legitimacy: Bridging the Empirical-Normative Divide* (Cambridge: Cambridge University Press, 2016), 3-7.

provides for the common interests of people. There is no general theory of when and what would cause a legitimization crisis of political authority because it depends on cultural-specific reasons.¹³ However, I claim that whether it is the government's infringement of common normative values or formal legal procedures, such legitimization crises invariably signify the rhetorical *failure* of establishing truth among contesting claims within a political community. In general, this dissertation views rhetoric as a method of *making* legitimacy or legitimation.

Accordingly, the object of this dissertation's analysis is modern Japanese legal and political thought, instead of the written texts of the constitutions *per se*. In the end, constitutional legitimacy is a part of political legitimacy. In other words, the legitimacy of a constitution rests on judicial as well as extra-judicial discourses within socio-political institutions. The study of constitutional legitimacy is inherently an inter-disciplinary inquiry for the network of knowledge across religious, legal, cultural and political elements. Thus, this dissertation's inquiry is to explore the *tacit* foundations of a written constitution which appear in the form of common topics and sustain the legitimacy of the written constitution.

Thus, my analysis explores how legal and political theorists articulate the tacit foundations of political/constitutional legitimacy through the lens of rhetorical perspectives such as myth, tropes, and invention. Particularly, such tacit foundations are expressed in common topics as places from where arguments derive. In this sense, my inquiry explores significant common topics at each historical period in order to unfold what leading scholars perceived as political legitimacy, what was considered "orthodoxical" and "heretical" legitimacy, and the underlying socio-political structure.

¹³ Ibid.

Overall, this dissertation argues that leading intellectuals in modern Japan constantly responded to the re-emerging issue of political/constitutional legitimacy through various rhetorical methods of making such legitimacy.

1.1 *Kokutai* and Its Brief Historical Background

In the following analysis of this dissertation, the term *kokutai* will appear repeatedly as it has been the dominant political ideology of modern Japan. Here, I provide a historical overview of how *kokutai* played a primary role in the issue of constitutional legitimacy across the Meiji constitution and the postwar constitution. *Kokutai* first appeared in Japanese political discourse in Aizawa Seishisai's *Shinron* (新論 New Theses) in 1825. It was a response to the crisis of the Tokugawa-*bakufu* (shogunate) caused by a combination of foreign military threats and domestic economic hardships. Since the middle ages, in the dual-political system of Japan, the emperor had given the formal authority to rule Japan to *bakufu*, a military government. Within this system, the first and foremost political purpose of *Shinron* was to reinforce the legitimacy of *bakufu*, displaying the *shogunate*'s reverence to the emperor. Aizawa used *kokutai* to signify the general body of a country, composed of the economy, military and the integration of the people's minds. Of these, the core is the emperor's ritual ceremony (*saishi* 祭祀) for the political integration of people, which sustained the social order and defended the country from foreign threat.

From the middle of the 19th century onwards, the term *kokutai* became a core driver for movements aimed at overthrowing *bakufu*, the latter being viewed as unable to keep Japan's isolation policy after a series of foreign pressures and unfair treaties initiated by Commodore Mathew Perry's expedition to Japan in 1853. Victor Koschmann, a Chicago school historian,

places *kokutai* within the tradition of *Mitogaku* (historical studies of Japan in the Mito domain), thereby articulating the ideological function of Mito ideology. Mito ideology interpellated *samurai* in the elite class as the subject who gained a new worldview in which they were fully aware of the threat from the West and Japan's urgent need for the restoration of its tradition in order to protect itself.¹⁴

The meaning of *kokutai* was polysemous in the beginning: 1) the dignity of a country, 2) the characteristics of a country, 3) a traditional political system, and 4) the unity of religion and government (*saisei-icchi* 祭政一致) based on the emperor's unbroken line. Nonetheless, its meaning narrowed down toward the Meiji Restoration in 1868 and the making of the Meiji constitution in 1889.¹⁵ Yonehara Ken articulates two important principles of *kokutai* after the Meiji

¹⁴ J. Victor Koschmann, *The Mito Ideology: Discourse, Reform, and Insurrection in Late Tokugawa Japan, 1790-1864* (Berkeley: University of California Press, 1987).

¹⁵ Ryuichi Nagao, a historian of Japanese political thought, proposes an alternative origin of *kokutai*, arguing that *kokutai* ideology prevalent after the Meiji period was a deviation from Japan's traditional myth-featuring polytheism. Polytheism is characterized in animistic myths that existed in agricultural societies. They have gods of *musubi*/産霊 (giving birth and becoming) in which infinite gods are immersed in nature and deeply connected with people's daily life. However, the Eurasian nomadic myths were brought to Japan around the 4-5th century BC and became dominant afterwards, influencing the emergence of *Kokutai* ideology. This is because the Eurasian nomadic myths typically have the element of "vertical descent" in which a heroic figure comes down from the heaven in an emergency and save the earth. Based on this distinction between the two myths, Nagao argues that post-war Japan, as a non-belligerent nation, represents the restoration of Japan's traditional animistic myths of polytheism.

period.¹⁶ First, it refers to the mythical-political principle that the unbroken imperial line (*bansei ikkei* 万世一系) reigned Japan. Second, it refers to the mythical-historical principle that *kokutai* had changed since the birth of Japan. These ideologies required further theoretical foundations.¹⁷ First, *Kokutai*, an originally a polysemous concept which broadly meant some essential aspects of the nation, became exclusively associated with an unbroken imperial line. Second, the authority of the emperor had to be superior to any political interests. Third, the idea that the unity of religion and government had been the eternal historical truth of Japan functioned as the dominant discursive framework. As a result, the ideology of *kokutai* became the foundation of Japan's political theology of State Shinto centered upon the emperor's supreme characteristic, consisting of both divine authority and humanistic care.¹⁸ *Kokutai* was the core ideology of State Shinto in which the emperor existed as *manifest deity*. State Shinto claimed itself to be a non-religious public principle, without which the socio-political integrity of Japan would disappear.¹⁹ Thus, State Shinto was defined not as the private practice of religion but as a public morality which the Japanese people must follow.

The Meiji Constitution in 1889 and the Imperial Rescript on Education in 1890 (see Appendix) were the key discursive devices of *kokutai* to internalize people's reverence to the

¹⁶ Yonehara Ken 米原謙, *Kokutairon ha Naze Umaretaka — Meiji Kokka no Chi no Chikeizu* 国体論はなぜ生まれたか — 明治国家の知の地形図 [Why was the Idea of Polity Born?: Topography of the Knowledge of the Meiji State] (Tokyo: Minerva, 2015).

¹⁷ Ibid.

¹⁸ Yonehara, *Kokutairon ha Naze Umaretaka*, 6.

¹⁹ For further discussion, refers to Chapter IV.

emperor and morality based on loyalty and filial piety (*chuko* 忠孝). The Meiji Constitution embodied such features of *kokutai*, particularly in Article I and IV. Article I expresses the historical origin of Japan in the following way: “The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal.”²⁰ Article IV expresses the emperor’s sovereignty thus: “The Emperor is the head of the Empire, combining in Himself the rights of sovereignty, and exercises them, according to the provisions of the present Constitution.”²¹ Moreover, in order to cultivate loyalty and patriotism (*chushin akikoku* 忠心愛国), the Meiji government distributed copies of the Imperial Rescript on Education the Rescript to all schools in Japan along with a portrait of Emperor Meiji. The Rescript describes loyalty and patriotism as the mandatory morality of the Japanese people. It states: “[the people must] advance the public good and promote common interests; always respect the Constitution and observe the laws; should an emergency arise, offer yourselves courageously to the State; and thus guard and maintain the prosperity of Our Imperial state; and thus guard and maintain the prosperity of Our Imperial Throne coeval with heaven and earth. So shall ye not only be Our good and faithful subjects but render illustrious the best traditions of your forefathers.”²²

²⁰ “The Constitution of the Empire of Japan | Birth of the Constitution of Japan,” 国立国会図書館 —National Diet Library, accessed March 29, 2020, <https://www.ndl.go.jp/constitution/e/etc/c02.html>.

²¹ Ibid.

²² “Imperial Rescript on Education,” translated by Japan Ministry of Education (1890), accessed March 29, 2020. https://en.wikisource.org/wiki/Imperial_Rescript_on_Education.

After the establishment of the Meiji constitution, the number of discourses on *kokutai* increased quantitatively whenever the government felt its legitimacy was in crisis.²³ Therefore, critical turning points in the *kokutai* discourse often overlapped with some significant political events in Japan. Particularly, these moments appeared in the form of government's censorship. After a period of relative discursive freedom in the Taisho era, government censorship of *kokutai* discourses was tightened in 1925. Then, *Kokutai Meicho Seimei* (Declaration of Clear Evidence of the National Polity) in 1935 complexly suppressed any deviance from its official orthodoxy. The governmental orthodoxy of *kokutai* was composed of two elements. The first is the mythological origin of the Japanese nation based on *Kojiki* (Records of Ancient Matters) and *Nihonshoki* (Chronicles of Japan), identifying *Amaterasu Ōmikami* (the Sun Goddess) as the nation's foundation *and* ancestor of the Imperial family. The other is to articulate Japan's supremacy over the West in the political, economic, cultural and historical dimensions.

After 1920s' the censorship and suppression of deviant discourses on *kokutai* fed Japan's totalitarianism. Thus, towards the mid 20th century, it was almost impossible to develop any meaningful discussions on the idea of *kokutai* because even the simple question of "what is it?" could not be asked.²⁴ *Kokutai* principles became virtually empty in their content. Rather than being discussed, developed and positively articulated, they became simply banned from being altered.

Upon Japan's defeat in World War II in 1945, it adopted a new post-war constitution under the guidance of the Supreme Commander for the Allied Powers (SCAP). Its primary features were

²³ Yonehara, *Kokutairon ha Naze Umaretaka*, 8.

²⁴ Matsuura Hisaki 松浦 寿輝, *Meiji no Hyosho Kukan* 明治の表象空間 [The Representative Space of Meiji] (Tokyo: Shinchosha, 2014), 32.

democratization, the apolitical symbolic characteristic of the emperor, and the renouncement of war. In the process of Japan's de-imperialization and democratization, *kokutai* eventually lost its significance and influence.

Despite the abandonment of *kokutai* in postwar Japan, its remaining influence in different form across the economic, political and cultural spheres is observable. The LDP's restorative conservatism expressed in its draft constitutional revision epitomizes the remaining influence of *kokutai*. Furthermore, the symbolic emperor system which is sustained via various rituals has functioned as a hinge between prewar and postwar Japan. Roland Barthes observes the symbolic power of the emperor in postwar Japan as follows: "Tokyo, which is one of the most tangled urban complexes that we can imagine from the semantic point of view, nonetheless has a kind of center. But this center, occupied by the imperial palace, surrounded by a deep moat and hidden by greenery, is felt as an empty center."²⁵ The imperial palace still functions as the magnetic hole of Japan's postwar urbanism.

1.2 Literature Review

This dissertation analyzes the history of modern Japanese legal-political thought by using rhetorical concepts and tools. While scholarship of this exact kind is almost non-existent, there are a few works that are useful for positioning this dissertation in relation to relevant disciplines.

²⁵ Roland Barthes, "Semiology and the Urban" in *Rethinking Architecture: A Reader in Cultural Theory* ed. Neil Leach (London: Routledge, 1997), 162.

In the history of Japanese legal-political thought, few scholars have offered an analysis of constitutional legitimacy by using some rhetorical concepts. Miyazawa Seichi, a historian of political thought, uses the concept of myth to understand the coexistence of contradictory elements within the Meiji constitution. Such contradictory elements include two sets: *tenno shinsei* (the reign by the emperor) – *kogi koron* (open public discussion), and *ohsei fukko* (the restoration of the imperial rule) – *bunmei kaika* (civilization and enlightenment).²⁶ Kawabata Akihiro, another historian of political thought, also observes the rhetorical function of myths in the discourse of the Meiji constitution.²⁷ He argues that both the writers of the Meiji constitution and the texts of the constitution became suspended in the gap between the body of the nation (particularity) and western laws (universality). In order to “sew” this gap, the latter (the constitutional law) as form embraced the former (the myth of *kokutai*) as substance. He also argues that it was the Meiji Restoration’s historical break from the Edo era that required the myth of *kokutai* to emerge. Both Miyazawa and Kawabata use myth as the core of constitutional legitimacy.

Regarding the legitimacy of the post-war constitution, scholars argue that myth lies at the origin of the constitution. Simon Servein, a historical sociologist, has emphasized the legitimate

²⁶ Miyazawa Seichi 宮澤誠一, “Kigen Shinwa toshiten no Meiji Ishin” 起源神話としての明治維新 [The Meiji Restoration as a Mythical Origin], *Kyoyou Kenkyu* 教養研究 15, 2 (2008): 5-27.

²⁷ Kawabata Akihiro 川畑 博昭, “Hou ga Shinwa wo Nuutoki: Meiji Kenpo Taisei no Sonosakini” 明治憲法体制のその先に [When the Law Sews a Myth: Beyond the Meiji Constitutional System], *Aichi Kenritu Daigaku Nihon Bunka Gakubu Ronshu* 愛知県立大学日本文化学部論集 8 (2017): 135-160.

power of the mythicized origin of the postwar constitution.²⁸ In contrast, a legal-political theorist, Shinoda Hideaki's recent work criticizes such a post-war mythicized constitutional origin.²⁹ Both, however, agree that a particular myth underpinned the legitimacy of the postwar constitution.

Other scholars call such a rhetorical core of constitutional legitimacy a “narrative.” A constitutional scholar, Sato Kouji views the importance of historical narratives in the constitution in terms of social norm building through which political autonomy governs individuals.³⁰ Another constitutional scholar, Okudaira Yasuhiro claims that the interaction of historical memories between different generations generates and maintains constitutional narratives.³¹ Given these arguments, Maki Misaki claims that it might be challenging to create an “attractive” narrative

²⁸ Simon Serverin, *Nihon Kenpogaku no Seitōsei nikansuru Kenkyu* 日本憲法学の正当性論に関する研究: ヴェーバー法社会 [Research on the Japanese constitutional theories of legitimacy: from the point of view of Max Weber's sociology of law], *Kobe Daigaku Daigakuin Ningen Hattatsu Kankyogaku Kenkyuka Kenkyu Kiyō* 神戸大学大学院人間発達環境学研究科研究紀要 3, no. 2 (2010): 95-112.

²⁹ Shinoda Hideaki 篠田英朗, *Hontouno Kenpou — Sengo Nihon Kenpougaku Hihan* ほんとうの憲法 — 戦後日本憲法学批判 [A True Constitution — A Critique of the Post-War Constitutional Scholarship] (Tokyo: Chikuma Shinsho, 2017).

³⁰ Sato Kouji 佐藤幸治, *Kenpou to Sono Momogatarisei* 憲法とその物語性 [The Constitution of Japan and Its Narrative] (Tokyo, Yuuhikaku, 2003).

³¹ Okudaira Yasuhiro 奥平康弘, *Kenpou no Souzouryoku* 憲法の想像力 [The Imaginary Power of the Constitution] (Tokyo: Hyouroun Sha, 2003).

about the origins of the Japanese constitution given its historical roots.³² She also warns that we have to be attentive to the dominant power of expert narratives and their normalization and institutionalization.

Nonetheless, the existing scholarship on the history of Japanese legal-political thought has not fully utilized rhetorical concepts to examine the issue of political/constitutional legitimacy. This might be historically attributed to the limited way in which Meiji intellectuals received the discipline of rhetoric from the West. In the Meiji Restoration's rapid importation of Western political thought, a few intellectuals including Fukuzawa Yukichi promoted political oralities as the essence of deliberative democracy. However, such understanding of rhetoric was limited to public oralities, and even this political aspect of rhetoric eventually disappeared when rhetoric became primarily identified as an ornament of writing.³³

My approach in this dissertation is inspired by the two legal studies that used a broader and more nuanced interpretation of rhetoric to analyze the US constitution. The analyses of Sanford Levinson's *Constitutional Faith* and Jack M. Balkin's *Constitutional Redemption* use rhetorical analogies between religious texts and constitutional texts to explain specific political operations of the constitution in American society. In the former, Levinson keenly observes how the constitution has become an American civil religion. He draws a convincing analogy between religion,

³² Maki Misaki 巻美矢紀, "Nihonkoku Kenpou ni 'Monogatari' ha aruka?" 日本国憲法に「物語 (narrative)」はあるか [Does a Narrative Exist in the Japanese Constitution?], *Houritsu Jihou* 法律時報 80, no.6 (2008): 48-54.

³³ Massimiliano Tomasi, *Rhetoric in Modern Japan: Western Influences on the Development of Narrative and Oratorical Style* (Honolulu: University of Hawai'i Press, 2004).

particularly Christianity, and the constitution in terms of two types of social practices: Protestantism and Catholicism. He argues

“Protestantism” herein refers to either (1) an emphasis on the exclusivity of written Scripture or text as the basis of doctrine, or (2) the legitimacy of individual (or at least relatively nonhierarchical communitarian) interpretation as against the claims of a specific, hierarchically organized institution. “Catholicism” herein refers to either (1) the legitimacy of unwritten tradition in addition to Scripture, or (2) the authority of a particular institution, hierarchically organized, to give binding interpretations of disputed aspects of relevant materials.³⁴

Levinson insists that the type of belief in the constitution can be categorized and analyzed via a combination of the four religious elements. American Constitutional legitimacy is rooted in Christian theological thinking embedded in its civil religion.

Inspired by Levinson’s work, Balkin’s *Constitutional Redemption* emphasizes the establishment of faith in constitutional stories that came to be shared among the people via the narrative of “redemption.” While the constitutional narrative of redemption is full of flaws, redemption is a promise that would occur in the future. He argues that this faith in the story of constitutional redemption is essential to its legitimacy. This is because a well-designed constitution could fall apart easily in the absence of a strong faith amongst the people.³⁵ Nevertheless, how is

³⁴ Sanford Levinson, *Constitutional Faith* (Princeton, NJ: Princeton University Press, 2011), 31.

³⁵ Jack M. Balkin, *Constitutional Redemption* (Cambridge, MA: Harvard University Press, 2011), 6.

his use of the religious concept of redemption legitimized when the constitutional project is secular? His answer is that this is because the religious tradition and the constitutional tradition share the same problem of how to organize and develop a community evolving around a sacred text.

In the same way as religious redemption, constitutional redemption must be believed in by a community. Here, Balkin introduces rhetoric as a means of legitimacy in order to persuade others to believe in the continuation of the constitutional project. Grounded in the rhetorical power of the narrative for the constitutional project, he argues that legitimacy is not based on a contract or an agreement of the people but “on believing in a story about the political system: where it has been and where it should be going. Second, for this reason, judgments.”³⁶ The constitutional story includes a complex set of the temporality of the present, past, and future via the rhetorical work of imagination. Hence, “the narrative imagination that undergirds legitimacy conceives the trajectory of the past and projects it outward into the future.”³⁷ Both works help to inform the analysis of this dissertation through their use of rhetorical analogies and concepts to examine political/constitutional legitimacy.

1.3 Approach

This dissertation takes different rhetorical and historical approaches compared to the above scholarship. First, by the rhetorical approach, I mean legal-political scholars’ use of rhetorical

³⁶ Ibid, 44.

³⁷ Ibid, 57.

concepts and tools, which appear in the works of Balkin and Levinson. In the context of Japanese political/constitutional legitimation, I suggest another rhetorical term, myth. By drawing on the political and rhetorical theories, including the works of Baruch Spinoza, Gianbattista Vico, Roland Barthes and etc., I frame the term “myth” as discursive method of making political legitimacy or what I call “the art of political legitimization.” Myth includes rhetorical perspectives, including common topics, imagination, tropes, invention, faith, and reconciliation. In particular, I highlight myth’s three specific methods of legitimization: invention, faith, and reconciliation. As invention, myth discovers common topics as the foundational institution of a political community. As faith, it helps to cultivate people’s faith in the integrity of a political community. As reconciliation, it justifies socio-political contradistinction and conflicts by neutralizing them to stabilize an existing order.

In this way, myth offers more comprehensive rhetorical perspectives and tools for a comparative study of constitutional legitimacy. Thus, it is able to provide rich rhetorical concepts, which are applicable to different cultural spheres. For instance, in the case of the Chinese constitution, the concept of myth helps to understand what Qing Jiang calls “a Confucian constitutional order” by articulating embedded cultural resources found in Chinese history.³⁸ In

³⁸ Regarding the current constitution of China, grounded on classical Confucianism, Jiang suggests Confucian Constitutionalism whose legitimacy has three sources. “Political power must have three kinds of legitimacy— that of heaven, earth, and the human—for it to be justified. The legitimacy of heaven refers to a transcendent ruling will and a sacred sense of natural morality. The legitimacy of earth refers to a legitimacy that comes from history and culture. And the legitimacy of the human refers to the will of the people that determines whether or not the people will obey political authorities.” Qing Jiang, *A Confucian*

the case of the American constitution, we can frame both Balkin's story of redemption and Levinson's Protestantism as a specific myth based on cultural implications of Christianity in American society. In the end, as Balkin argues, "[a] well-designed constitution can fall apart in months without public attachment and support; an imperfect constitution can last for centuries,"³⁹ public attachment to the constitution requires the work of myths as the self-sustaining mechanism of the constitution.⁴⁰

The rhetorical perspectives which myth offer is helpful in understanding not only the general issue of political legitimacy, a core part of which is constitutional legitimacy, but also the specific issue of Japanese constitutional legitimacy. Especially, the three methods of myth correspond to each outstanding feature of scholarly methods of legitimation at three historical periods. First, I use invention as a feature of scholarly method in the mid-late 19th century, through which leading intellectuals answered the question of how much Japan should either incorporate the foreign "universal" paradigm of constitutional governance or preserve its particular tradition. Second, I highlight reconciliation as a scholarly method in the early 20th century, by which legal and political theorists accommodate and neutralize the internal tension of the Meiji constitution.

Constitutional Order: How China's Ancient Past Can Shape Its Political Future (Princeton, NJ: Princeton University Press, 2012), 6.

³⁹ Balkin, *Constitutional Redemption*, 6.

⁴⁰ Backer captures the inseparable relationship between legitimacy and constitutionalism as follows: "Constitutions without legitimacy are no constitution at all, and legitimacy is a function of values, which in turn serve as the foundation of constitutionalism." Larry Catá Backer, "From Constitution to Constitutionalism: A Global Framework for Legitimate Public Power Systems," *Penn State Law Review* 113, no. 3 (2009), 100.

Third, I take faith as a scholarly method noticeable in the mid 20th century (post-1945), by which influential scholars cultivates people's conviction into contested new legitimacies in the postwar constitution.

Accordingly, this dissertation expands the historical approach of constitutional legitimacy to include both the Meiji constitution (1889 – 1946) and the postwar constitution (1946 –). Thus, it covers the legal-political discourses of constitutional legitimacy from the mid-late 19th century, through the early 20th century, and into the immediate postwar years. In doing so, this dissertation reconstructs *one* possible genealogy of constitutional legitimacy in modern Japanese political thought. Thus, it is sensitive to the illusion of historical necessity. Linda Zerilli's articulation of the illusion of historical necessity is insightful. By reevaluating John Locke's social contract theory as a rhetorical device to reimagine the past, she underlines the political problem of memory rooted in its predisposition to present the past in the guise of necessity: "What is the nature of this memory? Surely memory cannot mean reaching the true origin of political society as an empirical event – not because, as Hume claimed, there is no evidence of this event itself (e.g., the parchment on which the contract is written), but because, even if there were such evidence, the meaning of the event depends on the rhetorical figure that we use to illuminate it."⁴¹ I approach the discourse of constitutional legitimacy as a historically re-emerging work to re-make past events.

Especially, the dissertation presents a rhetorical genealogy of modern Japanese political thought. In general, it looks at a historical object as an aggregated patch of contingency and fragmentation rather than as a unified process of continuity. The rhetorical practice of

⁴¹ Linda M. Zerilli, "'Philosophy's Gaudy Dress,'" *European Journal of Political Theory* 4, no. 2 (2005): 161, doi:10.1177/1474885105050447.

constitutional legitimation is neither static nor a unified process. Instead, its practice always urges constant updates under ever-changing historical situations. In *Scientist as Prophets: A Rhetorical Genealogy*, Lynda Walsh, a rhetorical scholar, explains that a rhetorical genealogy embraces both continuity and discontinuity. In the book, she constructs a rhetorical genealogy of how scientific ethos have played the political role of prophets. By rhetorical genealogy, she means that “an investigation of ancestry and descent motivated by a desire to explain features or problems we recognize in the present”⁴² with a rhetorical focus on scientific ethos. What is important in her approach of the rhetorical genealogy is that while rejecting the assumed continuity of scientific ethos, she is also attentive to the degree of continuity to which a rhetorical articulation of scientific ethos has persisted in the form of fictional stories. My rhetorical genealogy applies a similar sensitivity to modern Japanese political thought. It examines distinctive answers at particular historical moments to the *re-emerging* issue of political/constitutional legitimacy.

This dissertation’s rhetorical genealogy focuses on the (re-)discovery, the building, and the collapse of political/constitutional legitimacy. Accordingly, I thematize the above three historical periods as a series of *Invention* in the mid to late 19th century, *Reconciliation* in the early 20th century, and *Rupture & Divide* in the mid 20th century.

The “invention” phase refers to a period in which scholars explore various intellectual sources to build a new political/constitutional legitimacy. In Japan, it occurred in the early Meiji era when the invention of *kokutai* tradition and the transplantation of modern constitutional governance merged in the making of the Meiji constitution. Historically, legal transplants have

⁴² Lynda Walsh, *Scientist as Prophets: A Rhetorical Genealogy* (Oxford: Oxford University Press, 2013), 7.

been common phenomena whereby a system of law in one culture is transferred into another. Alan Watson who coined the term observes that legal transplants facilitate prominent legal development.⁴³ At the same time, like organ transplants, legal transplants would cause some “allergic” reactions in another culture. It therefore requires the invention of a tradition like *kokutai*, which protects its cultural body from an “unfamiliar” organ. These two moves highlight two specific methods of inventing intellectual sources for political/constitutional legitimacy. One is to find sources within an immemorial “particular” tradition in order to stabilize the existing social order. The other is to find sources within “universal” novelties outside of one’s own tradition in order to transcend the pre-existing condition. These inventive methods produced the inherent tension within the Meiji constitution between Western-born constitutional governance in form and Japanese political-historical tradition in substance.

The “reconciliation” phase refers to a period in which leading intellectuals reconcile the inherent tension found in the coexistence of a constitutional government and the political history of the emperor’s unbroken reign. The reconciliation phase features the stability of constitutional legitimacy, sustained through the active exchange of diverse scholarly opinions. The early 20th century in Japan marks this historical phase. In particular, in the Taisho era (1912-1926), the intellectuals enjoyed a relatively liberal intellectual climate which facilitated various ways of stabilizing constitutional legitimacy by neutralizing the internal tension within the Meiji constitution.

Finally, “rupture & divide” is a phase in which, in the face of a political crisis, an existing

⁴³ Alan Watson, *Legal transplants: an approach to comparative law* (Charlottesville, Virginia: University of Virginia Press, 1974).

legitimacy ruptures, and a new legitimacy is divided into two forms. One rests on the continuity or modification of the previous legitimacy, and the other rests on the discontinuity of the previous legitimacy. Japan's immediate postwar period in the mid 20th century marks this phase. In the immediate postwar period, the legitimacy-building of the postwar constitution was divided between the liberals and the conservatives. What is unique about the postwar Japanese situation is that this rupture & divide seems to have continued and overshadowed the contemporary debates on constitutional revision.⁴⁴

⁴⁴ Recently, Shirai Satoru, in *Kokutairon* (Theory on *Kokutai*), made an intriguing argument on the historically reoccurring cycle of *kokutai*. He claims that since the Meiji Restoration, Japan has embraced two kinds of *kokutai*: the prewar *kokutai* as the myth of the emperor's eternal rule in Japan *and* the myth of America as the postwar substitution of *kokutai*. In other words, in the postwar Japan, "America" has substituted the position of *kokutai*. More importantly, Shirai also points out the internal cycle of three historical phases in each *kokutai*. The prewar *kokutai* of the emperor had each phase of "the emperor for the people," "the emperor without the people," and "the people for the emperor" in a chronological order. Similarly, the post-war *kokutai* of America has had each phase of "America for Japanese people," "America without Japanese people," and "Japanese people for America" in order. The first phase illustrates people's active creation of their identity based on *kokutai*, the second emphasizes the people's more independent identity without consciously relying on *kokutai* (*kokutai* retreats behind the scene), and the third points out the submission of the people to *kokutai*. This cycle offers a unique rhetorical perspective, which makes a historical analogy between Japan's postwar political economy and the prewar history of *kokutai* thought.

In a sense, Shirai's argument supplements my argument. It is because America, as the new *kokutai*, might have functioned to conceal the very fact of the existing the divide of constitutional legitimacy. However, this does not mean that constitutional legitimacy is less critical than real politics. Instead, the new

1.4 Text and Analysis

Grounded in the above two overarching approaches, I choose scholarly texts for analysis according to historically contextualized themes and questions regarding political/constitutional legitimacy at each historical phase. For scholarly works in the mid-late 19th century, I select texts published in the mid-late 19th century, which collectively answer the specific question of modern Japan's legitimacy or how much modern Japan should either domesticate foreign "universal" paradigms including constitutional governance or preserve its "particular" tradition of the emperor's eternal reign. Particularly, it picks up a set of texts which use contested method of inventing intellectual sources to answer that question.

For scholarly works in the early 20th century, I choose texts which answer the question of how to reconcile the initial tension of the Meiji constitution between the form of constitutional governance and the substance of the emperor's sovereignty. It especially chooses the texts which engage with the topic of "*kokka* (the state)" in the early 20th century. A large part of the chosen texts was written between 1900 to 1920 when the relatively liberal atmosphere produced diverse arguments on *kokka*. This is because around this historical period, the issue of what it meant to be *kokka* greatly drew the intellectuals' attention to solve the internal tension of constitutional legitimacy.

kokutai might have been just a "cover" to hide a more fundamental problem of the divide of constitutional legitimacy. See Shirai Satoru 白井 聡, *Kokutairon: Kiku to Seijyouki 国体論 菊と星条旗 [Theory on Kokutai: Chrysanthemum and the Stars and Stripes]* (Tokyo: Shueisha, 2018).

Lastly, for scholarly debates in the mid 20th century, I choose texts which answer the question of how to reconstruct a new political/constitutional legitimacy in the face of the rupture of the previous legitimacy. In particular, it selects ones both from the liberal and conservative sides, which represent contested discourses around the continuity and discontinuity of tradition. The texts are written within 10-15 years of the establishment of the postwar constitution in 1946.

For each historical theme and question, I conduct a close textual analysis by using the rhetorical perspectives of myth. The analysis of the early 20th century discourse focuses on invention as a distinctive method to build political/constitutional legitimacy. That of the early 20th century focuses on a method of reconciliation by means of the metaphors of *kokka* to neutralize the internal tension of the Meiji constitution. Last but not least, the analysis of the mid 20th century focuses on a method of creating faith by means of tropes for the rebuilding of a legitimacy.

1.5 A Preview of the Chapters

Chapter I offers scholarly approaches of myth as the art of legitimation, which explain core rhetorical perspectives, including common topics, imagination, invention, reconciliation, and faith. Building on the work of Hans Blumenberg and Victoria Kahn, I take rhetoric as the discursive method of making political legitimacy or legitimation. Built on that, the chapter presents several scholarly works on myth, including the works of political and rhetorical theorists such as Baruch Spinoza, Giambattista Vico, and Roland Barthes, to provide more specific modalities of political legitimation. Myth as the rhetorical art of legitimation corresponds to modern Japan's overall attempt to build a new political and constitutional legitimacy. Specifically, my use of rhetorical perspectives, such as invention (Ch II), metaphors and reconciliation (Ch III), and tropes and faith

(Ch IV), provide a historical perspective for modern Japan's constant efforts for political/constitutional legitimation.

Chapter II analyzes scholarly methods of invention or discovering legitimate sources of Japan's political/constitutional legitimacy in four debates took place in the mid-late 19th century. The debates are between: 1) Yoshida Shoin and Yamagata Taiga on the distinctive readings of Chinese Classics in the 1850s before the Meiji Restoration; 2) Inoue Kowashi and Fukuzawa Yukichi on how to find intellectual sources for legitimacy either within civilization and *shirasu* (to know; to reign publicly) in the 1870s-80s; 3) Kaneko Kentaro and Ueki Emori on the different uses of Edmund Burke as the intellectual source for Japan's legitimacy in the 1880s; 4) Inoue Tetsujiro and Uchimura Kanzō on the opposing uses of religion (or Christianity) for legitimation in the early 1890s. As a whole, the chapter argues that the four debates answer the question of how much modern Japan should either domesticate foreign “universal” paradigms including constitutional governance or preserve its “particular” tradition of the emperor's eternal reign. In this way, the debates reflect this internal tension within the Meiji constitution.

Chapter III investigates the idea of the state (*kokka*) expressed in the form of metaphor at the beginning of the 20th century. The *kokka* metaphors include 1) “*kokka* or the emperor” (国家即天皇 *kokka soku tenno*) by Hozumi Yakka and Uesugi Shinkichi; 2) “*kokka* as an organism (有機体 *yukitai*)” by Kato Hiroyuki and Kita Ikki; 3) “*kokka* as a legal person (法人 *hojin*)” by Minobe Tatsukichi and Ariga Nagao. This chapter argues that the scholars used the metaphors of *kokka* as a way to reconcile the inherent tension of the Meiji constitution (1889 – 1945) between constitutional governance and the political history of the emperor's unbroken reign.

Chapter IV examines the tropes of four leading intellectuals encompassing both liberals (Miyazawa Toshiyoshi & Maruyama Masao) and conservatives (Tsuda Soukichi & Watsuji

Tetsuro) in the immediate postwar years. In doing so, this chapter argues that each trope was their intellectual attempt to rebuild collective faith into a new legitimacy of the postwar constitution (1946 –). As a whole, their methods of legitimation are divided by each side. While the liberals' tropes intend to build a new legitimacy based on the discontinuity of Japanese tradition, the conservative tropes aim to restore the genuine Japanese tradition as the legitimacy of the new constitution. At the end, the chapter also argues that this divide in the immediate postwar years has overshadowed Japan's contemporary divide on constitutional legitimacy, which clearly appears in the debate on constitutional revision

2.0 The Rhetorical Art of Legitimation

This chapter summarizes the way of how legal, political, and rhetorical theorists use the concept of “myth” to describe the method and art of political legitimation. Myth as a “rhetorical art” highlights the two inseparable characteristics of myth. One is that myth functions to persuade a political community of its legitimacy. The other is that myth is a constant human collective (or impersonal) activity of making such legitimacy. Together, myth is the art of legitimacy-making (or legitimation) in a political community for the sake of building integrity and stable social order within the community. Thus, my take on myth does not refer to conventional contents related to sacred narratives in primordial times,⁴⁵ but rather to the discursive methods of legitimation.

This perspective of myth is relevant not only to the general issue of political legitimacy, a core part of which is constitutional legitimacy, but also to the specific issue of Japanese constitutional legitimacy. This is because modern Japan’s political transformation – from the dual political system of *bakufu* and the emperor to a constitutional governance structure with the emperor as the head of the state – was an attempt to build a new political and constitutional legitimacy. The primary task of the rebuilding is the incorporation into constitutional governance of the *kokutai* myth, which indicates the emperor’s external reign of Japan. It is clear that the

⁴⁵ For instance, Mircea Eliade argues: “Myths narrate a sacred history. They relate events that took place in a primordial time, the fabled time of the beginnings.” Eliade, *The Sacred and the Profane*. Also, Freud claims, “It seems extremely probable that myths, for example, are the distorted vestiges of the wish-phantasies of whole nations -- the age-long dreams of young humanity.” (Freud, "The Relation of the Poet to Day-Dreaming")

kokutai myth includes mythic contents as it refers to the emperor's sacred origin. However, my take on myth as an art of legitimation is not limited to the analysis of the *kokutai* myth; it also offers a perspective for unfolding the whole process of building a new legitimacy.

My analysis of the following chapters uses rhetorical perspectives that this chapter extracts mainly from political theories of myth. As discussed in the introduction, this approach is inspired by the works of two legal scholars Balkin and Levison (see Introduction). The rhetorical perspectives of myth as a tool of analysis include making (*poiesis*), metaphors, common topics, imagination, invention, faith, and reconciliation. Two scholars, Hans Blumenberg, a historian and political philosopher, Victoria Kahn, a political and rhetorical theorist, justify the use of "rhetoric" as a method of making possible legitimacy for a constitution. Thus, rhetorical perspectives refer to the diverse discursive ways of making political legitimacy. Then, political and rhetorical theorists, including Giambattista Vico, Baruch Spinoza, Roland Barthes, and Walter Benjamin, identify myth as such diverse discursive methods of legitimation, particularly as invention, faith and reconciliation.

Specifically, each rhetorical perspective corresponds to the primary theme of each historical period. Scholarly debates in the mid to late 19th century Japan, feature invention as a method of discovering common topics and legitimate sources for the foundation of a political community. The methods of discovering intellectual sources to legitimize its modern nation-state building were contested between the one that seeks tradition and the other that seeks foreign novelties. The contested methods reflect the coexistence of the substance of the emperor's unbroken reign and the form of the constitutional governance within the Meiji constitution. Leading scholars in the early 20th century used the metaphors of *kokka* (the state) as a method of reconciling the conflicting coexistence of the opposing elements in the Meiji constitution.

Scholarly debates in the mid 20th century characterize (collective) faith as a method of generating a common political platform. After the enactment of the Constitution of Japan (the postwar constitution) in 1946, the intellectual discourse of a new constitutional legitimacy was divided between the one that claims the continuity of Japan's tradition and the other that claims the discontinuity of such tradition. In other words, faith into the legitimacy of the postwar constitution was divided in the immediate postwar periods.

In the following sections, I frame rhetoric as the impersonal method of making political legitimacy within historical and socio-political contingencies. It is based on Blumenberg's and Kahn's response towards Carl Schmitt's constitutional legitimacy. Schmitt in *Political Theology* attributes constitutional legitimacy to quasi-divine decision of the sovereign (a.k.a decisionism), which he present as the logical and historical necessity. As a response, Blumenberg and Kahn relativize Schmitt's constitutional legitimacy by articulating that legitimacy is the rhetorical discovery/creation of multiple possibilities rather than a logical and historical necessity.

Built on their take on rhetoric, I provide the way in which political, and rhetorical theorists use myth as the rhetorical art of political legitimation. First, for the method of invention, I use Giambattista Vico's idea of myth or poetic wisdom in *The New Science*. It demonstrates that myth refers to a discursive method for inventing common topics as the foundation of a political community. Second, for the method of creating faith, I employ Baruch Spinoza's *Tractatus Theologico-Politicus* to show that historical-mythical narratives cultivate people's faith in the common platform of a political community. For the method of reconciliation, I recapitulate the works of Roland Barthes, Louis Althusser, Rene Girard, Walter Benjamin and Giorgio Agamben, all of which show how myth neutralizes violence, dominance and contradictions in the building of a socio-political order.

In this context, I introduce two cases related to the problem of legitimacy in early to modern Japanese political discourses at the end of this chapter. This is to demonstrate how myth as the rhetorical art of legitimation played a significant role in answering the historically re-emerging problem of legitimacy in Japan. The first case is the writing of Japanese history by *Mitogaku* (Mito school) in the late Edo era. The historical work of Mito school had the political purpose of re-inventing a political order centered upon the emperor. The second case is the image of the body politic in Meiji Japan. Such image of the body politic gave a visible body to the newly established political community called a state (*kokka*). I show that the ways in which each media legitimized their envisioned new order and integration of Japan's political community reflect the way in which myth works as the art of legitimization. In doing so, I claim myth's applicability to various discursive forms as well as its underlying role in answering the re-emerging issue of legitimacy in modern Japan.

2.1 Rhetoric as Political Legitimation

My take on myth as the rhetorical art of legitimation builds on both Blumenberg's and Kahn's criticism towards the historical and theoretical necessity of Schmitt's political theology. Both understand political legitimacy not as a necessity determined by a quasi-divine sovereign but as a rhetorical possibility made by humans. In this sense, I frame rhetoric as the impersonal method of *making* possible political legitimacy (or legitimation) within historical and socio-political contingencies.

Schmitt's political theology presents political/constitutional legitimacy as a historical and logical necessity. He argues that the structure of Christian theology has carried over to the modern

socio-political structure. Grounded in the assertion that “[s]overeign is he who decides on the exception,”⁴⁶ Schmitt gives a sovereign the role of the ultimate decision-maker of constitutional legitimacy (decisionism). This is an anti-normative argument since it rejects any moral and ethical normative grounds for the establishment of constitutional legitimacy.⁴⁷ Instead, the historical necessity of political theology gives the sovereign’s decision a quasi-divine nature. He argues: “all significant concepts of the modern theory of the state are secularized theological concepts...The exception in jurisprudence is analogous to the miracle in theology.”⁴⁸ This political theology is not only analogical but also socio-political: “the metaphysical image that a definite epoch forges of the world has the same structure as what the world immediately understands to be appropriate as a form of its political organization.”⁴⁹ Thus, Schmitt’s political theology necessarily makes the sovereign’s decision as the ultimate constitutional legitimacy.

Against Schmitt’s political theology, Hans Blumenberg, a German historian, suggests that political/constitutional legitimacy is the matter of making possibility, instead of logical and historical necessity. In *The Legitimacy of the Modern Age*, he frames Schmitt’s political theology as the secularization thesis. According to him, the secularization thesis explains that the modern

⁴⁶ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Cambridge, MA: MIT Press, 1985), 5.

⁴⁷ Schmitt’s anti-normative argument has informed post-structuralist approaches, which emphasize historical-ontological elements as the base of political thinking rather than the objective norm of values. Nathan Gibbs, “Modern Constitutional Legitimacy and Political Theology: Schmitt, Peterson and Blumenberg,” *Law and Critique*, 2018, footnote 1, doi:10.1007/s10978-018-9228-9.

⁴⁸ Schmitt, *Political Theology*, 36.

⁴⁹ *Ibid*, 46.

age is the transformation of the world of Christianity. Therefore, “the later phase is possible and intelligible only in relation to the earlier phase assigned to it.”⁵⁰ Instead of the secularization thesis, Blumenberg suggests a reoccupation thesis. The modern age “re-occupied” the continued problem of the contingency of the world which succeeded the previous Medieval period, utilizing different solutions such as secularism and the development of science and technology.⁵¹

Towards the re-emerging problem of political legitimacy, Blumenberg suggests a rhetorical solution or human-made possibility based on modern secularism. His modern secularism invents a novel answer to the re-emerging problem of legitimacy succeeded from the Christianity.⁵² He argues that Schmitt attributes the historically continuous identity of theology to a modern political legitimacy. In contrast, Blumenberg attributes self-assertion to it. According to him, self-assertion is the “existential program” in which “man posits his existence in a historical situation and indicates to himself how he is going to deal with the reality surrounding him and

⁵⁰ Hans Blumenberg, *The Legitimacy of the Modern Age*, trans. Robert M. Wallace (Cambridge, MA: MIT Press, 1985), 4.

⁵¹ The problem of contingency, for instance, appeared in the theological controversy between Gnosticism and orthodox Christianity. The former posed an inevitable question of how one could sustain trust and faith in the world, which is flawed in various ways. the Christian problem of trust and faith in the world.

⁵² Ifergan articulates this Blumenberg’s position as follows “His firm stance should be viewed as a conscious attempt to distinguish his theory from those aimed at justifying the Enlightenment and from those premised on the fact that the only substitute for this line of thinking is to return to the theological apologetics of yesteryear, namely, the position that was the object of criticism of the Enlightenment's supporters.” Pini Ifergan, "Cutting to the Chase: Carl Schmitt and Hans Blumenberg on Political Theology and Secularization," *New German Critique* 37, no. 3 (2010): 159, doi:10.1215/0094033x-2010-018.

what use he will make of the possibilities that are open to him.”⁵³ Thus, he argues that the legitimacy of the modern age is grounded in human-made possibility rather than an unbroken historical identity.⁵⁴ This human-made possibility has the characteristic of immanence. By referring to Marx’s historical view affected by the Last Judgement of Christianity, he argues that “the crucial question is still whether this situation is to be brought about immanence or transcendence, whether man can achieve it by the exertion of his own powers or has to rely for it on the grace, which he cannot earn, of an event breaking in upon him.”⁵⁵ Immanence holds multiple potentialities of change as opposed to transcendence which imposes a definite corollary. The characteristic of immanence relativizes Schmitt’s logical necessity of political theology, as well as features the method of making legitimacy possible for the modern age.

Blumenberg’s reading of Thomas Hobbes further highlights his take on rhetoric as the

⁵³ Blumenberg, *The Legitimacy of the Modern Age*, 138 (emphasis added).

⁵⁴ Gibbs’s understanding of Blumenberg’s self-assertion is helpful to clarify self-assertion not as a completely arbitrary novelty but as a way to open up possibility to answer the question of trust and faith thus, the contingency of the world. “Whilst, as we have seen, Blumenberg goes some way to detaching social and political legitimacy from a secularized eschatology, the ideal of self-assertion arguably still attempts, to use his own terminology, to ‘re-occupy’ a position or function served by the idea of trust or confidence in a cosmic order or mythical framework, an order connected with a particular social and political regime...One way of putting this is that the ‘teleological’ framework once supplied by the order of the cosmos or of a primordial myth is transcribed to the plastic sensibility of self-assertion: an unqualified aesthetic confidence in the variety of future possibilities it may engender.” Gibbs, “Modern Constitutional Legitimacy,” 15.

⁵⁵ Blumenberg, *The Legitimacy of the Modern Age*, 86.

method of making possible political legitimacy.⁵⁶ In “An Anthropological Approach to the Significance of Rhetoric,” Blumenberg uses Hobbes’ “anti-rhetorical” rhetoric to reject the theoretical necessity of Schmitt’s political theology.⁵⁷ It is anti-rhetorical rhetoric because the theoretical closure of rhetoric or possibility (anti-rhetorical discourse) is very clearly a persuasive discourse.⁵⁸ He argues: “in the modern age anti-rhetoric has become one of the most important

⁵⁶ Graham Hammill argues that Blumenberg’s take on rhetoric considerably developed from *The Legitimacy of the Modern Age* to “An Anthropological Approach to the Significance of Rhetoric.” In the former work, he takes rhetoric as a way to relativize Schmitt’s political theology. However, in the latter, he further takes rhetoric as the creative force of alternative possibilities, acknowledging “the persuasive force of theological metaphors” as a way to account for the early modern world view. With this understanding of the role of rhetoric, the theoretical necessity of Schmitt’s political theology becomes *impossible*. Graham Hammill, “Blumenberg and Schmitt on the Rhetoric of Political Theology,” in *Political Theology and Early Modernity*, ed. Julia R. Lupton and Graham Hammill (Chicago, IL: University of Chicago Press, 2012), 84-101.

⁵⁷ Hans Blumenberg, “An Anthropological Approach to the Significance of Rhetoric,” in *After Philosophy: End Or Transformation?*, ed. Kenneth Baynes, James Bohman, and Thomas McCarthy (Cambridge, MA: MIT Press, 1987).

⁵⁸ Nancy Struever’s *Rhetoric, Modality, Modernity* further contextualizes the rhetorical aspect of Hobbes’ work. She frames Hobbes’s argument as a rhetorical inquiry of possibility against the logic of necessity based on moral philosophy. Hobbes, grounded in Aristotle’s *Rhetoric*, demonstrates the continuum of faculties between general life activities and human-specific rational and moral activities. Possibility lies in this continuum, which always disturbs the moral project of political philosophy that lies only in rational human activities. For Hobbes, if there is life, then motion, passion, difference and politics must follow. The top-down moral consensus is not possible because there are always negotiations of

expedients of rhetorical art, by means of which to lay claim to the rigor of realism.”⁵⁹ Hobbes’ social contract includes the distinctive moment of anti-rhetorical rhetoric. The moment when Hobbes’ sovereign forecloses the rhetorical possibility of political negotiations and conflicts in the state of nature, he declares the authority that forms a unity in the multitude.⁶⁰ However, this is precisely Hobbes’ rhetorical discourse that makes necessary the foreclosure of the persuasive forces of emotion and imagination in the state of nature. This in turn highlights that legitimacy-building is not the product of necessity but that of possibility.⁶¹

What Blumenberg calls “the rhetorical situation”⁶² describes the basic condition and motivation for making possible political legitimacy, including in the case of modern Japan. As I will discuss in the following chapters, modern Japan’s invention of *kokutai* as an absolute political/constitutional legitimacy required constant re-work by scholars. Blumenberg defines a rhetorical situation as a lack of “definitive evidence and being compelled to act.”⁶³ In a rhetorical

contested differences, and individuals are incapable of responding to such differences appropriately. It is therefore not a philosophical mode of inquiry but a rhetorical mode of inquiry that articulates possible political processes in the mediation between nature and culture. Overall, Hobbes’ social contract, as anti-rhetorical rhetoric, comes as a result of his rhetorical inquiry into human contingency and possibility. Nancy S. Struever, *Rhetoric, Modality, Modernity* (Chicago: The University of Chicago Press, 2009), Ch.2.

⁵⁹ Blumenberg, “An Anthropological Approach,” 454.

⁶⁰ Hammill, “Blumenberg and Schmitt,” 87.

⁶¹ Blumenberg, “An Anthropological Approach,” 454.

⁶² *Ibid.*, 441.

⁶³ *Ibid.*, 441.

situation, rhetoric gives “the *provisionality* of reason.”⁶⁴ The rhetorical situation as the basic condition of political legitimacy constantly re-appears because it does not disappear all of a sudden by transcendent ideas. In this sense, humans make a provisional solution to the constantly re-appearing issue of political legitimacy.

Similarly, Victoria Kahn’s use of *poiesis* or “the making of fictions” also suggests rhetoric as the method of making possible legitimacy. Following Blumenberg, Kahn’s *poiesis* claims that “political theology is not so much a methodological and existential postulate of the political, as it is for Schmitt, as what Hans Blumenberg would call a metaphorology, an analysis of the dominant metaphors that inform our social, legal, and political arrangements.”⁶⁵ In this way, *poiesis* frames political theology as a possible provisional response to the changing world views of early modern Europe.

Her use of *poiesis* is highlighted by the fictional representation of the crown and the theatricality of the sovereign. The both arguments are made against Schmitt’s historical and logical necessity of legitimacy. On the first point, Kahn pits Kantorowicz’s representation of the *fictional* body politic or what she calls “the fictionalizing of the crown”⁶⁶ against Schmitt’s representation of a historical and political reality grounded in his political theology. Kantorowicz’s analysis of Shakespeare’s *Richard II* demonstrates the moment in which the divinity of the king starts to decline through his critical awareness of the separation between a person and the crown. Based on

⁶⁴ Ibid (emphasis added), 452.

⁶⁵ Victoria Kahn, *The Future of Illusion: Political Theology and Early Modern Texts* (Chicago: University of Chicago Press, 2014), 66.

⁶⁶ Ibid, 62.

this, Kahn relativizes Schmitt's historical necessity of political theology by articulating the liberating function of *poiesis* in the legal-political fiction. On the second point, Kahn emphasizes the sovereign's indecisiveness through her reading of Hobbes' *Leviathan*. For Schmitt, Hobbes's negation of the state of nature signifies the fundamental act of liberalism and the occlusion of political conflicts, leading to the apoliticalization of politics. Schmitt pits his genuine political representation based on the personalism of Roman Catholicism against the *mere* representation of Hobbes' *Leviathan*. In contrast, Kahn regards the theatricality of *Leviathan* as the essence of the sovereign. According to her, Hobbesian representation is grounded in the divorce between author and agent. Within such a representation, the political subjects consent that their agent (or the sovereign) decides *for* them. In this sense, "in theatrical terms, the subject has consented to be a member of the audience and to watch—as if on a stage—the sovereign play or counterfeit his actions."⁶⁷ Kahn argues that this non-correspondence of agent and author is the essence of representation. As a result, the sovereign appears only as a theatrical agent, who cannot decide by his own will. As a whole, Kahn's *poiesis* suggests both the contingent nature of political legitimacy and the essential human efforts of fabricating narratives and representations to create such legitimacy.

Grounded in Kahn and Blumenberg's framework, I take rhetoric as the impersonal method of making possible political legitimacy within historical and socio-political contingencies. At the same time, this framework still needs more specific rhetorical modalities of legitimation. Such a perspective is necessary to unfold the complex coexistence of Japanese constitutional legitimacy between the political history of the emperor's unbroken reign and constitutional governance.

⁶⁷ Ibid, 37.

Within this context, I find “myth” a suitable concept through which to examine the specific rhetorical modalities of legitimation.

In the field of law and rhetoric, a few scholars have studied the relationship between myth and constitutional discourse and legitimacy. Regarding her reason for studying such relationships, Marianne Constable writes that only rhetoric can articulate what the law oppresses in its logical structure.⁶⁸ With a similar sensitivity to the rhetorical dimension of the law, Simeon C. R. McIntosh suggests to read the legal text as a poetic language in order to find a new meaning rather than as a denotative-reference.⁶⁹ Moreover, Hansen-Magnusson and Wiener define myth as a collective political memory which forms the basis of constitutional legitimacy and regulatory principles, unlike modernist constitutionalists who focus on the formal and institutional aspects of the constitutions.⁷⁰

While I agree with the common implications of these scholarships, namely their insistence on finding legal legitimacy and significant meanings in the contents of mythical or non-logical languages, they fail to grasp myth as a specific rhetorical *method* of legitimization. In this sense, Kahn’s reading of Kantorowicz’s *King’s Two Bodies* gives a hint as to why myth is the rhetorical art of legitimation. Kahn frames Kantorowicz’s intellectual attempts as the redemption of “the

⁶⁸ Marianne Constable, *Just Silences* (New Jersey: Princeton University Press, 2005).

⁶⁹ Simeon C.R. McIntosh, “A Poetic for Law: Constitutional Theory as Metaphor,” *Howard Law Journal* 30 (1987): 647-726.

⁷⁰ Hannes Hansen-Magnusson & Antje Wiener “Studying Contemporary Constitutionalism: Memory, Myth and Horizon,” *Journal of Common Market Studies* 48. No.1 (2010) 21–44.

power of manufactured myth for politics.”⁷¹ *King’s Two Bodies* is a contribution to the broader historical and political problem of Cassirer’s *The Myth of the State*.⁷² While Cassirer condemns myth as irrational symbolic thought, Kantorowicz restores the fictional power of myth.⁷³ Kahn articulates Kantorowicz’s rehabilitation of myth in his reading of Dante’s *The Divine Comedy*. His rehabilitation of myth refers to a fictional making of a secular cosmopolitan world, including Christians, Jews, Muslims, and pagans. Kahn argues that for Kantorowicz, “[Dante] was a poet who envisioned in the manufactured myth of the *Commedia* a new notion of human autonomy and community. Moreover, Dante explicitly linked this idea of the human to the work of literature, in the scene in which Virgil crowns Dante with the laurel wreath.”⁷⁴ Thus, Kantorowicz ascribes the essential literariness of *poiesis* to a spontaneous power of shaping a life, unlike Cassirer who attributes reason to that. In the end, the power of manufactured myths for politics best executes itself in building a political community and its legitimacy.

The following sections use several works on myth by political and rhetorical theorists in order to clarify rhetorical perspectives useful for the analysis for the analysis of Japanese constitutional discourse: invention, faith and reconciliation.

⁷¹ Ibid, 74.

⁷² Ernst Cassirer, *The Myth of the State* (New Haven, CT: Yale University Press, 1946), XXXV.

⁷³ Kahn, *The Future of Illusion*, 60.

⁷⁴ Ibid, 77.

2.2 Myth as Invention

Myth as invention refers to the discursive method of discovering common topics and legitimate sources for the foundation of a political community. By reading Vico's *The New Science*, first published in 1725, I follow how Vico perceives myth as a rhetorical tool of inventing metaphors and common sense/topics for the purpose of rendering a legitimate foundation for a political community. Chapter II utilizes this rhetorical concept of invention as a way of discovering legitimate sources to identify the foundation of Japan's political transformation in the mid to late 19th century.

Myth is the foundation of political communities as it is the first language composed of people's imagination and sense to the external world. According to Vico, the origin of all nations (political communities) can be traceable to myth or poetic wisdom as a "true narration."⁷⁵ Vico's myth or poetic wisdom as a true narration made of "robust sense and vigorous imagination,"⁷⁶ has the ability to wonder everything, not knowing any falsehood. Hence, a true narration is the intelligible expression of something perceived. Vico claims the three purposes of great poetry: "(1) to invent sublime fables⁷⁷ suited to the popular understanding, (2) to perturb to excess, with a view

⁷⁵ Giambattista Vico, *The New Science of Giambattista Vico: Translated from the third edition (1744)*, trans. Thomas G. Bergin and Max H. Fisch (Ithaca, NY: Cornell University Press, 1948), par. 202 and 408.

⁷⁶ Ibid, par. 375.

⁷⁷ Regarding sublime objects, Vico claims "the first object of their contemplation in the world was the sky, and heavenly things must have been for the Greeks the first *mathcmata* or sublime things and the first *theorimata* or divine objects of contemplation." Ibid, par. 711.

to the end proposed: (3) to teach the vulgar to act virtuously.”⁷⁸ A wholly corporeal imagination, or what he also calls imaginative universal, owns these tasks. The faculty of imagination puts the flux of bodily sensations in order and generates a mode of perception and representation of reality.⁷⁹ In particular, myth appears in the form of metaphor. Metaphors give the identification and resemblances of unfamiliar things via simple signs. In doing so, it provides “sense and passion to insensate things.”⁸⁰ For example, the first metaphor was Jove, a god with a voice of thunder. Metaphors constitute language in the age of god in which humans perceive with great awe their immediate surroundings as divine entities. Starting from metaphors, Vico views the history of human beings as the history of ideas revealed in the language of the four rhetorical tropes. Metaphor, metonymy/synecdoche⁸¹ and irony represent the cyclical movement of history (*corsi e ricorsi*) composed of the age of god, the age of heroes, and the age of men.⁸²

Myth *creates* the common sense (*sensus communis*) of nations, which works as a legitimate

⁷⁸ Ibid, par. 376.

⁷⁹ Joseph Mali, *The Rehabilitation of Myth: Vico's 'New Science'* (Cambridge, England: Cambridge University Press, 2002), 180.

⁸⁰ Ibid, par. 404-406.

⁸¹ David Marshall provides very concise definitions of the four tropes. “Metaphor identifies resemblances of quality. Metonymy is sensitive to resemblances of sequence, and pairs causes with effects. Synecdoche organizes resemblances of hierarchy between part and whole, species and genus. Irony perceives the particular dissimilarity that is apparent contradiction and renders such tension plausibly coherent.” David L. Marshall, *Vico and the Transformation of Rhetoric in Early Modern Europe* (Cambridge, England: Cambridge University Press, 2010), 78,

⁸² Vico, *The New Science*, Par 347.

ground of a political community. Based on the common sense of nations, “humans...have passed through qualitatively different transformations, evidenced by changes in their use of language and parallel institutions.”⁸³ Vico defines common sense as “judgment without reflection, shared by an entire class, an entire people, an entire nation, or the whole human race.”⁸⁴ However, it does not mean that myth is given. Instead, it is what human *makes* as a political institution. Vico’s *verum-factum* principle, the truth is the same as the made, reflect myth’s capacity of making. He argues that “this world of nations has certainly been made by men, and its guise must therefore be found within the modifications of our own human mind. And history cannot be more certain than when he who creates the things also describes them.”⁸⁵

For the creation of common sense, myth invents *topica* or discovers common topics.⁸⁶ In this sense, Donald Verene articulates, “*sensus communis* is formed through the sensory topics.”⁸⁷ Vico argues that the first founders of nations used their inventive ability of sensory *topica* through which they created poetic genera. Then, Vico asserts:

*Providence gave good guidance to human affairs when it aroused human
minds first to topics rather than to criticism, for acquaintance with things must*

⁸³ Catherine L. Hobbs, "Vico, Rhetorical Topics and Historical Thought," *Historical Reflections / Réflexions Historiques* 22, no. 3 (Fall 1996): 570.

⁸⁴ par 142

⁸⁵ Ibid., par. 331.

⁸⁶ Ibid, par. 494-496.

⁸⁷ Donald P. Verene, *Vico's Science of Imagination* (Ithaca, NY: Cornell University Press, 1991), 176.

*come before judgment of them. Topics has the function of making minds inventive, as criticism has that of making them exact. And in those first times, all things necessary to human life had to be invented, and invention is the property of genius.*⁸⁸

Vico never pits *topica* against *critica* or philosophical reasoning. The order is critical because *topica*, as an art of regulating the primary operation of the human mind, must come before *critica*. Thus, *topica* is the prerequisite of *critica*. Sensory *topica* registers itself as “the mental dictionary for assigning origins to all the diverse articulated languages”⁸⁹ and constitutes Vico’s common sense.

By inventing common topics, myth provides legitimate cultural premises upon which diverse argument occurs in a political community. In *Rhetoric as Philosophy*, Ernesto Grassi frames this Vichian insight as the primacy of topical philosophy over rational philosophy. Grassi asserts, “it is clear that the first *archai* [or principle,] of any proof and hence of knowledge cannot be proved themselves because they cannot be the object of apodictic, demonstrative, logical speech; otherwise they would not be the first assertions.”⁹⁰ The first assertion cannot be logical-demonstrative but must be indicative and rhetorical. Grassi continues, “such speech is immediately a ‘showing’ — and for this reason ‘figurative’ or ‘imaginative,’ and thus in the original sense ‘theoretical’ [*theorein*—i.e., to see]. It is metaphorical, i.e., it shows something which has a sense,

⁸⁸ Ibid, par. 498.

⁸⁹ Ibid, par. 145.

⁹⁰ Ernesto Grassi, *Rhetoric as Philosophy: The Humanist Tradition* (University Park: The Pennsylvania State University Press, 1980), 19.

and this means that to the figure, to that which is shown, the speech transfers [*metapherein*] a signification.”⁹¹ *Ingenium* is the faculty to grasp relationships between dispersed and diverse things to create a new sense. It “reveals something ‘new’...something ‘unexpected’ and ‘astonishing’ by uncovering the similar in the unsimilar’ i.e., what cannot be deduced rationally.”⁹² In this way, myth provide the fundamental platform for argument.

Accordingly, myth gives historical legitimacy to an accumulated cultural practice of political communities.⁹³ Joseph Mali asserts that in Vico’s history, mythical thought and language in the past “infiltrates the present into all the spheres of cultural creativity.”⁹⁴ Similarly, A. J. Grant frames the Vichian myth as a community’s historical ground. He argues, “for Vico, reason needs not to displace myth since myth and reason are not contradictory, but complementary ways of knowing that imply each other.”⁹⁵ The Vichian myth is to see culture as something like an “onion,” which has no hidden true logical essence but only consists of multiple historical layers of tropes and language.

In the end, myth as a method of inventing common sense is essential to avoid the

⁹¹ Grassi, *Rhetoric as Philosophy*, 20.

⁹² Grassi, *Rhetoric as Philosophy*, 92.

⁹³ On the contrary, Chiara Bottici argues that Vico’s myth disappeared as history moves. In this way, while appreciating Vico’s insight into the autonomy of myth, she dismisses Vico’s multifaceted historical sensitivities by labeling the Vichian history as an enlightenment binary. Chiara Bottici, *A Philosophy of Political Myth* (Cambridge, England: Cambridge University Press, 2007), 170.,

⁹⁴ Joseph Mali, *The Rehabilitation of Myth*, 150-1.

⁹⁵ A. J. Grant, “Vico and Bultmann on myth: The problem with demythologizing,” *Rhetoric Society Quarterly* 30, no. 4 (2000): 51.

disintegration of people's socio-political life. In Vico's historical view, the age of men eventually enters the barbarism of reflection as the "last civil illness". In this age, "peoples, like so many beasts, have fallen into the custom of each man thinking only of his own private interests and have reached the extreme of delicacy, or better of pride, in which like wild animals they bristle and lash out at the slightest displeasure."⁹⁶ This illness of civilization happens when individuals with the ability of reflection start to take others not as ethical others with whom to co-exist but only as tools for satisfying their pleasure. As a result, "scarcely any two being able to agree."⁹⁷ As Marshall explains, for Vico, the barbarism of reflection is anti-rhetorical solitude, which is doomed to fail.⁹⁸ Conversely, rhetoric is anti-solitude, which always exists as a communal practice. Thus, myth is necessary as the basic institutional capacity for founding a political community.

As a whole, Vico articulates myth as the method of inventing common sense/topic as a legitimate source of political communities. Verene emphasizes this political function of Vico's myth by arguing that myth encodes essential practical lessons of socio-political life and remains its influence even long after its invention.⁹⁹ In this sense, myth is a crucial humanistic method to discover and configure a socio-political order.¹⁰⁰

⁹⁶ Ibid, par 1106

⁹⁷ Ibid.

⁹⁸ Marshall, *Vico and the Transformation of Rhetoric*, 255.

⁹⁹ Verene, *Vico's Science of Imagination*, 159.

¹⁰⁰ Ibid.

2.3 Myth as Faith (*Pistis*)

As another method, myth creates and promote collective faith into the legitimacy of a political community. Spinoza's persuading *Tractatus Theologico-Politicus* (a.k.a TTP), published anonymously in 1670, articulates this specific method of myth. In particular, Spinoza perceives myth as a necessary device for ordinary people into having a genuine faith in the moral law as the legitimacy of his political community. Chapter IV articulates the failure of creating such a collective faith into a new constitutional legitimacy in the immediate postwar years.

Faith (*pistis*) is not only a religious term but also indicates a broad rhetorical condition in which one is persuaded. In *Greek rhetorical origins of Christian faith*, James L. Kinneavy argues that religious faith originally derived from a Greek rhetorical term, *pistis*. Kinneavy argues, “‘persuasion’ is a process (persuading) and the product (being persuaded) ... the same two components can be seen in the Greek word *pistis*, which is often translated as ‘persuasion’ in English.”¹⁰¹ Accordingly, faith is a rhetorical-anthropological foundation upon which a political community establishes common beliefs or *endoxa*. In this sense, Max Weber designates beliefs, *Legitimitätsglaube* (legitimacy faith or belief), as the foundation of political legitimacy across all three types of authority including the traditional, the charismatic, and the rational-legal.¹⁰²

¹⁰¹ James L. Kinneavy, *Greek rhetorical origins of Christian faith: an inquiry* (New York, NY: Oxford University Press, USA, 1987), 22.

¹⁰² Max Weber, “The Three Types of Legitimate Rule,” *Berkeley Publications in Society and Institutions* 4, no. 1 (1958): 1-11.

Spinoza's use of faith for political legitimization is based on his specific use of the Bible as a mythical-historical narrative. In TTP, Spinoza suggests two characteristics of the Bible. One is a mythical-historical narrative upon which the legitimacy of a religious-political community rests. The other is the ahistorical-philosophical moral law of God's justice and love. These two characteristics reflect Spinoza's dilemma of choosing his audience between the multitude and philosophers. While the Bible's essence, the moral law of God's divine justice and love, is apparent to the people with a philosophical mindset, most people do not have such a capacity for rational reasoning and often get caught up with religious superstition. This dilemma is expressed in the first sentence of the preface, "If men were always able to regulate their affairs with sure judgment, or if fortune always smiled upon them, they would not get caught up in any superstition."¹⁰³ The dilemma of the Bible, either as the mythical-historical narrative or the philosophical moral law, involves two distinctive kinds of reading.¹⁰⁴ On the one hand, the historical narrative is rhetorical because prophets' mythical-historical stories try to persuade ordinary people to have faith in God and his moral law. On the other hand, the latter's ahistorical moral law is logical because the discovery of the moral law requires rational interferences.¹⁰⁵

¹⁰³ Benedict De Spinoza, *Spinoza: Theological-Political Treatise*, ed. Jonathan Israel. trans. Michael Silverthorne (Cambridge, England: Cambridge University Press, 2007), 3.

¹⁰⁴ His intended audience, either religious multitudes or philosophers, is another subject of controversies. For example, see Michael A. Rosenthal, "Persuasive Passions: Rhetoric and the Interpretation of Spinoza's Theological-Political Treatise," *Archiv für Geschichte der Philosophie* 85, no. 3 (2006): 250-251

¹⁰⁵ Steven Frankel, "Politics and Rhetoric: The Intended Audience of Spinoza's 'Tractatus Theologico-Politicus'," *The Review of Metaphysics* 52, no. 4 (1999).

The mythical-historical story nurtures people's faith in the moral law required for the integrity of a political community. Spinoza argues, "[s]omething intended to promote the practice of piety and religion is called sacred and divine and is sacred *only* so long as people *use* it religiously."¹⁰⁶ This suggests that piety is a communal-rhetorical practice. The political community's common faith is not based on the literal truth of the Bible. Instead, it is on the contingent meanings of the Bible used and practiced persuasively.¹⁰⁷ To this end, the prophets use their vivid imagination to teach the Biblical prophecies to ordinary people.

By invoking people's imagination, the mythical-historical narrative recalls legitimate norms and moral judgments commonly shared in the political community. Spinoza explains that imagination is a set of ideas generated through bodily impressions, which are incomplete and yet not false. Then, he argues that the prophecies must appeal to political imagination the ordinary. It is because teaching people "by experience"¹⁰⁸ is the only way to persuade a broad audience. He claims:

anyone seeking to persuade or dissuade people of something which is not known by itself, must, to gain their acquiescence, deduce it from things already accepted, convincing them by means of experience or reason... Often though, a long chain of linked inferences is required, to come to firm conclusions from basic ideas alone. Furthermore, this requires great caution and perspicacity and supreme mental discipline, qualities only seldom met with among human

¹⁰⁶ Spinoza, *Theological-Political Treatise*, 165

¹⁰⁷ Ibid.

¹⁰⁸ Spinoza, *Theological-Political Treatise*, 76.

*beings. People prefer to be taught by experience than to deduce all their ideas from a few premises and connect these together. Consequently, where someone seeks to teach a whole nation, not to speak of the entire human race, and wants to be understood by everybody, he must substantiate his points by experience alone and thoroughly adapt his arguments and the definitions of his teaching to the capacity of the common people (the majority of mankind), and not make a chain of inferences or advance definitions linking his arguments together.*¹⁰⁹

For Spinoza, an appeal to the experience of ordinary people via the faculty of imagination is an essential means of creating faith in the moral law since the ordinary people are preoccupied with “preconceived beliefs.”¹¹⁰

By appealing to common faith into the moral law, the historical-mythical narrative provides people with the historical and political sense of belonging.¹¹¹ According to Spinoza, the moral law only means the principle of “love thy neighbor” or the absolute principle of human coexistence. In this sense, what Spinoza defines as “faith” refers to the practice of communal living. Additionally, having such a faith has nothing to do with the difference amongst people’s ideas. Spinoza argues that the Bible is a historically accumulated writing made by people from different times and places.¹¹² Thus, people use different stories and narratives in the Bible in order to nurture their

¹⁰⁹ The emphases are mine. Ibid.

¹¹⁰ Ibid, 172

¹¹¹ Ibid, 177.

¹¹² “The Bible is adapted to the understanding not only for the prophets but also of the fickle and capricious common people.” Ibid., 178.

faith in the moral law. In this sense, faith is the practice of obedience to the moral law through which people are *persuaded* to form a political community with others in pursuit of justice and charity.

In this sense, myth as faith is an essential means to create the common platform of a political community, upon which diverse ideas and interests can interact. As I argue in Ch IV, Japan's constitutional discourse in the immediate postwar years represents the lack of this collective faith into a common legitimate ground. Spinoza understands this principle because he refutes the false understanding that people's liberty to interpret the Bible destroys faith. For Spinoza, since the foundation of faith rests on history and language, people have freedom to interpret the Biblical text in their own language, eventually leading to faith. Thus, he takes the Bible as a shared cultural premise, regardless of whether people believe its contents or not.¹¹³ In

¹¹³ So far, myth refers to the practice of faith in the discursive realm. At the same time, rituals are also an important element in the practice of faith in the non-discursive realm. In effect, they are inseparable in the practice of the legitimacy-building of a political community. For instance, in the case of modern Japan, the discourse of the *kokutai* myth entailed the mandatory ritual of reading the Imperial Rescript on Education (*Kyōiku Chokugo*) in every school. However, unlike in the case of mythical narratives, Spinoza downgrades rituals to something that has nothing to do with people's happiness because rituals are concerned material benefits for a particular religious-political community.¹¹³ Spinoza's critical view of rituals holds that the purpose of rituals is people's obedience to someone else, as opposed to that of myth, which promotes their obedience to the moral law. As a result, for one's obedience to God, rituals are not necessary at all. He uses the example of Japan where Christianity is forbidden, yet the Dutch live a good Christian life without practicing any ceremonial law.

However, Willem Lemmos's argument that Spinoza implies rituals' particular usefulness for the

building of a political community. Despite his overall negative assessment of rituals, Spinoza also admits their temporary efficacies for the solidarity of a political community. Lemmon claims, “the inculcation of devotion in the hearts of the people required exactly the propagation of this temporal law, with its particular ordinances and ceremonial observances in order ‘to preserve and strengthen the Hebrew state.’” (Lemmens, “Spinoza,” 59)¹¹³ The prophets’ mythical narratives cannot be separable separated from rituals in that 1) rituals as a non-discursive practice supplement myth as discursive practice 2) narrativizing myth *per se* is a sanctifying ritual.¹¹³ In this sense, for Spinoza, myth and rituals are an integral practice with the shared goal of establishing people’s faith in the moral law.

In the end, for Spinoza, as a rational philosopher, rituals and myth are *undesirable* yet *unavoidable* elements for legitimation. His cautious attitude towards rituals reflects what Michael Puett et al. calls “sincerity.” In *Ritual and Its Consequences*, Michael Puett et al. defines rituals as the framing of action, which exists beyond the realm of religion. They argue that rituals create a temporary order through the construction of a performative and subjunctive world. The subjunctive world is the world of “as if,” in which people’s social imagination via rituals creates boundaries. It also allows for people’s movements across boundaries without violent coercion and self-driven interests. Then, they pit rituals against sincerity. The latter imagines the world of “as is” and appears “as a reaction against the perceived hypocrisy of the ritually created subjunctive.” (Puett, et al., *Ritual and Its Consequences*, 14) In a sense, sincerity describes Spinoza’s pessimistic attitude towards rituals. The desire for sincerity seeks the true moral law by looking at “discursive meanings and unique selves instead of repeated acts and fragmented realities” (ibid). In this sense, sincerity describes Spinoza’s pessimistic attitude towards rituals. The political boundaries that rituals create possibly prevent the emergence of a more universal way for the moral law of God. Thus, Puett et al.’s claim on the limited capacity of *sincerity* for human co-existence marks a sharp contrast with Spinoza’s caution about over-ritualization. I agree with Spinoza’s concern because rituals are a useful ideological device used by political authority as an uncoercive means of people’s submission (e.g. reading of the

this sense, Spinoza's myth also includes the Vichian framework of myth as common topics. For Spinoza, the mythical-historical narrative in the Bible is the means of finding common topics, based on which people's collective faith is generated.

Last but not least, Spinoza uses myth as a specific means of legitimizing a *modern* political community. For Spinoza, a critical question for the building of modern society is on what legitimate ground people agree to a social contract. To answer this question, Spinoza uses the biblical narrative of how Moses and the Hebrews found their state as an *analogy* to explain how people in modern society agree with the social contract. He argues, "this undertaking or transfer of right to God was made in the *same way* that ... it is made in an ordinary society."¹¹⁴ According to the biblical myth, the contract between people and God occurred as a result of the divine revelation. Thus, Spinoza argues, "[a man] cannot discover [obedience to God] by reasoning either; he can only receive it from a revelation confirmed by miracles. Hence, prior to a revelation,

Imperial Rescript in Japanese schools). Keren Wang, a rhetorical scholar on sacrificial rhetoric, articulates this point. He argues, "rituals, however authentically performed and faithfully embodied, may function as legitimizing rhetoric justifying the continuation of contradictory social conditions." (Wang, "Legal and Rhetorical Foundations," 3) More often than not, rituals help to justify an inconvenient truth of social contradictions and the dominant practice of the ruler. In this sense, rituals are a double-edged sword. Willem Lemmens, "Spinoza on Ceremonial Observances and Moral Function of Religion," *International Journal in Philosophy and Theology* 71, no.1 (2010): 51-64; Michael J. Puett, et al., *Ritual and Its Consequences: An Essay on The Limits of Sincerity*, (New York: Oxford University, 2008); Keren Wang, "Legal and Rhetorical Foundations of Economic Globalization: An Atlas of Ritual Sacrifice in Late Capitalism," (New York: Routledge, 2020).

¹¹⁴ Spinoza, *Theological-Political Treatise*, 213.

no one is obligated by divine law, which he simply cannot know.”¹¹⁵ Spinoza understands that the social contract of modern society also requires people’s faith in a divine-like revelation as a legitimate base. Myth delivers such a “revelation” in modern society by appealing to people’s imagination and common history. Spinoza introduces some historical examples of kings who used mythical narratives about their divine origins in order to enhance people’s faith and the legitimacy of their rule. For the Hebrews, myth taught by the prophets made people willing to enter a contract with God, rendering their political order solid legitimacy. In the same way, myth creates people’s collective faith in the social contract as the legitimate ground of modern society.

2.4 Myth as Reconciliation

Myth as reconciliation is a useful rhetorical device for managing socio-political disorder. At the same time, it often neutralizes conflicts, violence, dominance and contradictions at the expense of re-building a socio-political order. Thus, framing myth as the method of reconciliation also offer a critique of myth. In the works of Barthes, Althusser, Girard, Benjamin, and Agamben, myth appears as a particular method to reconcile contradictions within a political community, rendering coherent legitimacy to an established socio-political order. Myth as the method of reconciliation provides a critical perspective for the analysis of constitutional legitimacy both in the Meiji constitution and the postwar constitution. The legitimization discourse of the Meiji constitution needs to reconcile internal contradictions inherent in the hybrid coexistence of

¹¹⁵ Ibid, 198.

constitutional governance in form and the political ideology of the emperor's unbroken reign in substance (see Ch. III). The legitimization discourse of the postwar constitution also needs to reconcile the coexistence of the remaining emperor system within liberal democracy (see Ch. IV).

In *Mythologies*, Barthes argues that myth's primary function is to naturalize the dominant ideologies. Naturalization is a rhetorical process through which dominant political ideas become self-evident.¹¹⁶ Myth's function of neutralization rests on the particular mode of reception of a reader. Using the example of saluting by a black young man in a French uniform, Barthes argues that its reception as the presence of French imperialism is neither too obvious nor obscure. This is because "myth hides nothing and flaunts nothing: it distorts; myth is neither a lie nor a confession: it is an inflexion." As a result, the myth-reader rationalizes the signifier (the saluting black young

¹¹⁶ Barthes takes up mythology as an analytical method to decipher myth. As a method, mythology is both the formal science of semiology and a historical science of ideology. What makes myth different from general language is its structure. In general semiology, language exists in the relationships of three terms: a signifier, a signified, and a sign. The signifier is a thing that expresses itself, including an utterance (e.g., *my name is Lion*), an object, and an image. The signified is the concept of the signifier. The sign is a total medium which associates the signifier and the signified. This general tri-dimensional structure is what Barthes calls "the language-object" (Barthes, *Mythologies*, 114). Myth, then, builds itself on top of this structure. In other words, myth takes up the sign of the language-object as a signifier. In this system of "the meta-language," myth appropriates the original sign, depriving it of its possible rich history and contents as well as filling it with a particular dominant ideology. For example, as myth, "my name is Lion," whose concept is originally open to multiple meanings, transforms itself into a grammatical predication which *imposes* particular linguistic habits upon people.

Roland Barthes, *Mythologies*, trans. Annette Lavers (New York: The Noonday Press, 1991), 114.

man) as a legitimate reason to be linked with the signified (French imperialism). The myth-reader's rationalization occurs even on seemingly banal and purely descriptive occasions.¹¹⁷

Barthes' articulation that myth has ideological function for the ruling class is especially observable in the Japanese scholarly effort of making the political history of the emperor's reign an *eternal* fact. According to Barthes, myth presents the social world as a natural or a smooth order without social contradictions by "making contingency appear eternal."¹¹⁸ In this form, myth emerges as a de-politicized speech, externalizing an established socio-political order.¹¹⁹ In this sense, for Barthes, myth is almost exclusively on the side of the oppressor or the ruling class. Myth employs several modalities to spread myth, including the evaporation of history, the assimilation of the other, tautology, and the statement of fact. With the help of these modalities, so-called *common sense* serves as the ideological foundation of the ruling class.

In this sense, myth conveys dominant ideologies, which make individuals receive

¹¹⁷ Barthes's example of a newspaper headline, "THE FALL IN PRICES: FIRST INDICATIONS. VEGETABLES: PRICE DROP BEGINS," is helpful to see this ordinariness. He argues that the concept of this signifier is governmentality as the essence of efficacy. Here, the myth-reader receives the very presence of the government as the definite premise of the price drop in vegetables.

¹¹⁸ Ibid, 142.

¹¹⁹ How, then, can people bring back political speech? By echoing the Marxist premise that even the most apparently neutral objects have a political trace, Barthes appeals for what he calls "revolutionary language." Revolutionary language debunks the political nature of the world as well as *makes* the world. He claims, "The oppressed makes the world, he has only an active, transitive (political) language; the oppressor conserves it, his language is plenary, intransitive, gestural, theatrical: it is Myth. The language of the former aims at transforming, of the latter at eternalizing." Ibid, 150.

politically and historically particular ideas as the “natural” foundation of a political community. Louis Althusser’s Ideological State Apparatus (ISAs) describes how such dominant ideologies work as a governing apparatus.¹²⁰ ISAs turn individuals into subjects through multiple relational technologies, including his famous example of police hailing, religious rituals, the various media, education, and the law. This is to create the imaginary relationship of individuals to reality. There is no outside of ideology because the subjects are always in communication with ISAs, regardless of their will. ISAs’ various institutionalized activities and habits oblige the subject to internalize socially dominant ideologies. In this sense, myth as the method of dominant ideologies works as an apparatus for governing the subject.¹²¹

¹²⁰ Barthes’ mythology focuses on the logic of dominance through ideological representation by the bourgeoisie but does not capture how myth works as a governing apparatus. Greene’s “another materialist rhetoric” makes a similar critique to post-Marxist rhetoric. Ronald Walter Greene, “Another Materialist Rhetoric,” *Cultural Studies in Mass Communication* 15 (1998): 21-41.

¹²¹ Myth as a discursive apparatus of dominant ideologies also governs specific material relations of production in society. Althusser’s reading of dominant ideologies uncovers its relationships with the material condition of human beings. In his philosophical framework, he introduces the concept of “the problematic” (Althusser, *On the Reproduction*, 162). The problematic determines which problems, questions and answers are articulated in a text and which ones are excluded. The problematic of the text also urges generations of answers to posed questions and their defective answers to excluded questions. In particular, Althusser’s problematic concerns the reproduction of the condition of production. This is because dominant ideologies articulated in the problematic contribute to reproducing the existing condition of production. Louis Althusser, *On the Reproduction of Capitalism: Ideology And Ideological State Apparatuses* (New York: Verso, 2009).

Myth also reconciliates conflicts and violence within a political community, serving as the law in order to stabilize a fragile socio-political order. Rene Girard articulates mythology as an essential device for controlling the incessant violence that is rooted in mimetic rivalry and desires. The imitative nature of human desires necessarily brings up violent conflicts with others, leading to a sacrificial crisis. Sacrificial crisis is “a crisis affecting the cultural order. This cultural order is nothing more than a regulated system of distinctions in which the differences among individuals are used to establish their ‘identity’ and their mutual relationships.”¹²² Without the configuration of differences and the acknowledgment of boundaries, society would fall into reciprocal violence. Thus, the scapegoat or the surrogate victim aims to bring back social boundaries via its cathartic effect. A community in a sacrificial crisis makes a particular member the surrogate victim, who bears the entire community’s polluted spirit and becomes the subject of collective violence. Ritualistic sacrifice is the simulating practice of such collective killing of a surrogate victim. In addition to rituals, myth functions as a means to prevent the lapse of the entire community into the sacrificial crisis of reciprocal violence. Myth does so by making people recall and re-experience the original collective violence in a political community. Girard argues, “myths are the retrospective transfiguration of sacrificial crises, the reinterpretation of these crises in the light of the cultural order that has arisen from them.”¹²³ At its core, ritual sacrifice is an exercise of imagination by simulation. While myth is not a ritual in itself, it is another means for the same effect. Thus, Girard claims, “the mythic and ritualistic imaginations are using the same model.”¹²⁴

¹²² René Girard, *Violence and the Sacred*, trans. Patrick Gregory (London: Continuum, 2005), 52.

¹²³ Ibid, 67.

¹²⁴ Ibid, 111.

In this model, myth invokes people's imagination of collective violence against the transgression of an individual.

Similarly, myth justifies "violence" as the means of creating a socio-political order. In *Critique of Violence*, Benjamin argues that the law already and always exists in relation to violence through its two functions: law-making and law-preserving. Law-making explains how violence establishes, "in all areas where individual ends could be usefully pursued by violence, legal ends that can only be realized by legal power."¹²⁵ Benjamin identifies the law-making power of violence in a peace ceremony after war as a primordial form of the execution of violence. In the form of the peace ceremony, the sanctioning of the result of war recognizes new conditions and regulations as a new law. Benjamin's concern is how to break such relationship between law and violence because the state retains its power through this relationship. To this end, Benjamin makes the distinction between violence connected with state power and violence that brings a completely different order. He calls the former mythic violence and the latter divine violence. According to Benjamin, myth uses "fate-imposed violence"¹²⁶ as a justifying means of law-making. Thus, in the law-making, myth neutralizes violence and presents the law as neutral.¹²⁷

¹²⁵ Walter Benjamin, *Reflections*, trans. Edmund Jephcott (New York: Schocken Books, 1978), 280.

¹²⁶ Ibid, 294.

¹²⁷ Benjamin echoes with Girard by articulating that a political community reiterates myth in order to re-experience the original violent origins of the law-making. Using the example of a Greek myth, he argues, "Prometheus...challenges fate with dignified courage, fights it with varying fortunes, and is not left by the legend without hope of one day bringing a new law to men. It is really this hero and the legal violence

Built on Benjamin's mythical violence, Agamben also suggests that myth rationalizes the existence of the sovereign within an existing judicial order. Here, the sovereign refers to Schmitt's quasi-divide sovereign. Agamben argues that the Schmittian sovereign exists in what he calls "fictitious" state of exception.¹²⁸ In such a state of exception, it is the work of myth that legitimizes the existence of the quasi-divide sovereign. Agamben makes distinction between the real state of exception and the fictitious state of exception. Drawing on Benjamin's distinction between divine violence and mythic violence, the *real* state of exception informed by the former is replete with

of the myth native to him that the public tries to picture even now in admiring the miscreant" (Ibid, 294-5.).

¹²⁸ In *Homo Sacer*, this "fictitious" state of exception already expressed as the exclusive inclusion (that which includes what excludes) of the structure of sovereignty. Agamben argues that the Schmittian sovereign exists outside of the law yet still maintains itself to the judicial order. He finds a similar structure in what he calls *homo sacer*. In the archaic Roman law, *homo sacer* was classified as the object of homicide or the object of being killed by anyone. However, it was not the object of sacrifice for religious ceremonies. "A bare life" describes the political nature of *homo sacer*, which was subject to killing without any legal protection. Agamben illustrates the analogical yet contrastive structure of sovereign and *homo sacer*. He argues, "at the two extreme limits of the order, the sovereign and *homo sacer* present two symmetrical figures that have the same structure and are correlative: the sovereign is the one with respect to whom all men are potentially *homines sacri* [the plural of *homo sacer*], and *homo sacer* is the one with respect to whom all men act as sovereigns."¹²⁸ In the modern world, where the state of exception is normalized, everyone is potentially *homo sacer* as well as sovereign at the same time.

potentiality, which has not yet become actuality.¹²⁹ In the real state of exception, the law becomes inoperative because it is “an empty space, in which a human action with no relation to law stands before a norm with no relation to life.”¹³⁰ On the other hand, in the fictitious state of exception, myth makes the solid connection between the judicial order and the sovereign. The problem for Agamben here is that no matter how radical it is, contemporary politics founds itself on “the essential *fiction* according to which anomie... is still related to the juridical order.”¹³¹ The fictitious state of exception is not fake. Instead, it gives the *raison d’etre* of the sovereign and his political violence. In the end, myth as reconciliation make a natural association between the existence of a sovereign and a judicial order.

2.5 Contextualizing the Rhetorical Art of Legitimation in Modern Japan

Following the above works, I have clarified rhetorical perspectives embedded in a concept of myth, including, common topics, imagination, invention, faith, and reconciliation. These rhetorical perspectives as a whole suggest myth as the method of *making* legitimacy (or

¹²⁹ “Taking up Jean-Luc Nancy’s suggestion, we shall give the name *ban* (from the old Germanic term that designates both exclusion from the community and the command and insignia of the sovereign) to this potentiality (in the proper sense of the Aristotelian *dynamis*, which is always also *dynamis me energein*, the potentiality not to pass into actuality).” Giorgio Agamben, *State of Exception*, trans. Kevin Attell (Chicago: The University of Chicago, 2005), 28.

¹³⁰ Ibid, 86.

¹³¹ The emphasis is mine. Ibid.

legitimation). The emphasis on “making” is the reason why I call myth as the art of “legitimation,” instead of “legitimacy.” It is to highlight the historical dynamics of myth, which is always in the making of legitimacy. The emphasis on making also rejects the idea that legitimacy-making is a static or one-time activity. More importantly, such a method is impersonal. No one possesses nor controls myth. Be it positive or negative, myth is a communal discursive practice, which exists in the network of numerous human institutions and media. In this sense, the characteristics of making and impersonality make a sheer contrast with Schmitt’s legitimacy based on the quasi-divine decision of the sovereign.¹³²

¹³² Myth as the art of legitimation together offers a comprehensive critique of the realism of Schmitt’s decisionism. First, myth as invention, which bases the foundation of a community on the *impersonality* of common sense, is a direct critique of the legitimacy of the personality of the Schmittian sovereign. In other words, Vico’s myth as a true narration refutes Schmittian sovereign’s *antirhetorical* solitude. In this sense, myth as the capacity of invention radically flips the concept of the political endorsed by Schmitt. For Vico, the political is the way to discover a common topic and ethos among contested interests and differences for the sake of coexistence. In contrast, the personality of the Schmittian sovereign is anti-rhetorical or anti-political because it attempts to give an all-at-once solution to the construction of a socio-political order at the expense of the constant negotiation of differences. Therefore, echoing with Kahn’s notion of *poiesis*, myth is capable of the secular fabrication of common sense by the faculty of impersonal perception, imagination, intellect, and memory, as opposed to the transcendent command of the sovereign.

Second, myth as faith pits *historicity* against a sovereign’s *ahistorical* decision. Its source of legitimacy is historical narratives, which induce faith into obedience to the moral law among ordinary people. Such historical narratives stimulate people’s imagination for the common understanding of divine

justice and charity as the foundation of a political community. Moreover, the practice of faith makes Schmitt's analogy between the sovereign's decision and the divine miracle unsustainable. The miracle is not the sovereign's decision but the sign, which people receive as the constitutive force of a political community. The sign received by ordinary people forms relevant narratives and rituals, leading to faith in obedience to the moral law. In *Emergency Politics*, Bonnie Honig points out a similar rhetorical alternative to Schmitt's political theology. Based on Franz Rosenzweig's theology of the miracle, she suggests understanding the miracle as a "democratic" sign, which people receive as faith in a particular political orientation. She undermines Schmitt's concept of the sovereign by debunking "democratic energies" (Honig, *Emergency Politics*, 87) and "vulnerability to democratic action and resistance" (Ibid) hidden within his theological analogy. The emphasis on people's semiotic-reception of the new democratic political orientation creates another possible rhetorical reading against the theoretical necessity of Schmitt's political theology.

Lastly, myth as reconciliation offers three kinds of critique to the *realism* of Schmitt's decisionism. In other words, Schmitt's political realism is in effect his work of myth. First, his assertion on the historical necessity of the structural similarity between theology and politics is to *naturalize* historical contingencies. Here, the presence of the sovereign appears as a signifier, and the theological miracle or command as a signified. In Schmitt's work of myth, the presence of the sovereign appears as *a legitimate* reason to invoke the people's imagination of the divinity of its decision. This process requires interpellation, by which individuals internalize the sovereign's decision, if any, as their own. Thus, it is the practice of interpellation by the multitude, which *retrospectively* fabricates the sovereign's decision *as if* it was the origin of legitimacy. Second, Girard's sacrificial myth reverses the orientation of political violence for the building of a socio-political order. Schmitt's sovereign directs political violence to his political subjects as a means to create an order. In contrast, Girard's sacrificial myth brings the legal order via people's collective killing of the sovereign. Third, the decisionism of Schmitt's sovereign does not reflect legal-political *reality*

In particular, each rhetorical method of myth corresponds to a different historical phase that each chapter examines. Chapter II focuses on invention as a method of discovering common topics and legitimate sources for the foundation of a political community. It features the contested scholarly methods of discovering sources for Japan's new political legitimacy in the mid to late 19th century. The contested methods reflect the coexistence of the substance of the emperor's unbroken reign and the form of the constitutional governance within the Meiji constitution. Chapter III highlights reconciliation as a scholarly method of neutralizing contradiction and dominance. Leading scholars in the early 20th century used the metaphors of *kokka* (the state) to reconcile the conflicting coexistence of the opposing elements in the Meiji constitution. Chapter IV features (collective) faith as a method of generating a common political platform. After the enactment of the Constitution of Japan (the postwar constitution) in 1946, the intellectual discourse of a new constitutional legitimacy was divided between the one that claims the continuity of Japan's tradition and the other that claims the discontinuity of such tradition. In other words, faith into the legitimacy of the postwar constitution was divided in the immediate postwar periods.

but is a rhetorical fabrication of myth. Myth creates the fictitious state of exception, in which the sovereign *appears* to be able to suspend the existing legal order. However, in the *real* state of exception, which “shed[s] every relation to law,” (Agamben, *State of Exception*, 59.) the sovereign loses his ability to decide due to the radical groundlessness of human action. (McLoughlin, “The Fiction of Sovereignty, 524). Hence, the legitimacy of the sovereign's decision, if any, only expresses one of the rhetorical possibilities, instead of legal-political realism.

Bonnie Honig, *Emergency Politics: Paradox, Law, Democracy* (Princeton: Princeton University Press, 2011); Daniel McLoughlin, “The Fiction of Sovereignty and the Real State of Exception: Giorgio Agamben's Critique of Carl Schmitt,” *Law, Culture and the Humanities* 12, no.3 (2016): 509-28.

At the same time, these rhetorical methods are not limited to a specific historical phase. First, invention operates in different forms at the three historical phases. The following chapters explore common topics among leading scholars of each historical time: “particularity or universality of Japan’s positionality” in the mid-late 19th century, “*kokka* (the state)” in the early 20th century, “continuity or discontinuity of tradition” in the mid 20th century. These themes reflect intellectual efforts of inventing common topics for establishing political and constitutional legitimacy. Following Vico, such invention requires intellectuals to exert their imagination fully in order to build Japan’s self-identity and its difference from others. Second, the creation of faith into legitimacy was a significant intellectual concern for each historical time. For example, in the mid-late 19th century, intellectual faith was divided regarding Japan’s positionality in the world order. It was the matter of Japan’s self-survival in the harsh international political climate. For example, Fukuzawa Yukichi, a liberal critic, used “civilization” as the object of faith into Japan’s assimilation to what he perceived “universal” global order. In contrast, Inoue Kowashi, a conservative government official and one of the drafters of the constitution, used a Japanese ancient term “*shirasu*” to legitimize Japan’s particular and supreme governance and position in the world order. Third, reconciliation was an essential method to reconcile the inherent tension within the two Japanese constitutions. In addition to the scholarly discourse of *kokka* in the 20th century, the legitimation discourse of the postwar constitution also requires the intellectual effort of reconciliation as well. It is because the postwar constitution embraces another inherent tension within the coexistence of liberal democracy and the symbolic emperor system.

Finally, I use two specific historical cases in order to highlight how rhetorical perspectives that this chapter has examined help to understand the re-emerging issue of political legitimacy in modern Japan. One is *Mitogaku* (水戸学 Japanese Historical and Shinto Studies in the Mito

Domain)'s writing of history in the late Edo era, as the method of inventing Japan's alternative political legitimacy based on the emperor's eternal reign. The other is the image of Japan's body politic in the late 19th century, as the method of reconciliation through the visualization of Japan's particular vision of the nation state.

2.5.1 The Writing of History as the Method of Invention in *Mitogaku* in the Late Edo Era

Mitogaku's history writing at the very end of the Edo era was the method of inventing Japan's alternative political legitimacy. The key term is *sakui* (the artifact), which indicates the method of invention through the discovery of Japan's traditional form of governance by the emperor. Japan's dual political system between the military government of *bakufu* and the emperor since the late 12th century started to collapse towards the end of the Edo era in the mid 19th century. Within the system, the political legitimacy of *bakufu* was formally guaranteed by the emperor's authority. Being encountered with superior western military power combined with domestic hardships in economy, Japan's isolation policy during the Tokugawa *shogunate* was shaken, through which people realized the weakness of their country and questioned the legitimacy of *bakufu*. Within this context, based on Neo-Confucianism, the political movement of *sonno joi* (尊皇攘夷, revere the emperor, expel the barbarians) appeared in the 1850s and 1860s. This led to the overthrow of the Tokugawa Shogunate and the unification of authority and power under the emperor (the Meiji Restoration). The Meiji government with the aim of Japan's modernization, identified the emperor as the divine yet non-religious figure based on State Shinto, placing him as the head of the modern constitutional state.

The idea of *sakui* (作為 the artifact) as the method of invention in opposition to *shizen* (自

然 nature) emerged during the political turmoil of the *sonno joi* movement.¹³³ *Sonno joi*, which directly questioned the political legitimacy of *bakufu*, was a core force behind the emergence of the idea of *sakui*. Of many other historical-political thoughts,¹³⁴ *Mito-gaku* outstands for its prominent influence upon *sonno joi* and the entailing *kokutai* ideology of the emperor's external reign of Japan. The House of Mito was one of three collateral houses to the primary lineage of the Tokugawa Shogunate. *Mitogaku*'s scholarly excellence rests on its unique accomplishment of a

¹³³ In *Studies in Intellectual History of Tokugawa Japan* Masao Maruyama articulates that Ogyu Sorai's distinction between nature and the artifact led to both the dismantle of Confucianism and the modern consciousness of Japan. However, Maruyama's work received a lot of criticism due to its quick developmental process in which the notion of artifact (作為) contributed to the emergence of modern subjectivity and its implication for the imperialism. My argument does not go beyond the point where the notion of the artifact emerged in early-modern Japanese political thought, thus, does not link to any broad general modernization themes. Masao Maruyama, *Studies in Intellectual History of Tokugawa Japan* (Princeton, NJ: Princeton University Press, 2014). Also, as criticisms of Maruyama's argument, for example, Okutani Koichi 奥谷 浩一, "Maruyama Masao no Nihonshisoshiron no Mondaiten 丸山眞男の日本思想史論の問題点 [Issues in Masao Maruyama's Studies on the History of Japanese Thought]," *Sapporo Gakuin Daigaku Sougou Kenkyujyo Kiyoku* 札幌学院大学総合研究所紀要2 (2015): 59-69.

¹³⁴ There was the diverse development of political thought, which fed into the *sonno joi* movement, such as *kogaku* (古学 the study of the Chinese classics), *kokugaku* (国学 the study of the Japanese Classics apart from Chinese influence), *suikashinto* (垂加神道 the synthesis of Neo-Confucianism and Shinto), and *Mitogaku*.

historiographical compilation of Japan, *Dai-nihon-shi* (A History of the Great Japan), which started as early as in 1657.¹³⁵ Their historical works awakened the great sense of nationalism among the Japanese. In other words, their works made people realize the urgent need for human intervention into politics in the face of the national crisis.

Via the artifact (*sakui*) of history writing, *Mito-gaku* aimed to invent the socio-political hierarchy centered upon the emperor as a renewed political legitimacy. According to Victor Koschmann, already in the late 18th century, Fujita Yukoku's *Seimeiron* (On the Rectification of Names) demonstrates the distinctive method of *Mit-gaku* as the combination of the artifact (*sakui*) and nature. Fujita claims that the proper relationship between the name and the political hierarchy solely finds the eternal nature or Way. A critical problem for Fujita was that the reality of the dual-political system does not match the proper *name*, that is to say, the legitimacy of the unbroken imperial line. In the original Chinese Confucian tradition, the name must entail the moral supremacy of the ruler. When the ruler does not show his moral supremacy, the mandate of Heaven legitimizes dynastic change (*ekisei kakumei*). In this way, the proper relationship between the name and the political hierarchy retains. Nevertheless, while Japan's official political legitimacy had always been upon the bloodline of the imperial household, *bakufu* had exclusively held the political power. As a result, Fujita's conundrum was that the reality of the political regime had not reflected the proper name of the imperial household.

In this context, Fujita's *Rectification of Names* used the method of invention in order to solve the obvious divide between the reality and the name. His historical writing discovered a

¹³⁵ Victor J. Koschmann, *The Mito Ideology: Discourse, Reform, and Insurrection in Late Tokugawa Japan, 1790-1864* (CA: University of California Press, 1987), 2.

name, “regent” (*sessho*), to refer to the shogun. Regent signifies the socio-political role-models of the shogun, who embraces formal reverence to the emperor *and* respect to superiors in society. In this way, the new name subordinates the shogunate under the supreme name of the emperor. Here, one can observe a theoretical contradiction. Although the name is supposed to prefigure a naturally made socio-political hierarchy, historical writing must invent a new name to correct a distorted hierarchy. In *Mitogaku*, the awareness of this contradiction prompted history writing as the method of human intervention to restore the natural socio-political hierarchy.

In the mid 19th century, Fujita’s son, Toko, also used the artifact (*sakui*) of history writing as an inventive method of making alternative political legitimacy. As opposed to his father, Toyo prioritizes Way over the name in *Kodokanki Jutsugi* (Commentary on the Manifesto of Mito Academy). Toko tried to restore the nameless Way that the ancient Japan had in its divine origin, where everything was perfectly harmonized as one. For Toko, the name only serves for the differentiation of Way. Thus, the name obscures Way by losing the latter’s original harmony. He claims, “in antiquity, there was no writing. The meaning of Way was conveyed through legends and songs.”¹³⁶ However, in order to restore such a harmonious Way, Toko used history writing as a method to “restore” divine political regime centered upon the emperor.

Mitogaku’s history writing is essentially the artifact (*sakui*) of myth-making for alternative political legitimization. *Sakui* in *Mitogaku* especially refers to the method of invention by means of discovering Japan’s traditional governance by the emperor. *Mitogaku*’s invention by means of history writing invokes people’s historical imagination and common ethos to the “naturally” made social order already lost in the past. Eventually, the Meiji government succeeded to *Mitogaku*’s

¹³⁶ Koschmann, *The Mito Ideology*, 51.

legacy of history writing for the later invention of the *kokutai* myth.

2.5.2 The Image of the Body Politic as the Method of Reconciliation in Meiji Japan

The drawing of the body politic (see Figure I) in the late 19th century is the example of the method of reconciliation. By reconciling the tension between the abstract idea of *kokka* (the state) and the political history of the emperor's unbroken reign, the drawing legitimizes Meiji Japan's unique vision of the modern state. The drawing uses the human body analogy to visualize Japan as a newly emerging nation state. Its "head" is composed of the two-part, *jingikan* (the oracle) and *sinsai* (the prayer by the emperor) and the feet represent the people. Although Ch III will offer further details, here I briefly articulate its overview. In 1887, Kaieda Nobuyoshi, a noble-class politician, drew the image of Japan's body politic when he attended the lecture of Lorenz von Stein, a German legal scholar, in Vienna. He was one of several Japanese officials, who studied under von Stein for the making of the Meiji Constitution. von Stein was one of the most influential intellectuals on the organic theory of state. The drawing merges the organic theory of state, which was born in the 19th century Germany, with Japan's socio-political hierarchy centered upon the emperor.

The drawing reconciles the opposing political direction between the two elements. On the one hand, the organic theory of state rendered sovereignty to the existence of the state. In doing so, the organic theory of state envisions the state as an *abstract* and philosophical entity, which appears as the ultimate reification of human spirit. Thus, it rejects using the human body analogy as the analogy suggests the anti-liberal nature of a pre-established social hierarchy. On the other hand, Japan's socio-political order is based the pre-established hierarchy centered upon the emperor. In this sense, the drawing of the body politic reconciles Japan's need of creating a

“nation-state” and its demand of preserving an established socio-political hierarchy.

The drawing’s method of reconciliation features a historical problem of modern Japan, that is to say, how and how much it needs to domesticate foreign and unfamiliar notions and institutions in its local context. The human body analogy of the state neutralizes the pre-established social hierarchy by appealing to the natural association between the body of *kokka* and that of human. The analogy also helps to identify the destructive effect of any socially deviant behaviors and norms to organic harmony, as an “evil” cell or organ would do harm to the entire human body. This idea normalizes individuals’ behavior and their loyalty to the emperor and the state.

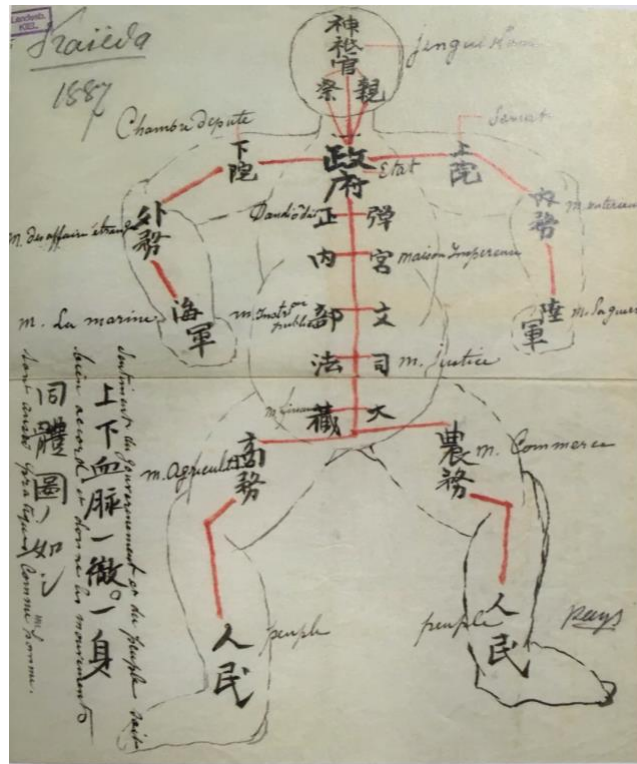


Figure 1 The Drawing of Kaieda Nobuyoshi in his Note at von Stein's Lecture¹³⁷

2.6 Chapter Conclusion

This chapter has clarified rhetorical perspectives of myth as tools for analysis, including common topics, imagination, invention, faith and reconciliation. These concepts as a whole suggest the method of making legitimacy or legitimation, which characterizes modern Japan's intellectual responses to the re-emerging issue of political/constitutional legitimacy. In particular,

¹³⁷ Nichi-Doku Kōryūshi Henshū Iinkai 日独交流史編集委員会編, *Nichi-Doku Kōryū 150-nen no Kiseki* 日独交流 150 年の軌跡 [A 150-year history of an interaction between Japan and Germany], (Tokyo: Yūshōdō Shoten, 2013), 71.

I have featured myth's specific methods of legitimation: invention, faith and reconciliation. Each method corresponds to the theme of each chapter, invention (Ch. II), reconciliation (Ch. III), and faith (Ch. IV).

My analysis in the following chapters starts with the scholarly debates in the mid-late 19th century. The debate captures distinctive scholarly methods of inventing Japan's new legitimacy in the face of political transformation around that historical period. The invention of a new legitimacy was roughly divided into two ways. One is to seek legitimate sources in traditional values and memory in the midst of a fluctuating socio-political order. The other is to discover legitimate sources in a novel ideas and practices outside of tradition. Together, the two methods created the tension, which characterized the Meiji constitution's coexistence of the constitutional governance and the political history of the emperor's unbroken reign.

3.0 Inventing Modern Japan's Political/Constitutional Legitimacy: Between Particularity and Universality in Mid to Late 19th Century Japan

From the 1860s to the 1890s, Japanese intellectuals faced Japan's radical political transformation from the dual political system to a constitutional monarchy. Tokugawa *bakufu*'s incompetence in handling the domestic economic crisis and defending against Western military forces led the "restoration" of the emperor's sovereignty in 1868 (Meiji Restoration). In the same year, the emperor promulgated *Gokajyo no Goseimon* (the Charter Oath), which outlined the goals of Japan's modernization as a new nation-state, including deliberation based political decision-making and learning of foreign knowledge (see Appendix). Almost 20 years later, the Meiji Constitution was finally established in 1889. These 20 years were the years of the learning of Western legal and political knowledge and culture. One of the most notable phenomena on the road to the Meiji constitution was the Freedom and People's Rights Movements from 1870s - 80s. The movements demanded the establishment of parliament, which urged the government officials to study foreign constitutions, particularly the Prussian constitution, and draft its own constitution.¹³⁸ What underpinned Japan's political transformation was the issue of how much and how to incorporate the inflow of Western legal and political norms and institutions into Japan's local context. However, such an inflow of Western legal-political norms and institutions into

¹³⁸ For the detail of the officials' study trip of the European constitutions, see Takii Kazuhiro 瀧井一博, *Bunmeishi no nakano Meiji Kenpo* 文明史のなかの明治憲法 [The Meiji Constitution in the History of Civilization] (Tokyo: Kodansha, 2003).

Japan's local context caused an irreconcilable tension. The Meiji constitution exactly embraced this tension between the form of the constitutional governance and the substance of the emperor's unbroken reign. As a result, the fundamental question of political/constitutional legitimacy was how much Japan needs either to domesticate what is deemed as "universal" paradigms or to preserve its particular "tradition."

Given this context, this chapter argues that the contested scholarly methods of invention in the mid-late 19th century, that is to say, discovering intellectual sources for Japan's political legitimacy were responses to the above question. The methods of invention were roughly divided into two ways. One is to identify legitimate sources within an immemorial "particular" tradition in order to stabilize the existing social order. The other is to identify legitimate sources within "universal" novelties outside one's own tradition in order to transcend the pre-existing condition. In short, while the method of particularity aims to establish inward legitimacy to the domestic audience, that of universality aims to build outward legitimacy to the international audience. Thereby, the chapter regards this methodological tension of invention as an outstanding scholarly way to answer the question of political/constitutional legitimacy in the mid to late 19th century Japan.

Accordingly, the chapter claims that the methodological tension of invention in the mid-late 19th century Japan reflects the inherent tension – the political history of the emperor's unbroken reign (particularity) in substance and the constitutional governance in form (universality) – in the Meiji constitution. It is because this methodological tension dealt with the fundamental question of how much Japan should seek foreign "universal" paradigms or traditional "particular" sources for political legitimacy, which exactly informs the legitimation issue of the Meiji constitution.

For the purpose of these arguments, this chapter examines four intellectual debates on different topics between leading scholars, including Chinese Classics, religion, *kokutai*, and Western political thought. Each debate discovered these intellectual topics and sources to answer the specific question of Japan's political/constitutional legitimacy. The analysis of this chapter starts with a debate, that took place in the mid 19th century before the Meiji Restoration. Despite the complete difference in historical circumstances, the debate illustrates the seeds of the inventive tension between universality and particularity regarding the issue of Japan's political legitimacy. Thus, the chapter include debates between: 1) Yoshida Shoin and Yamagata Taiga on Chinese Classics in the 1850s; 2) Kaneko Kentaro and Ueki Emori on Edmund Burke in the 1880s before the constitution was made; 3) Inoue Kowashi and Fukuzawa Yukichi on civilization and *shirasu* (to know; to reign publicly) in the 1870s-80s; 4) Inoue Tetsujiro and Uchimura Kanzō on religion (or Christianity) in the early 1890s right after the constitution was made.

While existing scholarship has studied the topic of each debate¹³⁹, the analysis of this chapter focuses on examining how each debate uses the contested methods of inventing intellectual

¹³⁹ For instance, Liu Ai-Lin 柳愛林, “Edmund Burke to Meiji Nihon: Kaneko Kentaro 『Seijironryaku』 niokeru Seijikouso” エドモンド・バークと明治日本：金子堅太郎『政治論略』における政治構想 [Edmund Burke and Meiji Japan : A Study of Kaneko Kentaro's Political Thought in Seijironryaku], *Kokka Gakai Zasshi* 国家学会雑誌 127 (2014), 789-852; Hong Wei-Min 洪偉民, “Yoshida Shoin no Kokkaron: Yamagata Taika tonon Ronso wo toushite” 吉田松陰の国家論：山縣太華との論争を通して [Yoshida Shoin's Theory of the State: Through his Debate with Yamagata Taika], *人間文化学研究集録* 12 (2003): 63-75; Kobayashi Toshio 小林敏男, “Tenno no Tochiken wo Kangaeru: Ushihaku

sources in constructing Japan's political/constitutional legitimacy. 1) in the Yoshida – Yamagata debate, while Yoshida reads Chinese Classics critically to justify Japan's particularity as *doku* (independence of the Sinocentric world order), Yamagata reads it literally to legitimize Japan's universal position as *dou* (one of the same in the China-centered universal world order); 2) in the Fukuzawa – Inoue debate, while Inoue uses *shirasu* to legitimize a particular way of Japanese governance, Fukuzawa uses “civilization” to validate a universal principle which Japan shares with other nations; 3) in the Kaneko – Ueki debate, while Kaneko translates Edmund Burke to justify Japan's particularity, Ueki refutes Burke to legitimize Japan's need of radical liberalism in the same way as Western liberal democratic countries; 4) in the Inoue – Uchimura debate, while Inoue uses the public morality of Shinto to justify Japan's particularity as well as superiority, Uchimura uses Christianity (or religion) to legitimize Japan's equal membership in the universal world order.

3.1 The Contested Reading Methods of Chinese Classics: The Yoshida – Yamagata Debate

This section aims to show the seed of the methodological tension in the mid 19th century regarding the issue of Japan's political legitimacy, which overshadowed the inherent tension within the Meiji constitution. Despite a completely different political landscape from the late 19th

to Shirasu” 天皇の統治権を考える：「ウシハク」と「シラス」を通して [Thinking about the Emperor's Sovereignty: Ushihaku and Shirasu], *日本文学研究* 54 (2015): 1-21.

century, the contested methods in the Yoshida – Yamagata debate already precede the tension of the constitutional identity in the Meiji constitution between “universal” constitutional governance and particular political history of Japan. Their contested methods rest on different readings of Chinese Classics for the purpose of founding Japan’s political legitimacy. While Yamagata uses it as the universal source of Japan’s political legitimacy, Yoshida builds Japan’s unique legitimacy through his critical reading of it.

The debate between Yoshida Shoin (1830-59) and Yamagata Taika (1781-1866) occurred in 1855 (when Yoshida was 27 and Yamagata was 76 years old), three years after Commodore Mathew Perry’s arrival at Uraga. Thus, the debate happened amid Japan’s encounter with the military power of the Western countries. Yoshida is one of the most important political activists, educators and intellectuals, who educated many *ishin shishi* (samurai who overthrew the Tokugawa shogunate). Yamagata is a high-class samurai as well as a neo-Confucian educator. The debate started when Shoin asked Taika to respond to his political treatise, *Komo Yowa* (講孟余話, Additional Notes on Mencius). *Komo Yowa* was Shoin’s lecture note, which was delivered to political inmates during his imprisonment due to his failed attempt of stowing away on the ship USS Powhatan led-by Perry.

My analysis below elucidates their distinctive method of invention. While Yoshida finds the source of Japan’s political legitimacy in the term *doku* (particular) through his critical reading of Chinese Classics, Yamagata finds it in the term *dou* (universal) through his adherence to Classis. The analysis starts with Yoshida’s method of invention. It articulates how Yoshida’s critique of Chinese Classics in turn legitimizes Japan’s particular identity in the world order. It argues that Yoshida’s critical reading is not a total rejection of Classics as the source of Japan’s legitimacy. Rather, it suggests selecting and sorting out what is appropriate and what is not appropriate for

Japan's political legitimacy. It is based on Yoshida's cosmopolitan world view, in which the particular legitimacy of each country coexists. Then, the analysis moves to Yamagata's method of invention. It explains how Yamagata strictly follows what Classics teaches and apply it to Japan as the universal source of political legitimacy. It also describes that his method of invention illustrates his political conservatism in the historical context of the mid 19th century. Afterwards, my analysis introduces two elements – neo-Confucianism and a historical question of political revolution in Japan – in order to further highlight their different method of invention. Finally, I articulate that the debate shows an earlier trace of scholarly debates to answer the question of Japan's political/constitutional legitimacy, that is to say, how much Japan should follow foreign “universal” paradigm for its political legitimation.

As for the key terms in their debate, while *doku* refers to what Yoshida calls *kokutai*, *dou* refers to Yamagata's universal Way of Confucianism. On the other hand, Yamagata argues that *dou* expresses the universal Way of *tenka-kokyo* (天下公共 lit. publicness under the heaven). Its essence is the lasting five relationships (五倫五常): *kunshin* (subject and ruler), *fushi* (father and kid), *fufu* (husband and wife), *choyo* (young and old), *hoyu* (friend). On the other hand, Yoshida argues that when a country exceeds in one of these relationships, *doku* appears. Japan's *doku* is the subject-ruler relationship based on the imperial household. Yoshida also uses *kokutai* interchangeably with *doku*. He borrowed *kokutai* from Aizawa Seishisai's *New Thesis* (1825). In fact, having been inspired, Yoshida visited Aizawa when he was 22 years old in 1851.

In *Komo Yowa*, Yoshida draws the distinction between *doku* and *dou* based on the following dialogues of Mencius:

曾皙嗜羊棗，而曾子不忍食羊棗。公孫丑問曰：「膾炙與羊棗孰美？」

打開字典顯示相似段落顯示更多訊息。孟子曰：「膾炙哉！」打開字典

顯示相似段落顯示更多訊息。 公孫丑曰：「然則曾子何為食膾炙而不食羊棗？」打開字典顯示相似段落顯示更多訊息。 曰：「膾炙所同也，羊棗所獨也。諱名不諱姓，姓所同也，名所獨也。」

Mencius said, "Zeng Xi was fond of sheep-dates, and his son, the philosopher Zeng, could not bear to eat sheep-dates." Gong Sun Chou asked, saying, "Which is best, minced meat and broiled meat, or sheep-dates?" Mencius said, "Mince and broiled meat, to be sure." Gong Sun Chou went on, "Then why did the philosopher Zeng eat mince and broiled meat, and would not eat sheep-dates?" Mencius answered, "For mince and broiled meat there is a common liking, while that for sheep-dates was peculiar. We avoid the name, but do not avoid the surname. The surname is common; the name is peculiar."

Yoshida expands these familiar examples to the general political philosophy of *doku* and *dou*. In the above dialogue, Mencius favored the universality of the surname and broiled meat over the particularity of the first name and sheep-dates. In contrast, Yoshida finds the particularity as the essence of a country.

Yoshida's critical reading of Chinese Classics legitimizes Japan's distinctive national identity or *doku*. He argues "you should not have a blind admiration for the saints and the sages. This is an essential point. If your admiration is even a little blind, you will be unable to see clearly 'the way.'"¹⁴⁰ Yoshida criticizes Confucius and Mencius' "error" of leaving their own country in

¹⁴⁰ Yoshida Shoin 吉田松陰, *Komo Yowa* 講孟余話 [Additional Notes on Mencius] (Tokyo: Chuko Classics, 2002), 90.

order to do good to the whole world. It is an “error” because leaving one’s own country is the same as governing the world without governing oneself and one’s house, which he thinks is against the Japanese political principle. Such a critical reading is based on his political realism regarding the world order, in contrast to Confucian scholars’ typical idealism. Based on his observation of the Qing dynasty’s vulnerability to Western countries, especially the Opium War, Yoshida realized the significance of national identity and integrity for protecting Japan from Western colonial force. Without such integrity under the emperor, Japan would be the next China.

This Yoshida’s critical reading articulates that the source of Japan’s political legitimacy is radically different from the Chinese counterpart. On the one hand, in China, the legitimacy of the emperor rests on the Mandate of Heaven. When the emperor’s virtue and care for people is not sufficient, the lack of his virtue was often used as a reason for the emperor’s displacement. Thus, the people’s sense of justice and morality nurtured by Chinese Classical works is what legitimates the displacement of political authority. On the other hand, Yoshida argues, it is the emperor with his supreme sense of justice who judges the legitimacy of the displacement of shogun. In this sense, he radically breaks the legitimacy of Japanese political system away from Chinese Classics as a source of political legitimacy.

Nonetheless, it does not suggest a total rejection of Chinese Classics: Rather, Yoshida proposes selecting and sorting out what is appropriate and what is not appropriate in Classics for Japan’s political legitimacy. For example, he argues that the above “error” of Confucius and Mencius’s is not an error in China. It is their particular nature (*kokutai*) that legitimatizes their service to a lord, depending on their master’s virtues: If the lord has virtue, they stay with them, if the lord loses virtue, they leave or even kill him. In contrast, Japan’s particular nature (*kokutai*) is *daichu* (the great loyalty), which bases political authority and legitimacy on a lord’s blood-line

succession. Thus, his reading of Chinese Classics entailed the selection only of texts and principles useful to Japan's particular legitimacy, as opposed to the contemporary Confucian scholar's adherence to the entire Classics. In this sense, Yoshida's *doku* imagine a cosmopolitan (not universal) world order, in which each particular legitimacy coexists. He asserts, "to make foreigners conform to our way is as almost impossible as we cannot conform with their way. Therefore, "one-single Way under the heaven (*tenchikan ichiri* 天地間一理)" is not realistic at all. In this sense, Way(s) exist at each scale of a political community. At the largest scale, there is a common way across all the continents; then, there is a particular way for each continent, country, province, city, village, and family. A particular way is common only within its political terrain. However, it is still connected with common Way across all the continents.

As a response to Yoshida, Yamagata wrote *Review of Komo Yowa* in the same year in 1855, in which his idea of *dou* appears in various moral-political topics. Yamagata reprimands Yoshida for his making of a political boundary between Japan and foreign countries. It is because the Way of rulers (*kundou* 君道) is common across the continents as it exclusively pertains to governing people and making them feel secure. Yamagata also criticizes Yoshida's employment of 華夷 (*hua-yi*), known as the sino-barbarian dichotomy in English. *Hua* indicates a civilized center and *yi* refers to uncivilized others. Yamagata argues that all countries including western countries are unified under 五倫五常 (the lasting five relationships), as opposed to Yoshida's designation of Euro-America as *yi*. Specially, he condemns Yoshida's parochial self-understanding of Japan's geography expressed in the phrase "Japan as the origin from which the sun rises and the center of

energy.”¹⁴¹ Yamagata claims that Yoshida’s political mapping of Japan is based on the “backward” imaginary world order shared among ancient people.

Yamagata’s method of invention, through which he uses Chinese Classics as the universal source of Japan’s political legitimacy, is based on his strict adherence to Classics. For instance, Yamagata firmly defends Mencius and Confucius’s behavior of leaving the country in which they were born, a behavior Yoshida severely criticizes. Yamagata claims that Way has both *kei* (経 reason) and *ken* (権 scheme). While *kei* is a must-follow rationale in society, *ken* is a scheme to attain a certain political purpose, even by an illegitimate means. In ordinary time, ordinary people must follow *kei*. Nonetheless, in an unusual political situation, the *extraordinary* people of sages like Mencius and Confucius must handle the situation with *ken*. Therefore, they did not deviate Way. Rather, it is through the exercise of *kei* that they pursue Way with their remarkable intellect. Here, in defending Mencius and Confucius, Yamagata identifies the Way of Chinese Classics as an absolute and universal principle.

The strict adherence to Chinese Classics also depends on Yamagata’s philological sensitivity to Classics. For example, Yamagata spots the danger of Yoshida’s labeling of the *shogunate* as *ba* (霸 dominance; hegemony).” According to Yamagata, *ba* is an ancient Chinese political idiom, which signifies the most dominant power capable of controlling other lords.¹⁴² In Yamagata’s mind, *ba* suggests the military dominance of one country over others which are always

¹⁴¹ Yamagata Taika 山縣太華, “Koumou Bouki Hyogo Genoni” 講孟荀記評語 [Commentaries of Additional Notes on Mencius], in *Yoshida Shoin Dai-san-kan* 吉田松陰第3卷 [Yoshida Shoin Collection Vol.3] (Tokyo: Iwanami, 1939), 606-7.

¹⁴² Ibid., 538.

exposed to a possible political subversion. Thus, if *bakufu* is *ba*, it can be overthrown, causing social disorder. As opposed to Yoshida's use of *ba*, Yamagata identifies *bakufu* as *wang-dao*. *Wang-dao* (王道 king's way), another Chinese political idiom, suggest a stable social-order reigned by virtuous rulers. This also reflects Yamagata's adherence to the Chinese classical political philosophy, which he thought the Japanese political regime must follow.

In the end, Yamagata's adherence to Chinese Classics is connected with his political "conservativism," which views Japan's contemporary political system as a perfect match for the universal Chinese classical principles. He asserts, "by nature every country in the world is the same and human beings together must cultivate the *rational* principles (理), according to which people with no virtue change their deviance (異) to *dou*." Thus, every nation is under the harmonious Way and any deviation from it is naturally fixed. With regard to Japan, Yamagata perceives that the dual political system of the imperial house and the emperor for the past 600 years has created a perfect harmony. However, Yoshida's concept of *doku* or *kokutai* poses a threat to the existing harmonious Way by reviving the power of the imperial house. In other words, the idea of *kokutai* destabilizes Japan's socio-political order by giving excessive political power to the emperor. As a result, this would weaken the power of the shogunate. On the contrary, Yamagata's *dou* suggests that the political legitimacy of *bakufu* is granted by the emperor's authority in the same way as the Chinese emperors are granted their legitimacy by the Mandate of Heaven. In this way, Yamagata pictures Japan's existing political order is perfectly in accord with the Chinese classical doctrine.

Here, two elements further clarify the difference of their methods of invention: neo-Confucianism and a historical question of political revolution in Japan. First, in the distinctive school of thought in neo-Confucians –Yoshida's *yomeigaku* (陽明学) and Yamagata's *shushigaku*

(朱子学) –, Yoshida’s reading emphasizes how to change Japan’s existing political situation and Yamagata’s reading stresses the accurate understanding of Japan’s status quo. In general, neo-Confucianism argues that human nature is originally good and is able to attain *li* (理 principle; reason). Nonetheless, the two schools differ in terms of their method. *Shushigaku* features its scrutinous analysis of the external world given the principle that *li* exists in things outside of one’s mind. One’s mind becomes easily immoral because it is exposed to *qi* (氣 vital force), which appears as various passions. Thus, the goal of *shushigaku* is to have one’s mind aligned with *li* by means of “the investigation of things” (格物). Instead of *shushigaku*’s method of pursuing *li* in the external world, *yomeigaku* features its discovery of *li* within one’s mind via one’s action. This is expressed as *chikō gōitsu* (知行合一 the inner knowledge and the exterior action as one).” In this context, *yomeigaku*’s “investigation of things” has a different meaning from the one in *shushigaku*. While in *shushigaku* (Yamagata) it means to achieve *li* sitting in the outside world, in *yomeigaku* (Yoshida) it signifies that one’s mind becomes moral and right when one take actions towards things outside. As a result, *yomeigaku* emphasizes the importance of action by criticizing *shushigaku*’s too static and analytical method. In this context, Yoshida’s *yomeigaku*-based political thought and Yamagata’s *shushigaku*-based thought form a stark contrast. Yamagata’s *shush-gaku* aims to give a rational framework for explaining the current dual political system in Japan. In this sense, Yamagata’s political thought is epistemological, justifying how Japan’s status quo is in accord with Chinese Classics.¹⁴³ As a response to Yamagata’s analytic epistemology, Yoshida’s

¹⁴³ Kawamura Ichiro 河村一郎, *Yamagata Taika — Yoshida Shoin Kou* 山縣太華 — 吉田松陰考 [A Study of Yamagata Taika — Yoshida Shoin] (Yamaguchi: Sakura Print, 2004), 81.

critical reading of Chinese Classics urges the change of Japan's reliance on China as a source of political legitimacy.¹⁴⁴

Additionally, a historical question of whether or not Japan has experienced political “revolution” like China informs their contested method of invention for Japan's political legitimacy. On one hand, Yoshida never admits the existence of political revolution in Japanese history, emphasizing instead the ever-lasting continuity of the emperor-subject relationship. This is based on his critique of the Chinese political thought of dynastic change, which legitimizes the displacement of unvirtuous rulers. As a result, his rejection of political revolution and re-writing of Japanese history based on the ever-lasting loyalty of the subjects to the emperor aims to establish Japan's particular legitimacy. On the other hand, Yamagata's historical realism admits the historical existence of political revolution in Japan. This does not mean urging political revolution in contemporary Japan. Instead, it means the protection of the already existing socio-political order. He argues, “the inability of the imperial house has made *bafuku* emerge and rule the country...which is *the reason of nature*.”¹⁴⁵ Thus, for Yamagata, Yoshida's claim on the emperor's historical continuity alone cannot be a legitimate reason to disrupt the already established harmonious way of the dual political system, kept by Japan for the past 600 years.

As a whole, their contested methods of invention already insinuate the inherent tension in the later-born Meiji constitution, despite a completely different historical context. In short, the debate demonstrates an earlier trace of scholarly responses to the fundamental question of constitutional legitimacy, that is to say, how much Japan needs to follow foreign “universal”

¹⁴⁴ Ibid.

¹⁴⁵ Emphasis is mine. Yamagata, “Koumou Bouki,” 556.

paradigm as a source of political legitimacy. A key for Japan in the mid 19th century is whether or not it should remain in the sino-barbarian order (the *hua-yi* order). Yoshida's *doku* is an attempt to shift away Japan's relationship to the China-centered "universality." Confronting the sober reality of Western imperialism and China's weakening, Yoshida cast doubt on Japan's dependence on China for its political-cultural legitimate resources. However, as already discussed, Yoshida's *doku* does not aim to isolate Japan from the world order. It emphasizes locally differentiated identities and norms under the universal Way. In this sense, Yoshida's *doku* is his intellectual invention of the particular strength of Japan in comparison with other nations, instead of his claim to Japan's unconditional superiority over others. On the contrary, Yamagata's *dou* claims Japan's remaining position in the China-centered "universality." His strong rejection of the concept of *doku* as well as his emphasis on *dou* articulates Japan's political identity as a part of the sino-barbarian order. However, this order has a clear center and peripheries. Thus, far from being "universal" in the literal sense, Japan's position as *dou* meant being a subordinate part of the China-centered universality.

The debate reflects the changing world view among the mid 19th century Japanese intellectuals. After the Meiji Restoration of 1886, Japan's reference to "universal" paradigms gradually shifted from China to the West. In this sense, the different readings of Chinese Classics reflect two opposing intellectual methods of either adhering to the existing world order (Yamagata) and departing from it (Yoshida). This tension between the particularity of Japan's independence and the universality of China-centered world order in the mid 19th century paved the way for the inherent tension within the Meiji constitution between the particularity of emperor's unbroken line and the universality of Western liberal democracy. The next section demonstrates that the question of how much Japan should domesticate foreign "universal" paradigms still continues in the debate

between Fukuzawa Yukichi and Inoue Kowashi within the different political landscape of the late 19th century.

3.2 The Different Methods of Legitimizing *Kokutai*: The Fukuzawa – Inoue Debate

In the late 19th century, after the Meiji Restoration in 1868, the question of Japan's domestication of foreign paradigms became further important scholarly topic due to the rapid inflow of Western knowledge and Japan's desire for becoming a modern nation state. The Fukuzawa – Inoue debate was a response to the question through inventing different sources to articulate *kokutai* as Japan's political legitimacy.

This section constructs the works of Fukuzawa Yukichi (1835-1901) and Inoue Kowashi (1844-1895), as a scholarly debate. Fukuzawa was one of the most influential scholars in Meiji Japan, who imported and translated Western knowledge and culture, and Inoue was Japanese statesman and one of the primary drafters of the Meiji constitution. Both Fukuzawa's work published in 1875, *Bunmeiron no Gairyaku* (Outline of A Theory of Civilization) and Inoue's lecture in 1889, "*Kogen*" (古言 old saying) shows the distinctive methods of inventing intellectual sources – "civilization" (Fukuzawa) and "*shirasu*" (Inoue) – to identity *kokutai*. Thus, this "debate" took place in the middle of making the Meiji constitution.

In the following paragraphs, first my analysis describes Fukuzawa's method of inventing "civilization" as a legitimate source to interpret *kokutai* as a universal paradigm of "nationality" in English. In order to do so, Fukuzawa decouples *kokutai* from *seitō* (政統 political legitimation) and *ketto* (血統 bloodline), all of which were typically conflated by conservatives under the name

of *kokutai* as Japan's unique political authority.¹⁴⁶ Afterwards, the analysis illustrates Inoue's method of inventing *shirau*, the ancient Japanese term, as a legitimate source for Japan's political legitimacy of *kokutai*. Especially, Inoue's inquiry emphasizes the untranslatability and historical precedence of *shirasu*. In the end, I argue that their debate's contested methods of invention highlight two opposing responses to the question of legitimacy: how much does Japan need to domesticate foreign paradigms or need to retain its particular tradition as a newly emerging nation state?

Fukuzawa's interpretation of *kokutai* appears in *Bunmeiron no Gairyaku*, one of the most important and widely read intellectual works in the history of modern Japan. Beyond Japan, it has exerted prominent influence upon East Asian modernity. This is also one of the few works of modern Japanese political thought that have been translated into English. The work demonstrates a sophisticated understanding of political liberalism in the West or what Fukuzawa calls "civilization." Published in the middle of the Freedom and People's Rights Movements in the 1870s and 80s, this work well represents the historical atmosphere at that time when political reform for liberal democracy was becoming a dominant force in Japanese society.

Fukuzawa defines *kokutai* as the translation of the English term "nationality." At the same time, he assigns a distinctive meaning to it as follows:

First off, what does the term [kokutai] refer to? Let me put aside popular arguments for a moment and explain the term as I understand it. [Tai] means a framework or a format. It refers to a structure in which things are collected together, made one, and distinguished from other entities. Thus [kokutai]

¹⁴⁶ Hozumi Yakka was an exemplar of such conservative scholars. See Chapter III for his argument.

*refers to the grouping together of a race of people of similar feelings, the creation of a distinction between fellow countrymen and foreigners, the fostering of more cordial and stronger bonds with one's countrymen than with foreigners. It is living under the same government, enjoying self-rule, and disliking the idea of being subject to foreign rule; it involves independence and responsibility for the welfare of one's own country. In Western countries it is called 'nationality.' As there are many countries in the world, each has its own [kokutai].*¹⁴⁷

Fukuzawa's *kokutai* as an autonomous political community preceded the early 20th liberal constitutionalist interpretation (see Chapter III).¹⁴⁸ He continues, "although the reason [of sense of *kokutai*] may differ from country to country, the most important factor for a race of people to pass through a series of social forms and share a common past."¹⁴⁹ This, in turn, means that *kokutai* disappears when a nation loses their political autonomy regardless of the continuity of language, religion, and other cultural elements.¹⁵⁰ Fukuzawa uses some historical examples. In China, while the heritage of language and customs may appear the same in the Ming and Qing dynasty, *kokutai* certainly changed from the Han Chinese of South China to the Manchu of North China. Also, the

¹⁴⁷ The emphasis is mine. Fukuzawa Yukichi, *An Outline of A Theory of Civilization*, trans. David A. Dilworth & G. Cameron Hurst (Tokyo: Sophia University, 1973), 23.

¹⁴⁸ See the arguments of Minobe Tatsukichi, Kita Ikki, and Ariga Nagao in Chapter III.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid., 24.

Indian under the British empire and the native Americans under the European colonizers have lost their *kokutai*.

In order to discover *kokutai* (or a political autonomy) within “civilization,” first Fukuzawa decouples of *kokutai* from *seitō*. *Seitō* is Fukuzawa’s own translation of the English term, “political legitimation.” This decoupling generates the political principle that *seitai* has nothing to do with *kokutai*.¹⁵¹ According to him, *seitō* is that which is “the ultimate source of political authority recognized by the people.”¹⁵² Thus, he captures the essence of political legitimation as the justification of authority by reason rather than the force of arms. This is to conceal the taboo of the initial violence of political authority. He argues, “the past is forgotten, the present esteemed. Grievances eventually fade into oblivion.”¹⁵³ This forgetting of the initial violence naturally must facilitate the progress of rational principles as a means of political legitimacy. More importantly, political legitimation varies according to changing cultural and historical situations whilst keeping *kokutai* intact. In this sense, political legitimation also refers to a governmental structure. Similarly, his second decoupling is the separation of *ketto* (blood lineage) from the former two, which makes the three elements completely independent. Such an independency of the three variables is universally observable in world history. Fukuzawa uses the example of the Glorious Revolution in England to illustrate an instance of change in political legitimation without a change in *kokutai* or the king’s blood lineage. Fukuzawa’s decoupling prioritizes Japan’s political autonomy or *kokutai* over the other two. Mainstream conservatives reduced Japan’s political authority and

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid., 25.

identity to the emperor's blood lineage, assigning them to the unbroken imperial line. However, according to Fukuzawa, the unbroken imperial line is only the result of the historical retention of *kokutai*, not vice versa. In order to explain this, he uses the analogy of a human body by regarding *kokutai* as the entire body and the imperial blood lineage as the eyes. If Japan kept the blood lineage of the imperial house yet lost its political autonomy, then the eyes would be open but the body would be dead.¹⁵⁴

In doing so, Fukuzawa finds the essence of *kokutai* or nationality within “civilization” or what he understands as people's independent mindset. For Fukuzawa, civilization appears in the universal law of progressive history, which develops from a primitive, through a semi-civilized, to a fully civilized stage. At the same time, he warns that civilization is a relative product. This signifies the endless process of civilization in which some western countries are leading the race yet have not achieved the pinnacle.¹⁵⁵ According to Fukuzawa, civilization consists of two parts: the material and the spirit. While the former includes “all empirical details, from food, clothing, shelter... to government decrees and laws,”¹⁵⁶ the latter refers to *jinshin fuzoku* (人心風俗) or “the sentiments and custom of a people.”¹⁵⁷ In this sense, Fukuzawa's essence of civilization rests on the development of people's independent mindset. Fukuzawa argues that *taji soron* (多事争論

¹⁵⁴ Fukuzawa argues that this was exactly what the British empire did it when it governed the Eastern colonies.

¹⁵⁵ Thus, he argues, “we cannot be satisfied with the level of civilization attained by the West.”
Ibid., 15.

¹⁵⁶ Ibid., 16.

¹⁵⁷ Ibid., 17.

diverse affairs and ideas) is necessary to develop such people's mindset. The opposite of "diverse affairs and ideas" is the standardization of thinking, which prohibits the progress of civilization. He argues, "an essential feature of civilized progress lies in endeavoring to intensify and multiply human enterprises and needs, to find more and more outlets...and to stimulate the activities of the human spirit."¹⁵⁸ The multiplicity of world views in society has historically created the critical difference between Western democratic societies on the one hand, and Japanese and Chinese autocracy and theocracy on the other.

In this way, Fukuzawa's inventive method emphasizes the need of incorporating the "universal paradigm" of civilization in order to strengthen Japan's *kokutai* or its political autonomy. The contemporary Japan's lack of "diverse affairs and ideas" has led to the imbalance of power prevalent in the entire Japanese society. This imbalance of power was a particular socio-political problem in Japan. The imbalance of socio-political conditions, for instance, between base and noble, poor and rich, and stupid and intelligence has turned into a difference in "rights."¹⁵⁹ As a result, the imbalance of power has forever separated the ruler and the ruled.¹⁶⁰ Therefore, Fukuzawa's invention aims to fix this imbalance of power and generate the autonomous subjectivity of Japanese people. In the history of Japan, the imbalance of power had produced the dire consequence of the lack of autonomous subjectivity of Japanese people. He argues that while only rulers have occupied power, knowledge, and virtues, the ruled or common people are not concerned with these matters as indifferent bystanders. Thus, "in Japan, there is a government but

¹⁵⁸ Ibid., 20.

¹⁵⁹ Ibid., 137.

¹⁶⁰ Fukuzawa called it ironically the basic element of Japanese civilization.

no nation.”¹⁶¹ The construction of the Japanese people as a nation is the true progress of the spirit of civilization. In this sense, Fukuzawa even asserts that “Japan has never been a single country”¹⁶² unless the Japanese people have become autonomous political subjects with the spirit of freedom. As a civilized nation, the Japanese people must cultivate themselves as a self-ruler.

In the end, for Fukuzawa, Japan’s political legitimacy is dependent on whether or not Japan follows the universal paradigm of civilization and eventually becomes as a fully civilized nation. It is especially because he believes that becoming a fully civilized nation is the only way for Japan to survive in the competitive environment of international politics. According to Fukuzawa, Japan was on the way to becoming a higher civilized nation. Therefore, for Fukuzawa the conservatives’ adherence to the particularity of Japan’s tradition or the emperor’s unbroken line would not defend Japan from Western imperialism.¹⁶³

¹⁶¹ Ibid., 144.

¹⁶² Ibid.

¹⁶³ On the other hand, Fukuzawa’s invention of *kokutai* within civilization, which might be called “liberal nationalism” (Nakamasa, “Nihonteki,” 28) offers a different solution for Japan’s survival in the contemporary international politics. Not surprisingly, he and his conservative contemporaries both well recognized Japan’s weakness as a semi-civilized nation in the world order. Nevertheless, Fukuzawa’s political thought radically departed from the conservatives. His universal law of progressive history allowed him to believe that Japan was on the way to becoming a higher civilized nation. Fukuzawa in turn suggested that adherence to the particularity of Japan’s tradition or the emperor’s unbroken line would not defend Japan.

In this way, he uses civilization as an essential principle of nationalism or Japan’s survival in international politics. This might pose the question as to whether Fukuzawa perceives civilization only as

As opposed to Fukuzawa's method of invention, Inoue Kowashi discovers the untranslatable Japanese term, *shirasu*, as the source of Japan's particularly legitimacy of *kokutai*. As a primary drafter of the Meiji constitution, Inoue's philological inquiry for the ancient myth in

an instrument for Japan's nationalism. Maruyama Masao rejects this way of reading Fukuzawa. In his earlier work, *Gakumon no Susume* (An Encouragement of Learning) in 1872, Fukuzawa argues

freedom and independence refer not only to the private self, but to the nation as well...each individual man and each individual country, according to the principles of natural reason, is free from bondage. Consequently, if there is some threat which might infringe upon a country's freedom, then that country should not hesitate even to take up arms against all the countries of the world. Similarly, if there is some person who would infringe upon another person's individual freedom, the threatened party should not fear even the officials of the government (Fukuzawa, *An Encouragement of Learning*, 3-5).

Based on this argument, Maruyama argues that civilization always informs the progress of a nation while a nation uses civilization as its principle (Maruyama, *Fukuzawa Yukichi*, 80). In the minds of liberal nationalists, this dialectic between civilization and nationalism has always existed in the history of human beings. As a result, Fukuzawa's civilization is not just an instrument for a nation. Instead, it is always a universal principle to which every nation and individual is subjected. Nakamasa Masaki, "Nihonteki na Cho-kokka shugi no genten: Fukuzawa Yukichi no Kokutai-ron" 日本的な超国家主義の原点: 福沢諭吉の「国体」論 [The Japanese Origin of Ultra-nationalism: Fukuzawa Yukichi's Theory of Kokutai], *Associé* 17 (2006); Maruyama Masao, *Fukuzawa Yukichi no Tetsugaku* 福沢諭吉の哲学 [The Philosophy of Fukuzawa Yukichi] (Tokyo: Iwanami, 2001); Fukuzawa Yukichi, *An Encouragement of Learning*, trans. David A. Dilworth & Umeyo Hirano (Tokyo: Sophia University, 1969).

Kojiki (Records of Ancient Matters) invented *kokutai* as the emperor's unbroken reign within the ancient term *shirasu* (知らず to know; to reign over). His *shirasu* theory first appeared in *Kenpo Gikai* (Commentaries on the Constitution of the Empire of Japan) published in 1889, the government's official commentaries of the constitution. The explanation of *shirasu* in *Kenpo Gikai* goes as follows.

By 'reigned over and governed,' it is meant that the Emperor on His Throne combines in Himself the sovereignty of the State and the government of the country and of His subjects. An ancient record mentions a decree of the first Emperor [Amaterasu-Ohmikami] in which he says: 'The Country of Goodly Grain is a State, over which Our descendants shall become Sovereigns: You, Our descendants, come and govern it.' He was also called 'Emperor governing the country for the first time' (Hatsu-kuni-shirasu Sumera-mikoto). A Prince named Yamato-takeru-no-Mikoto said: 'I am a son of the Emperor Otarashi-hiko-Oshiro-Wake, who resides in the palace of Hishiro at Makimuku, and who governs the Country of Eight Great Islands.' The Emperor Mommu (697 – 707 A.D.) declared at the time of his succession to the Throne: 'As long as Emperors shall beget sons, We shall, each in His succession, govern the Country of Eight Great Islands.' The same Emperor also said: 'We shall reduce the Realm to tranquility and bestow Our loving care upon Our beloved subjects.' Such in brief has been the principle, by which the Emperors of every age have been guided on succeeding to the Throne. Latterly, the phrase 'the Emperor reigning over and governing the Country of Eight Great Islands' (Oyashima-shiroshimesu Sumera-mikoto) came to be used as a regular

*formula in Imperial Rescripts. The word shiroshimesu means reigning over and governing. It will thus be seen that the Imperial Ancestors regarded their Heaven-bestowed duties with great reverence. They have shown that the purpose of a monarchical government is to reign over the country and govern the people, and not to minister to the private wants of individuals or of families. Such is the fundamental basis of the present Constitution.*¹⁶⁴

Thus, *shirasu* as an ancient Japanese term appeared in *Kojiki* in the early 8th century refers to the specific Heaven-bestowed duties of the imperial family to reign over the Japanese people.

The appearance of the gist of *shirasu* theory in *Kenpo Gikai* means that it became adopted as an official *unwritten* foundation of the Meiji constitution. Although Article I of the Meiji constitution did not end up adopting the term *shirasu*, it appeared in the text of a few drafts: the draft of December 1886, of April 1887, and of May 1887. After the draft of May 1887, Ito Hirobumi changed *shirashu* to a contemporary general term *touchi* (統治 to govern). Thus, while *shirasu* disappeared from the constitutional text, it serves as the core ideology of the whole constitutional system.

Inoue's invention of *shirasu* aims to alleviate overarching influence of modern constitutionalism upon the Meiji constitution. Thus, in Inoue's mind, *shirasu* minimizes Japan's domestication of foreign paradigms, despite its adoption of a constitution. His detailed exposition of *shirasu* appeared in his lecture titled "Kogen" (古言 old saying) delivered five days after the

¹⁶⁴ Ito, *Commentaries on the Constitution*, 3-4.

enactment of the Meiji constitution on February 26th, 1889.¹⁶⁵ In the lecture, Inoue’s discovery of *shirasu* rests on one of the most famous events in Kojiki, *kuni-yuzuri* (国譲り transfer of the land), in which Japan’s rulership passed from the earthly *kami* (*kunitsukami*), the heavenly *kami* (*amatsukami*) to their eventual descendant, the Imperial Family.

天照大御神、高木神之命以。問使之。汝之宇志波祁流。葦原中國者。

我御子之所知國。言依賜。故汝心奈何。

The Heaven-Shining-Great-August-Deity and the High-Integrating-Deity have charged us and sent us to ask, ‘We have deigned to charge our august child with thy dominion, the Central Land of Reed-Plains, as the land which he should govern.’¹⁶⁶

In the excerpt, the heavenly *kami*, including Amaterasu, asks to *Ohkuninushi* (大国主神) or the gods of the earth to transfer *Ashihara-no-Nakatsukuni* (the Central Land of Reed Plains 葦原中国) to them. The Central Land of Reed Plains eventually became the land of Japan, which the imperial family reigns over.

The above excerpt highlights an important distinction between *ushihaku* (宇志波祁流) as the universal method of governance and *shirasu* (知らず lit. to know) as the Japanese particular way of governance. On the one hand, as the above English translation indicates, *ushihaku* refers

¹⁶⁵ The lecture was published later on with a new title “梧陰存稿言靈” in 1895.

¹⁶⁶ The underlines are mine. *The Kojiki*, trans. Basil Hall Chamberlain (1919), 122-23. Accessible at sacred-texts.com.

to dominance, whose universal existence Inoue intends to show by referring to European and Chinese governance. On the other hand, *shirasu* is an untranslatable term, which signifies “reigning over without dominance.” The excerpt captures the moment when the *shirasu* governance of the heavenly *kami* and the imperial family as their descendants took the place of the *ushihaku* governance of the earthly *kami*. In order to stress further the particularity of *shirasu*, Inoue also finds equivalent terms for *ushihaku* in Chinese (“御す-牧す”) and English (“occupy-govern”). The former reflects the way in which Chinese political thought has regarded people as if they were a livestock. The English term, “occupy-govern,” similarly reflects the European political idea of dominating people and land for the sake of monarchs. Therefore, both traditions have treated people and lands as the private property of the rulers. Even the contemporary European democratic countries cannot escape from the influence of the legacies of these old political terms.

Moreover, Inoue’s invention of *shirasu* has a particular emphasis on its untranslatability and historical precedence. *Shirasu* as “reigning over without dominance” is untranslatable because it is only possible by the emperor’s supreme morality and his “knowing” of his subjects. Inoue argues that *shirasu* (lit. to know) generally indicates the intellectual ability to understand the external world. However, in Japanese political history, *shirasu* has expressed the emperor’s ability, like a mirror, to “know and care” about the ordinary people’s mind. For Inoue, the emperor’s care and “knowing” of his subjects suggest a historical precedence for the idea of the public realm. As result, Inoue argues that *shirasu*’s historical precedence over the recent European invention of the public realm gives historical supremacy to Japan’s particular governance.

Finally, his articulation of *shirasu*’s untranslatability and historical precedence means his rejection of Japan’s total assimilation into the Western (or “universal”) paradigms. Inoue’s

assertion, “the Meiji constitution is not a copy of European constitutions but is the development of the unwritten constitution of *shirasu*,”¹⁶⁷ reflects Inoue’s resistance to Japan’s such assimilation. In Inoue’s mind, Japan’s assimilation into the Western world order decreases its chance of survival. In this sense, Inoue’s particular method of *shirasu* explicitly opposes Fukuzawa’s universal method of civilization. In effect, Inoue, in his earlier memorandum, “Jinshin Shido Iken-an (The Memorandum of Guiding the People’s Mind)” in 1881, accused Fukuzawa’s radical influence over the Freedom and People’s Rights Movements and encouraged the people’s learning of morality based on loyalty towards the emperor.¹⁶⁸

Altogether, the Fukuzawa – Inoue debate responded to the question of legitimacy that the Meiji constitution shared. While Fukuzawa’s invention of civilization for *kokutai* urges Japan to assimilate western “universal” paradigms, Inoue’s invention of *shirasu* resisted its total assimilation. In this way, the debate informs the inherent tension in the Meiji constitution between the form of constitutional governance and the substance of political history of the emperor’s unbroken reign.

Around the same historical period, another scholarly debate occurred between Kaneko Kentaro and Ueki Emori. The next section examines this debate because it demonstrates the contested methods of invention to answer the *same* question of legitimacy in another form. On the one hand, Kaneko on the conservative side finds his translated work of Edmund Burk, an English

¹⁶⁷ Inoue Kowashi Den 3 [The Biography of Inoue Kowashi Vol.3], (Tokyo: Kokugaikuin Daigaku Toshokan, 1969), 703-5.

¹⁶⁸ Inoue Kowashi Den 1 [The Biography of Inoue Kowashi Vol.1], (Tokyo: Kokugaikuin Daigaku Toshokan, 1969), 248-251.

statesman and scholar, as an appropriate intellectual source to legitimize Japan's own political legitimacy of *kokutai*. On the other hand, Ueki finds anti-Burke as a legitimate source to justify Japan's incorporation of Western liberal democracy.

3.3 The Discovery of Edmund Burke in Japan: The Kaneko – Ueki Debate

This section constructs the *indirect* dialogue between Kaneko Kentaro, a conservative government official, and Ueki Emori, a liberal scholar and political activist. Their dialogue is not a direct kind of interaction because it takes the form of Ueki critiquing the work of Edmund Burke, an English statesman and conservative political theorist, which Kaneko translated. Kaneko's uptake of Burke appeared in 1881, almost 100 years after the original publication in England in 1790. Kaneko's translation of Burke and Ueki's critique of Burke should be contextualized as a political battle over Japan's political legitimacy between conservative particularism and liberal universalism in the 1870-80s at the time of the socio-political turmoil of the Freedom and People's Rights Movements.

The debate shows the contested methods of invention: while Kaneko discovers Burke to legitimize Japan's particular legitimacy based on *kokutai*, Ueki uses Burke as a counter-reason to incorporate liberal democracy into Japan. Accordingly, this section argues that their different methods of reading Burke add another nuance to the question of Japan's political legitimacy or how much Japan should domesticate foreign "universal" paradigms or retain its particular tradition. On the one hand, Kaneko uses Burke's conservatism to legitimize Japan's legal foundation based

on its “empirical” history.¹⁶⁹ On the other hand, Ueki uses anti-Burke to legitimize an “abstract” theory of liberal democracy and its applicability to Japan. As a whole, the Kaneko – Ueki debate was a respond to the question of how much Meiji Japan’s political reform needs to be grounded on either its empirical history (Kaneko’s *kokutai*) or an abstract theory (Ueki’s liberal democracy). The coexistence of the form of constitutional governance and the substance of the emperor’s unbroken reign in the Meiji constitution embraces this internal tension of legitimacy between an abstract theory and an empirical history.

In the following paragraphs, first, I explain the political background in which Kaneko decides to translate Burke’s work. Then, my analysis shows that Kaneko’s method of inventing Burke for Japan political legitimacy of *kokutai* includes three points: 1) the rejection of unrestricted natural rights, 2) the support of gradual reform as opposed to radical change, and 3) the emphasis on monarchical rights and *kokutai*. Finally, it articulates that Kaneko answers the question of Japan’s political legitimacy by appealing to the empirical history of *kokutai*. Then, the analysis moves to Ueki’s method of inventing anti-Burke as a legitimate source for Japan’s incorporation

¹⁶⁹ Additionally, Kaneko’s introduction of Burke, as a conservative Western political thinker, disturbed the conventional binary method of invention between Japanese political history on the conservative side and Western political thought on the liberal side. In this sense, on the one hand, Ueki answers the question of legitimacy with Japan’s total assimilation into Western liberal democracy. On the other hands, Kaneko’s answer is twisted because while he rejects Japan’s total assimilation into Western liberal democracy, his intellectual source of such rejection is Burke’s “Western” political thought. In the end, Kaneko’s method of invention highlights the Japanese conservatives’ paradoxical desire seeks “Western” paradigms for outward legitimacy while rejecting the influence of such paradigms to keep Japan’s particular legitimacy.

of liberal democracy. It articulates three characteristics of his method: 1) his labelling of Kaneko-Burke as anti-liberalism; 2) his appeals to the universal spirit of “the liberty of emotion”; 3) his articulation of “political conservatism” as an incomplete political thought. Then, the analysis claims that Ueki’s method of invention seeks the answer of Japan’s political legitimacy by qualifying only Western “liberal” thought as a “universal” paradigm.

Kaneko’s translation of Edmund Burke, *Seiji Ronryaku (The Outline of Politics)*, was published in 1881 as an implicit critique of the Freedom and People’s Rights Movements in the 1870-80s. The Movements demanded the Meiji government to establish a constitution and representative democracy, whose theoretical drive was Rousseauian liberal thought. In 1880, Sakai Takayuki, a government minister, invited Kaneko to his place to ask if Kaneko knew any conservative political theory to combat social contract theory and the Freedom and People’s Rights Movements.¹⁷⁰ Kaneko’s answer was Burke, whom he had learned about whilst studying abroad in the U.S. In the next year of 1881, Kaneko published *Seiji Ronryaku* (政治論略 *The Outline of Politics*) as a collection of excerpts from both *Reflections on the Revolution in France* in 1790 (a.k.a *Reflections*) and *An Appeal from the New to the Old Whigs* in 1791 (a.k.a *An Appeal*). Around 1880, many influential Western legal-political works were published. In particular, in 1877 Rousseau’s social contract was published as *Minyaku-ron* (民約論) and 1876 Montesquieu’s *The Spirit of Law* as *Banmho Seiri* (万法精理). Kaneko criticized the discursive situation around this historical period, when *yogakusha* (scholars of Western knowledge) *only* knew Rousseauian social contrast theory and advocated parliamentary democracy.

¹⁷⁰ Liu Ai-Lin 柳愛林, “Edmund Burke to Meiji Nihon, 793.

In this political situation, Kaneko believes that Japan's constitution must be based on its own history rather than an abstract theory of liberal democracy. Oliver Wendell Holmes Jr., whom he studied under at Harvard Law School, influenced Kaneko's constitutional thought based on the history of law. Kaneko claims, "there are three types of law: philosophical jurisprudence, comparative jurisprudence, and historical jurisprudence. We cannot understand the spirit of the constitution with philosophical jurisprudence but only with historical jurisprudence."¹⁷¹ For Kaneko, the Freedom and People's Rights Movements pushes philosophical jurisprudence based on social contract for constitutional democracy, instead of historical jurisprudence.

Within this context, *Seiji Ronryaku* was not just a translation of Burke's works but Kaneko's critical political response to scholars of Western knowledge and the Freedom and People's Rights Movements. The book has four parts: 1) Kaneko's summary of Burke's thought, 2) the introduction of Rousseau's thought extracted from Theodore Dwight Woolsey's *Political Science, or, The State Theoretically and Practically Considered* (1877), *Reflections*, and *An Appeal*. The first section is Woolsey's introduction of Rousseau. Woolsey's in his original work criticizes Rousseau for its idealism and potential danger of the tyranny of a majority. In contrast, he affirms Burkean thought as a resistance to the idealistic principle of revolution. This reflects Kaneko's political intention to criticize Rousseau by utilizing a recent work in the West. The rest of the book is Kaneko's reconstruction of the medley of both *Reflections* and *An Appeal*. Of the eight sections (from second to ten), the second, third, ninth, and tenth sections are on *An Appeal*,

¹⁷¹ Kaneko Kentaro 金子堅太郎, *Nihon Dokuitsu Ryo Teikoku Kenpo no Sai ni oite* 日本独逸両帝国憲法の差異に就て [On the Difference of the Japanese and German Constitution] in 金子堅太郎著作集 第一集 [Kaneko Kentaro Collection Vol. 1] (Tokyo: Nihon Daigaku Seishin Bunka Kenkyujyo, 1995).

and the fourth to eighth sections are on *Reflections*. *Reflections* is Burke's famous critique of the radical change brought by the French revolution. A year later, Burke published *An Appeal* as a response to harsh criticisms from the Whig party, in particular, the pro-revolutionary statesman Charles James Fox. However, Kaneko's reconstruction ignored this chronological order and selected excerpts from both works to get his own points across.

Kaneko's reconstruction of Burke's works is his method of inventing an intellectual source to legitimize Japan's political legitimacy of *kokutai*, instead of liberal democracy. Kaneko's method includes the following three points: 1) the rejection of unrestricted natural rights, 2) the support of gradual reform as opposed to radical change, and 3) the emphasis on monarchical rights and *kokutai*. First, Kaneko uses Burke's rejection of unrestricted natural rights to refute the strong claim of liberal democracy on human rights. Burke's rejection of unrestricted natural rights appears as his response to Thomas Paine in *An Appeal*. The Japanese translation of natural rights is *tenpu jinken*, which literally means "the heavenly endowed human rights."¹⁷² Kaneko translated Burke's quotation of Paine's *Rights of Man* (1792), "a Nation has at all times an inherent indefeasible right to abolish any form of Government it finds inconvenient, and to establish such as accords with its interest, disposition and happiness."¹⁷³ Burke's critique targets Paine's claim on "an inherent indefeasible right." Here I claim that, by means of translation, Kaneko "appropriates" Burke's critique as his own critique of *tenpu jinken* theory. Thus, Kaneko's political appropriation

¹⁷² See Chapter III for more arguments of *tenpu jinken* among Japanese scholars.

¹⁷³ Thomas Paine, *Rights of Man* (1792). Accessible at http://sqapo.com/complete_text_paine_rights_of_man.htm

of Burke aims to highlight the surrender of full natural rights as a necessity condition of society as follows:

政治ノ社会ヲ創立スル第一ノ精神タルヤ、人民ハ己レノ事件ニツキ自
カラ判決スルコト能ハストノ格言ニ基キタルモノニシテ。。。天賦の
権理トヲ同時ニツナカラ之ヲ享受スルコトヲ得ス。。。人民ハ自カラ
己レノ身体ヲ使用シテ敢テ他人ノ箝制ヲ受ケサル天賦ノ権利ヲ減殺シ
テ、政府ヲ創定シ法律ヲ設ケテ人民ノ権理ヲ制限スルニ方テ、始メテ
政府ノ組織ハ社会一般ノ便益ヲ重ンスルノ目的ヲ確定シタリト云フヘ
シ。則チ其国ノ憲法トモ云フヘキモノニシテ。。。¹⁷⁴

*One of the first motives to civil society, and which becomes one of its
fundamental rules, is, that no man should be judge in his own cause...Men
cannot enjoy the rights of an uncivil and of a civil state together...The moment
you abate anything from the full rights of men, each to govern himself, and
suffer any artificial positive limitation upon those rights, from that moment the
whole organization of government becomes a consideration of convenience.*

*This it is which makes the constitution of a state...*¹⁷⁵

¹⁷⁴ Kaneko Kentaro, *Seiji Ronryaku* 政治論略 [The Outline of Politics] (Tokyo: Chuai Sha, 1881),
177.

¹⁷⁵ Edmund Burke, *Reflections on the Revolution in France* (London: Penguin Classics, 1986), 153-
5.

Kaneko's translation emphasizes that *gensatsu* (減殺 offset) of natural rights exists for the sake of the general convenience of society (*shakai ippan no ben-eki* 社会一般ノ便益). However, Burke's original work does not emphasize it. Instead, Burke attributes the necessary limitation of unrestricted natural rights to the human lack of "a sufficient restraint upon their passions."¹⁷⁶ By omitting this explanation from his translation, Kaneko articulates that liberal democracy's claim on unrestricted human rights does harm to the benefits of society.

On the second point, Kaneko's emphasis on Burkean gradual political reform is to refute radical thought of the Freedom and People's Rights Movements (*minken-ha* 民権派) as well as to defend Japan's immemorial tradition. Kaneko calls the Burkean gradual political reform *zenji kairyo* (漸次改良)¹⁷⁷ The Burkean gradual political reform goes against the evil of inconstancy of those who dream of a political reformation by radical subversion. According to Burke, it is because "society is indeed a contract..., each contract of each particular state is but a clause in the great primaeval contract of eternal society..., [and] this law is not subject to the will of those, who by an obligation above them, and infinitely superior, are bound to submit their will to that law."¹⁷⁸ Burke's claims on immemorial law does not insist on the eternal existence of an unchanging content. Instead, it emphasizes the continuity of tradition with constant updates.¹⁷⁹ Burke calls this

¹⁷⁶ Ibid, 154.

¹⁷⁷ Kaneko, *Seiji Ronryaku*, 173.

¹⁷⁸ Burke, *Reflections*, 206-207.

¹⁷⁹ Regarding this point, J.G.A Pocock's essay "Burke and the Ancient Constitution" also suggests that Burke's traditionalism is a particular way of thinking that has existed since time immemorial within

immemorial tradition “prejudice,” which is “profound and extensive wisdom.”¹⁸⁰ In Burke’s original work, he introduces church establishment as “the first of pure prejudices,”¹⁸¹ Burke continues, “I speak of it first. It is first, and last, and midst in our minds. For, taking ground on that religious system, of which we are now in possession, we continue to act on the early received, and uniformly continued sense of mankind.”¹⁸² In his translation, Kaneko omitted this theological implication in order to fit Burke’s claim in Japanese context. In particular, Kaneko translated “this law is not subject to the will of those, who by an obligation above them, and infinitely superior, are bound to submit their will to that law”¹⁸³ into “決シテ一時人民ノ思想ニ依テ指揮セラルモノニアラズ ([this law] is never under the guidance of the people’s temporary thought).”¹⁸⁴ I argue that here Kaneko implies that Japan has its own law of the great primaeval contract, that is to say, *kokutai* or the emperor’s eternal reign.

Finally, on the third point, Kaneko’s use of *kokutai* in the translation work clarifies his political purpose of linking *kokutai* with Burke’s great primaeval contract. Needless to say, Kaneko is not allowed to discuss Japanese emperor’s unbroken line in the translation of Edmund Burke. Nevertheless, he tweaked his translation so that his reader could find it easily relatable to Japanese

the common law tradition. J.G.A Pocock, “Burke and the Ancient Constitution – A problem in the History of Ideas,” *The Historical Journal* 3, no. 2 (1960): 125-143.

¹⁸⁰ Burke, *Reflections*, 200

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Kaneko, *Seiji Ronryaku*, 170

kokutai in two ways. First, while Burke was a fervent defender of the “mixed government” of a representative legislature and a hereditary monarchy, Kenako’s translation does not cover those parts where Burke argues for a representative legislature. Accordingly, Kenko’s translation only discusses the people’s reverence to the monarch as their obligation and their automatic submission to the monarch’s political authority. Second, Kaneko uses the term *kokutai* a few times in the text. For instance,

*Besides, the people of England well know, that the idea of inheritance
furnishes a sure principle of conservation, and a sure principle of
transmission; without at all excluding a principle of improvement.*¹⁸⁵

“然レドモ保守党ノ政略ニ依レハ第一ニ国体ヲ保存スル主義ヲ立ツルコ
ト、第二ニハ時世ノ変遷ト共ニ旧来ノ国体ヲ永遠ニ維持スル主義ヲ守
ルコト、第三ニハ文明ノ壇上に進歩スル主義ヲ目的都スルコトノ三主
義を併セ有スルモノナレハ、決シテ政治上ニ於テ進取ノ自由ニハ毫釐
ノ缺漏障碍ナク”¹⁸⁶

Kaneko’s use of *kokutai* is abrupt. There is no corresponding word in the original text because he added *kokutai* as the object of both “inheritance” and “conservation.” In the original text, before this sentence, Burke discusses truth liberty as an inheritance from the ancient times through the Magna Carta to the Declaration of Rights. Given this, Kaneko’s *kokutai* might refer to

¹⁸⁵ Burke, *Reflections*, 121

¹⁸⁶ Kaneko, *Seiji Ronryaku*, 191

“the true ancient and indubitable rights and liberties of the people of this kingdom.”¹⁸⁷ Clearly, Kaneko’s use of *kokutai* does not fit Burke’s original text at all. His reason for using Burke thus lies in his political purpose of familiarizing the Japanese readers with the true ancient principle of Japan or *kokutai*.¹⁸⁸

¹⁸⁷ Burke, *Reflections*, 121.

¹⁸⁸ Kaneko’s following episodes also show how he invented Burke’s translation in order to articulate the particularity of Japan’s political orientation. In 1884, before he published the transition, Kaneko received a letter from Sasaki Takayuki, the aforementioned conservative statesman, asking what *kokutai* was. A summary of the letter is as follows. 1) Do Anglo-Saxon countries have the idea of *kokutai*? What really is *kokutai*? 2) Ito Hirobumi, one of the primary drafters of the constitution as well as the first prime minister of Japan, told Sasaki that *kokutai* meant not only the eternal reign of the emperor of the unbroken line *but also* certain characteristics of the Japanese people, language and customs. Sasaki casts doubt on the latter aspect of *kokutai*. 3) Since *kokutai* is *kango* (the Chinese word), Sasaki has asked scholars of Chinese literatures. But no one has a clear answer. 4) Sasaki wonders if there is an equivalent term in Euro-American vocabularies. He also wonders if the term *kokutai* has emerged quite recently.

Before writing this letter, Sasaki had an intense dialogue with Ito Hirobumi about whether *kokutai* would change when they establish the Parliamentary system. Ito’s answer was yes. Ito’s notion of *kokutai* was not the eternal truth of the emperor’s reign *but* “the national organization,” which is fundamental yet changeable components of a country, including the territory, the people, language, customs, and the infrastructure. While Sasaki wanted to refute it, Ito’s knowledge and eloquence almost convinced all the government officials. Being desperate to seek a theoretical foundation of *kokutai* for Japan’s idiosyncrasy, Sasaki wrote the letter to Kaneko. In the end, Kaneko responded to Sasaki that the English equivalence to *kokutai* would be Burke’s “fundamental political principle of (England)” derived from the immemorable common law.

In the end, Kaneko's inventive method answers the question of Japan's political legitimacy by inventing the empirical history of *kokutai* within Burke's conservatism. Kaneko identifies Japan's *kokutai* with Burke's "fundamental political principle."¹⁸⁹ Kaneko's method has both an advantage and a disadvantage. On the one hand, Kaneko's method holds significance for modern Japanese intellectual history because it disturbs the conventional dichotomy between "liberal" Western thought and "conservative" Japanese-Confucian thought. In this sense, Kaneko's scholarly excellence lies in his identification of the unprecedented connection between Japanese political thought and Western political thought in order to bolster the legitimacy of Japan's particularity. Nonetheless, this method also embraces paradox too. Kaneko emphasizes that *kokutai* is the unique political idiom, which *only* exists in Japan. This reflects the contemporary conservatives' conundrum, in which they have to express Japan's uniqueness or *kokutai* with an Anglo-Saxon political lexicon to acquire its outward legitimacy. As a result, while Kaneko's discovery of Burke opened up alternative discursive possibility, it also suffers from such a paradox.

In response to Kaneko's political move against the Freedom and People's Rights Movements via his translation of Burke, Ueki Emori retaliated with the essay "*Boroku wo korosu*

Eventually, Kaneko directly refuted Ito's interpretation of *kokutai* as "the national organization." Ito explains that the national organization *changes* when, for instance, as a country builds railroads or alters a polity to a constitutional governance. On the contrary, Kaneko argues that Ito fails to understand *kokutai* because Ito's national organization confuses *kokutai* with a polity. Moreover, he emphasizes *untranslatability* and unchangeability of *kokutai* in order to reject Ito's contingent nature of *kokutai*.

Kaneko Kentaro 金子堅太郎, *Kenposeitei to Oubeijin no Hyoron* 憲法制定と欧米人の評論[The Making of the Constitution and Euro-American Commentaries], (Tokyo: Nihon Seinenkan, 1938).

¹⁸⁹ Kentaro, *Kenposeitei to Oubeijin*, 96.

(Killing Burke)” in 1882. As a supporter of liberal democracy and a leading activist of the Movements, Ueki also wrote “A Private Draft of the Japanese Constitution” in 1881.¹⁹⁰ This “private” draft was the most democratic constitutional text that existed in Japan before World War II. The draft ensured fundamental human rights as well as included a provision for the overthrow of oppressive governments. The provocative title of the essay not only suggests his commitment to the value of liberal democracy but also implies a severe critique of Kaneko. It is important to note that Ueki did not read Burke’s original texts but only Kaneko’s translation. In effect, the essay was his indirect critique of Kaneko’s conservatism. In order to emphasize this, I use “Kaneko-Burke” as the object of Ueki’s critique in the following paragraphs.

As a whole, I suggest that Ueki’s method of invention is to find anti-Burke as an intellectual source for legitimizing Japan’s total incorporation of the “universal” paradigm of liberal democracy. Such a method includes three theoretical implications: 1) his labelling of Kaneko-Burke as anti-liberalism; 2) his appeals to the universal spirit of “the liberty of emotion”; 3) his articulation of “political conservatism” as an incomplete political thought.

First, Ueki discovers the anti-liberalism of Kaneko-Burke as an illegitimate source to found a political community in general. Kaneko-Burke argues that the great primaeval contract creates an eternal society or the state which binds three generations together, including those who are dead, those who are living, and those who are to be born. Thus, its aim is not to bring temporary benefits to society like a general contract in human society. Against this framework of the great primaeval

¹⁹⁰ “UEKI Emori's Conception of a Constitution,” *The National Diet Library*.
<https://www.ndl.go.jp/modern/e/cha1/description14.html>.

contract, Ueki argues that the initial contract to create a society or the state must also be beneficial to the people.¹⁹¹ For Ueki, whether the people enter the state or society completely depends on their will. Conversely, if the state does not offer any benefits, the people can decide not to enter it. In this context, Ueki asserts that the people submit to the government not because of consent, necessity, or obligation, but *only* because of the benefits.¹⁹² As a result, the great primaeval contract illegitimately subjugates the people to the state as if they were slaves. In particular, if a contract in a previous generation binds the people in the current generation, it means that the people lose their autonomy. Ueki attributes the people's autonomy to their will for free interaction (*jiyu kosai* 自由交際) with others.¹⁹³ Based on the Aristotelian definition of humans as social animals, he argues that the will for free interaction is the fundamental human nature, which prompts humans to co-exist with others. After the people establish the state, they interact with one another according to institutions and regulations, instead of their innate will. Nevertheless, this autonomous will for free interaction never disappears after the emergence of the state. Thus, the people are not subject to (*hisei* 被制 lit. being-made) the state authority but are the subjects (*jisei* 自制 lit. self-making) of fabricating such authority.¹⁹⁴

Second, Ueki uses anti-Burke as a way of evoking the universally applicable spirit of “the emotion of liberty” among the contemporary Japanese. Ueki argues that the pre-revolution France

¹⁹¹ Ueki Emori 植木枝盛, *Ueki Emori Shu Dai-yon-kan* 植木枝盛集第四卷 [Ueki Emori Collection Vol.4] (Tokyo: Iwanami, 1990), 7-8.

¹⁹² Ibid, 6.

¹⁹³ Ibid, 16.

¹⁹⁴ Ibid.

epitomizes such a universally applicable spirit of the emotion of liberty. On the contrary, Kaneko-Burke identifies the French as reckless destroyers of their tradition. Burke argues, “[the French] despise experience as the wisdom of unlettered men; and as for the rest, they have wrought underground a mine that will blow up at one grand explosion all examples of antiquity, all precedents, charters, and acts of parliament. The objections of these speculatists, if its forms do not quadrate with their theories, are as valid against such an old and beneficent government as against the most violent tyranny, or the greenest usurpation.”¹⁹⁵ Against this criticism, Ueki applauds the French people’s love for freedom and their wisdom.¹⁹⁶ He argues, “the French heard and imagined the British theater (*engeki* 演劇) of liberty, stimulated their spirit via sympathy, and identified themselves with the British.”¹⁹⁷ Thus, the French had “the emotion of liberty (*jiyu no kanjyo* 自由の感情).”¹⁹⁸ Most importantly, the emotion of liberty can transmit itself anywhere in the world, wherever people are suffering from the oppressive government. Thus, Ueki calls for the evocation of the emotion of liberty among the Japanese through sympathy and imagination.

Lastly, Ueki pits Kaneko-Burke’s conservatism as an incomplete political theory against liberal thought as a complete one, which universally legitimizes modern nation states, including Japan. Ueki argues that conservatism is not an independent theory.¹⁹⁹ It is because its particularism cannot suggest an *abstract* theory applicable to contingent political situations. This

¹⁹⁵ Burke, *Reflections*, 155.

¹⁹⁶ Ueki, *Ueki Emori Shu Dai-yon-kan*, 22.

¹⁹⁷ *Ibid.*, 25.

¹⁹⁸ *Ibid.*, 25.

¹⁹⁹ *Ibid.*, 30.

in turn suggests Ueki's political thought, which must include a universal set of principle and purpose of the state.²⁰⁰ However, Ueki does not reject traditional norms and customs straightforwardly. He argues that when a political situation radically changes like modern Japan, scholars need to seek an innovative method, which can be universally applicable.

Taken together, both Kaneko and Ueki discover (anti-)Burke as an appropriate intellectual source to support each distinctive political legitimacy of Japan, *kokutai* for Kaneko and liberal democracy for Ueki. In this way, the debate, which occurred around 1880's, corresponds to the significant question of Japan's political legitimacy or how much Japan needs to assimilate itself into the universal paradigm of liberal democracy or to retain the particular legitimacy of *kokutai*. Especially, the debate reflects the internal tension of legitimacy in the Meiji constitution by suggesting the conflict between the abstract theory of liberal democracy and the empirical history of *kokutai*.

In the next section, my analysis moves to the scholarly debate that occurred after the establishment of the Meiji constitution. The debate between Inoue Tetsujirō and Uchimura Kanzō took place over the existence of "religion" in the Meiji constitutional governance. The debate represents the existing tension within constitutional legitimacy, especially in terms of freedom of thought and religion (Article 28). On the one hand, Inoue bases Japan's legitimacy on the absolute public morality of Shinto, which "religion" (or Christianity) cannot violate. On the other hand, Uchimura's Christianity seek legitimacy from "universal" paradigms, one of which is liberal constitutionalism.

²⁰⁰ Ibid., 30.

3.4 The Place of Religion in Japan's Legitimacy: The Kaneko – Ueki Debate

In Meiji Japan, the reception of “religion” (*shūkyō* 宗教) brought a new complexity to the formation of Japan's political legitimacy. Inoue Tetsujirō (1855-1944), a conservative philosopher at Tokyo Imperial University, insisted on the incompatibility of “religion,” particularly Christianity, within Japan. As a response, Uchimura (1861-1930), a converted Christian, who studied theology in the U.S. during 1884-88, advocated Japan's contribution to the development of human civilization through Christianity. This section examines how the debate between Inoue Tetsujirō and Uchimura Kanzō invents the topic of (anti-)religion/Christianity as a source of Japan's political legitimacy. Accordingly, their contested methods respond to the question of political/constitutional legitimacy by each suggesting Japan's rejection of Christianity for the protection of its particular legitimacy based on Shinto (Inoue) or Japan's incorporation of the universal paradigm of Christianity as a civilized nation (Uchimura).

In the following passages, I describe a historical background, in which Japan incorporated the foreign term “religion” in the mid 19th century. Religion, particularly Christianity, brought a problem of political legitimacy as it caused conflict with the emperor's eternal reign and the entailing public morality of Shinto. Then, I move to the analysis of Inoue. I articulate that Inoue's legitimacy is based on 1) Christianity's both anti-statism and anti-secularism and 2) the subordination of Christianity (religion) to Shinto. Finally, my analysis examines Uchimura's method of invention. Uchimura's legitimacy is built on two elements: 1) Japan's need for contributing to the world civilization and 2) the compatibility of Christianity with a Japanese identity.

Before the mid 19th century, there was no such concept as “religion” in Japan. In other words, there was no unified concept to hold together Shinto-Buddhism, Confucianism, and other folk-beliefs. Isomae provides an account of how Japan’s encounter and negotiation with the West in the mid-19th century forced Japan to translate the term “religion.” It was as a result of the Treaty of Amity and Commerce (日米修好通商条約, *Nichibei Shuko Tsusho Joyaku*) in 1858 that the term “religion” was translated into Japanese.²⁰¹ Article VIII of the Treaty states, “American in Japan shall be allowed the free exercise of their *religion*, and for this purpose shall have the right to erect suitable places of worship...The American and Japanese shall not do anything that may be calculate to excite religious animosity.”²⁰² In the Japanese version of the treaty, “religion” was translated as *shūshi* (宗旨), a word used to signify a branch of Buddhism in early modern Japan.

In addition to *shūshi*, *shūkyo* was used as a translation for religion before the 1880s. Nonetheless, these two terms mean quite different things. *Shūkyo* derives from a Buddhist vocabulary and refers to the teaching of the ultimate truth. *Shūshi* signifies ritual practices while *shūkyo* systematic teachings and beliefs.²⁰³ Within this vacillation of meaning between ritual practices and beliefs, *shūkyo* had become the official translation of religion by the 1880s. This is primarily because religion for Japan at this historical moment specifically referred to Protestantism. Protestantism has a rigorous belief system while rejecting ritual practices. This created a stark

²⁰¹ Isomae Junichi 磯前順一, *Kindai Nihon no Shūkyo-Gensetsu to sono Keifu* 近代日本の宗教言説とその系譜 [The Religious Discourse of Modern Japan and Its Genealogy], (Tokyo: Iwanami, 2003), 33.

²⁰² The emphasis is mine.

²⁰³ Isomae, *Kindai Nihon*, 35.

contrast with Japanese pre-existing “ritual-based religions” of Shinto-Buddhism and other folk-beliefs.

As a result, the term “religion” came to include ethical-moral teaching and to refer to religious doctrines, especially Christian doctrines. Additionally, religion conceptualized as beliefs and teachings subordinated ritual-based “religions” that lacked systematic principles. This hierarchy is under the influence of the Western international political framework in which Christian countries were regarded as civilized and non-Christian counterparts as non-civilized.²⁰⁴ Thus, this specific reception of the term “religion” in Japan resulted in a lack of differentiation between religious doctrines and ethical-moral teachings.

However, the lack of differentiation between religious doctrines and ethical teachings caused two problems around the same time in the 1880s. One was a conflict between religion and science, and the other was a conflict between religion and *kokka* (the state).²⁰⁵ Regarding the former, Japanese intellectuals’ learning of natural sciences and Western rational philosophy came into an irreconcilable conflict with what they perceived as the irrational thought of religion, particularly Christianity.²⁰⁶ As a result, religious doctrines and ethical-moral teachings became gradually differentiated: the former as an irrational worldview and the latter as a set of rational principles.

²⁰⁴ Ibid., 33.

²⁰⁵ Ibid., 45-48.

²⁰⁶ For more details, see Kato Hiroyuki’s discussion in Chapter 3 for the conflict between natural sciences based on evolutionary biology and Christianity.

Furthermore, in the second conflict between religion and *kokka*, religious doctrines became associated with the private realm and ethical-moral teachings with the public realm.²⁰⁷ This conflict happened because of religion's (Christianity) critical perspective on secular authority. In the Japanese context, Christianity's anti-secularism automatically challenged the emperor's sovereignty based on State Shinto. Therefore, the designation of ethical-moral teachings of State Shinto to the public realm was a necessary political move in order to confine religion (Christianity) to the private realm.

The difference between Shinto as public morality and religion (Christianity) as private belief became more solidified upon the promulgation of the Meiji Constitution 1889 and the issue of The Imperial Rescript on Education (*kyōiku chokugo*) in 1890 (see Appendix). Article 28 of the constitution made it explicit as follows: "Japanese subjects shall, within limits not prejudicial to peace and order, and not antagonistic to their duties as subjects, enjoy freedom of religious belief." As Isomae Junichi suggests, around this historical period, Shinto became recognized as non-religious moral practice in the public realm, as opposed to religion which was treated as private belief.²⁰⁸

Within this context, the Uchimura Kanzō *Lèse Majesté* Incident had a predominant influence upon the hierarchization between State Shinto and religion. The incident happened in the Reading Ceremony of The Imperial Rescript on Education at the First Higher School on January 9th, 1891. Uchimura Kanzō, as a Christian teacher, attended the ceremony but did not do

²⁰⁷ Ibid., 48-49.

²⁰⁸ Ibid., 54.

a *saikeirei* (最敬礼 the deepest bow)²⁰⁹ to the emperor's signature written on the Rescript. His refusal became controversial news in the media.

What made this incident further significant for Japanese intellectual history was the response from Inoue Tetsujirō. Inoue wrote a series of essays to condemn Uchimura's Lèse Majesté and published them as a book titled *Kyōiku to Shūkyō no Shōtotsu* (教育と宗教の衝突, The Clash between Education and Religion) in 1893. In his own framework, *shinto* was on the side of education, which had to be protected from the detrimental force of "religion" or Christianity.²¹⁰ What matters for the analysis of this chapter is the way in which Inoue discovers anti-Christianity as a source to protect Japan's particular legitimacy of *kokutai* and the entailing Shinto morality. He does so by articulating Christianity's both anti-statism and anti-secularism and subordinating Christianity to Shinto.

²⁰⁹ Uchimura did a deep bow (with 30 degree) but refused to do the deepest bow (with 45 degrees) which is to show the respect for the emperor. Ozawa Saburō 小沢三郎, *Uchimura Kanzō fukei jiken* 内村鑑三不敬事件 [The Uchimura Lèse Majesté Incident], (Tokyo: Shinkyō Shuppansha, 1961).

²¹⁰ Inoue's dichotomy between education and religion designates particular contents to each side: *kokka*, State Shinto, rational philosophy, the Rescript to the side of education, and Christianity to the side of religion. However, is Buddhism in Japan not a religion? Some anti-secular teachings of Buddhism in particular create problems for Inoue's dichotomy. However, Inoue articulates Buddhism's affinity with the Japanese cultural context due to its teaching of secular matters and its polytheistic nature. In doing so, he in turn problematizes Christianity's worship of the monotheistic-personal God.

First, Inoue delegitimizes Christianity's anti-statism and anti-secularism as it opposes the essence of *kokutai*.²¹¹ For Inoue, Christianity inherently opposes *kokutai* and the entailing Japanese socio-political morality of Shinto including anti-statism, anti-secularism, anti-*chuko* (anti-loyalty and filial piety), and indiscriminative love.²¹² Particularly, anti-statism and anti-secularism violate the Imperial Rescript on Education. The Rescript makes "loyalty, filial piety, and patriotism (*chuko-aikoku*)" a mandatory obligation for the Japanese people. He claims that it describes the general guidance of moral education in Japan and does not include any religious doctrines at all.²¹³ In the Rescript, the Japanese moral education starts within a family. Loyalty and filial piety in a family expands to a village, society, and eventually the emperor and the state. Eventually, it leads to self-sacrifice to the emperor and the state. As a result, Christianity's propagation of unsecular devotion to God violates the secularist and statist principle of Japanese moral education.

Second, by subordinating Christianity to Shinto, Inoue minimizes Christianity's "detrimental" influence over Japan's particular legitimacy of *kokutai*. He does so by interpreting

²¹¹ Inoue further de-legitimizes Christianity by articulating its self-contradictory claim on the contribution to civilization. According to him, in Western history, Christianity has been the major cause of wars, weakened each country, and become the force of imperialism. Additionally, he argues that the universal law of humanities pursued by Christianity has now been replaced by the rational philosophy based on natural sciences (43-44). His separation between philosophy and religion emphasizes the latter's harmful influence on national education on the one hand and philosophy's contribution to the growth of the nation-state on the other hand (139).

²¹² Inoue Tetsujirō 井上哲次郎, *Kyoku to Shūkyō no Shōtotsu* 教育と宗教の衝突 [The Clash of Education and Religion], (Tokyo: Keigoshā, 1893), 125.

²¹³ Inoue, *Kyōiku to Shūkyō*, 33.

the freedom of thought expressed in the constitution in an extremely narrow way. He uses the government's official explanation of Article 28 of the Meiji constitution in *Kenpo Gikai* (1889). It states,

*Freedom of conscience concerns the inner part man and lies beyond the sphere of interference by the law of the State...Belief and conviction are operation of the mind. As to forms of worship, to religious discourse, to the mode of propagating a religion and to the formation of religious associations and meetings, some general legal or police restrictions must be observed for the maintenance of public peace and order...Thus, although freedom of religious belief is complete and is exempt from all restrictions, so long as manifestations of it are confined to the mind.*²¹⁴

By following this official treatment of “religion (Christianity),” Inoue’s freedom of religious belief refers to the pure internal state of the mind. Once a belief incompatible with State Shinto appears in the form of words and rituals, it comes to be subject to the legal restriction of the state or “the general duties of subjects.”²¹⁵ In this way, he places Japanese morality based on State Shinto beyond “religious belief.”

Thus, Inoue’s method of invention directly answers the question of Japan’s political/constitutional legitimacy. His discovery of anti-Christianity was his intellectual resistance to Japan’s total incorporation of the Western legal and cultural order. Inoue’s method also reflects

²¹⁴ Ito Hirobumi, *Commentaries on the Constitution of the Empire of Japan*, trans. Ito Miyoji (Tokyo: Chuo Daigaku, 1906), 59-60.

²¹⁵ Inoue, *Kyōiku to Shūkyō*, 60.

Japanese conservatives' political anxiety about national integrity around 1890. His accusation of Christianity's anti-statism and "universalism" is tied to the way in which Christianity was often used to justify Western supremacy and colonialism towards the non-West. Thus, Inoue's designation of "religion" or Christianity to the private realm was a way of protecting Japan from Western colonialism. At the same time, against Christian universality, the public morality of State Shinto is to solidify the Japanese national identity for the sake of its own survival.

As opposed to Inoue's condemnation of his *Lèse Majesté* and anti-statism, Uchimura's political thought argues that Christianity constitutes neither *Lèse Majesté* nor signifies anti-statism.²¹⁶ Rather, he finds Japan's rigorous political legitimacy within the universal paradigm of Christianity. His method rests on two points: 1) Japan's need for contributing to the world civilization and 2) the compatibility of Christianity with a Japanese identity.

First, Uchimura argues that Japan's political legitimacy must rely on its own contribution to the world civilization, of which Christianity can play a crucial part. In "Shigaku no Kenkyu (The Study of Historiography)"²¹⁷ published in 1895, he identifies the study of history as the essence of Japan becoming a civilized nation. By history he means the history of human civilization, which refers to philosophy, literature, politics, and religion in the West. According to him, Japan as a late comer to what he calls "*sekai-rekishi*" or "universal history," has not contributed to such history yet. In claiming so, he criticizes Japanese intellectuals and nationalists

²¹⁶ Uchimura Kanzō 内村鑑三, *Uchimura Kanzō Zenshu 2-kan* 内村鑑三全集 2 卷 [Uchimura Kanzō Collection Vol.2] (Tokyo: Iwanami, 1980), 126-130.

²¹⁷ Uchimura Kanzō 内村鑑三, *Uchimura Kanzō Zenshu 3-kan* 内村鑑三全集 3 卷 [Uchimura Kanzō Collection Vol.3] (Tokyo: Iwanami, 1982), 275-283.

who deny the historical influence of human civilization upon Japan and preoccupy themselves only with national history. In the following year of 1896, in “Sekai no nakano Nippon (Japan in the World),”²¹⁸ Uchimura calls for Japan’s contribution to the world’s civilization. He argues that *kokka-shugi* (statist) and *sekai-shugi* (universalist) are foundationally the same by using a body analogy in which the world is an entire body and a state is a nose. Taking care of the entire body eventually gives greater benefits to its parts, and not vice versa. For Uchimura, Japan’s special “calling” in the world is to be the bridge between the East and the West. Similarly,

In this sense, he delegitimizes parochial particularity of *kokutai* as Japan’s political legitimacy. Here, Uchimura uses Christianity as a method to place Japan within a universal paradigm. In his first published book *Kirisuto-kyoto no Nagusame* (The Conform of a Christian) in 1893, he calls himself *sekaijin* or Weltmann (the world man).²¹⁹ For him, *sekaijin* refers to one’s double belonging to Japan (or other nations) and Christianity. In doing so, he delegitimizes the parochial nationalism of the Japanese conservatives. Similarly, “Tanjyu Yoteki (The Drop of Bile)”²²⁰ in 1897, he criticizes some conservatives’ claim on Japanese particularity and supremacy, including Inoue’s work. He ironically calls such a claim *nihon-kyo* (the Japanese religion). In order to liberate people from “the Japanese religion,” Uchimura stresses the necessity of incorporating

²¹⁸ Uchimura, *Uchimura Kanzō Zenshu 3-kan*, 260-64.

²¹⁹ Weltmann is Uchimura’s own use in the text. Uchimura Kanzō 内村鑑三, *Kirisuto-kyo no Nagusame* キリスト教の慰め [The Comfort of Christianity] (Tokyo: Iwanami, 1893), 34.

²²⁰ Uchimura Kanzō 内村鑑三, *Uchimura Kanzō Zenshu 5-kan* 内村鑑三全集 5 卷 [Uchimura Kanzō Collection Vol.5] (Tokyo: Iwanami, 1981), 3-5.

Western universal standard, major part of which is Christianity, into Japan's own political legitimacy.

Second, Uchimura legitimizes Japan's incorporation of the universal paradigms of Christianity by articulating Christianity's compatibility with a particular Japanese identity. In Uchimura's open letter to Inoue in 1893, "Bungaku Hakase Inoue Tetsujiro-kun ni teisuru Kokaijyo (An Open Letter to Dr. Inoue Tetsujiro)," Uchimura primarily argues that his refusal of the deepest bow does not constitute *Lèse Majesté* at all because ritual practices do not reflect one's internal faith.²²¹ Instead, he claims that his substantial respect to the emperor and Japan follows the contents of the Rescript in everyday practice. He argues that patriotism should not be imposed by someone else because the Japanese people naturally embrace love and respect for the imperial court. Thus, he must reject Inoue's authoritative imposition of patriotism.²²² Uchimura claims that when a nation demands *aikoku* (patriotism) as obligation, such a nation is already losing their patriotism. Instead, patriotism is something human beings acquire naturally. In this context, he quotes a part of the 137th psalm of the Book of Psalms as the core of patriotism, "If I forget thee, O Jerusalem, let my right hand be forgot. Let my tongue cleave to the roof of my mouth if I do not

²²¹ Uchimura Kanzō 内村鑑三, *Uchimura Kanzō Zenshu 2-kan* 内村鑑三全集 2 卷 [Uchimura Kanzō Collection Vol.2] (Tokyo: Iwanami, 1980), 126-130.

²²² Uchimura also points out Inoue's inconsistent claim on forced patriotism. For instance, by quoting Herbert Spencer's work, on whom Inoue heavily relied for his theoretical construction of nationalism, Uchimura ironically asks how Spencer's abhorrence of subordination to political authority can be compatible with Inoue's attitude.

remember thee.”²²³ As patriotism is the essential part of one’s soul, no foreign culture can shake Uchimura’s Japanese identity.²²⁴ The compatibility of Christianity within Japan is expressed most clearly in the essay “Two J’s”²²⁵ (written in English) published in 1926. Two Js stands for his faith in both Japan and Jesus. He argues, “Jesus makes me a world-man, a friend of humanity; Japan makes a lover of my country, and through it binds me firmly to the terrestrial globe. I am neither

²²³ Uchimura, *Kirisuto-kyo no Nagusame*, 28.

²²⁴ His identity as a Japanese Christian derives from his suffering experience in the Lèse Majesté incident. The title of a chapter in his book, “Kokujin ni Suterareta toki (When Your Countrymen Abandon You),” suggests the intense bushing against him upon the incident. He feels great sympathy to those who were real patriots and became abandoned by their people: Jesus, Socrates, Scipio Africanus, and Dante Alighieri. Along with the four greats, Uchimura declares that he became a “world citizen” *because* he was abandoned by his countrymen. However, he himself never abandons his own country. Rather, his passion to return to his own country increases more than before.

In this way, his faith in God as a world citizen and his love for Japan as a Japanese national creates a harmonious duality. This duality generates his moderate nationalism. His assertion that “people should love God for their country as well as love their country for God” (Uchimura, *Kirisuto-kyo Nagusame*, 29.) express the gist of his modest nationalism. His Christianity never means becoming stateless. Rather, it offers him a fresh perspective to “relativize” Japan as a small country in the world, making him a “moderate” nationalist. Thus, Christianity is able to liberate people from being a parochial nationalist.

²²⁵ Uchimura, Vol. 30, 53-54. On the one hand, he does not belong to both because he is hated by his countrymen and foreign missionaries. However, his abandonment by the two makes it possible for him to be devoted to both. That he is being hated by foreign missionaries refers to Uchimura’s experience as “Asian (or Japanese)” Christian in the U.S., in which he was reviewed as not a “genuine” Christian. See Uchimura Kanzō, *How I become a Christian* (Tokyo: Keiseisha, 1922).

too narrow nor too broad by loving the two at the same time.”²²⁶ In other words, he is neither a stateless world person nor a parochial nationalist. Accordingly, his Christianity exists for Japan’s sake and Japan must contribute to developing Christian- universalist values.²²⁷

All in all, the Inoue – Uchimura debate gives opposing answers to the question of political/constitutional legitimacy. On the one hand, Inoue finds anti-Christianity as a reason to protect Japan’s legitimacy from Western influence. On the other hand, Uchimura finds Christianity as an appropriate source for Japan’s legitimacy based on universal paradigms. In this way, the debate directly reflects the internal tension of legitimacy within the Meiji constitution.

3.5 The Discovery of Japan’s Political/Constitutional Legitimacy

This chapter has articulated that the four debates use contested methods of invention or discovering intellectual sources to answer the question of legitimacy, that is to say, how much

²²⁶ Uchimura, Vol. 30, 53.

²²⁷ Nonetheless, Uchimura’s Christianity simultaneously rejects the blind supremacy of Western countries. In “Christians and Christian Nations”²²⁷ in 1926, he argues that there is no such thing as Christian nations in the world but only Christians in each country. This reflects his own complex of being a Japanese Christian based on his experience of how Christians in the West looked at him as an example of a barbarian “convert” as well as had cultural practices with anti-Christian values.²²⁷ Thus, he claims that Japanese Christians are independent of foreign Christians and not converts to American and European Christianity. See Uchimura Kanzō 内村鑑三, *Uchimura Kanzō Zenshu 5-kan* 内村鑑三全集 30 卷 [Uchimura Kanzō Collection Vol.30] (Tokyo: Iwanami, 1982), 49-52.

Japan needs to domesticate foreign universal paradigms or to retain its particular legitimacy of the emperor's eternal reign in the mid-late 19th century. First, in a historical context radically different from the late 19th century, while Yoshida find Chinese Classics as the object of critique to construct Japan's particular legitimacy of *doku* or *kokutai*, Yamagata finds it as the absolute source of political legitimacy. Second, right before the establishment of the Meiji Constitution in 1889, while Inoue discovers the ancient term "*shirasu*" for the particular legitimacy of *kokutai*, Fukuzawa discovers "civilization" for the universal legitimacy of *kokutai* or a nation's political autonomy. Around the same historical time, Kaneko finds Edmund Burke as an intellectual source to appeal to Japan's immemorial legitimacy of *kokutai*, Ueki finds anti-Burke as a source of the universal legitimacy of liberal democracy in Japan. Lastly, right after the establishment of the Meiji constitution, while Inoue discovers Christianity as the object of critique to found Japan's particular legitimacy based on Shinto, Uchimura discovers it as the source of Japan's universal legitimacy.

Accordingly, each debate gives distinctive response to the question of Japan's constitutional/political legitimacy. First, in the Yoshida – Yamagata debate, Yoshida emphasizes the need of Japan's particular legitimacy distinguished from the Sino-centric world, Yamagata places Japan's legitimacy within the universal order of the Sino-centric world. Second, in the Inoue – Fukuzawa debate, while Inoue gives an exclusive legitimacy to Japan's unique governance of *kokutai* or the emperor's eternal reign, Fukuzawa supports constitutional governance as the legitimacy of Meiji Japan by interpreting *kokutai* as a universal principle. Third, in the Kaneko – Ueki debate, while Kaneko attempts to protect Japan's *kokutai* by articulating the danger of imposing the abstract theory of liberal democracy upon Japan, Ueki argues that the universal applicability of liberal democracy to Meiji Japan. Finally, in the Inoue – Uchimura debate, while

Inoue minimizes the influence of religion (or Christianity) over Japan's particular legitimacy based on the public morality of Shinto, Uchimura argues that Japan's domestication of Christianity gives a solid legitimacy to Japan as a late comer to the world civilization.

3.6 Chapter Conclusion: Invention

The scholarly works examined in this chapter together construct the invention phase within the entire framework of this dissertation. The invention phase in the making of constitutional legitimacy starts much before a constitution is made because the historical legacy and issue of political legitimacy is typically carried over to constitutional legitimacy. The phase refers to the specific historical period which features intellectual struggles for discovering intellectual resources, either to preserve a "traditional" legitimacy or to construct a "novel" one, in urgent need of a radical political transformation. In the case of Japan, the mid to late 19th century marks this phase. During this historical period, the inflow of Western legal and political norms and institutions caused conflict and tension with Japan's political history of the emperor's external reign. The Meiji constitution exactly embraced this tension between the form of the constitutional governance and the substance of the emperor's unbroken reign. As a result, the fundamental question of political/constitutional legitimacy during this historical period was how much Japan needs to domesticate what is deemed as "universal" norms and institutions within its local context. The analysis of this chapter has shown how the leading scholars answered that question.

The next chapter will examine how this initial tension within the legitimacy of the Meiji constitution was solved by leading scholars around the early 20th century. I focus on the discourse of *kokka* (the state) expressed in the form of metaphors. This is because the idea of *kokka* became

a significant topic in *reconciling* the initial tension of political/constitutional legitimacy that emerged in the mid-late 19th century.

4.0 *Kokka* as the Unwritten Constitution: The Body Metaphors of the State at the Beginning of the 20th Century of Japan

After the establishment of the Meiji constitution in 1889, the intellectual development of the concept of *kokka* (国家 the state) was the driving force behind scholarly discourses on constitutional legitimacy. *Kokka* is the Japanese translation of the state, but the combination of the two kanji characters used for the translation makes the concept elusive. While 国 (*kuni*) means a country, indicating the enclosed territory of a political community, 家 (*ie*) means a family.²²⁸ After the Meiji Restoration in 1868, the word *kokka*, which influenced the formation of the idea of the state in other East Asian countries,²²⁹ significantly differs from the western concept of “the state.” *Kokka* assumes the analogy between a patriarchal family and the state, known as *kazoku kokka* (家族国家 a family state). Because the idea of *kokka* and the constitution went hand in hand in the process of modern nation-state building, the discourse of *kokka* played a crucial role in constitutional legitimation, particularly at the beginning of the 20th century. I argue that leading scholars of the period used the idea of *kokka*, especially in the form of metaphors, to reconcile the

²²⁸ In Classical Chinese literature, 国家 was used in two ways. One is to indicate both society and family. The other is used to name the emperor after Dōnghàn (後漢). Okada Hidehiro 岡田英弘, *Rekishi to wa nani ka 歴史とはなにか* [What is History?] (Tokyo: Bungei Shunju, 2001), 159.

²²⁹ For example, see Kokubun Noriko 國分典子, *Kindai Higashi Ajia Sekai to Kenpo Shiso* 近代東アジア世界と憲法思想 [Modern East Asia and Constitutional Thought] (Tokyo: Keio University Press, 2012).

tension between constitutional governance in form and the political ideology of the emperor's unbroken reign in substance. Though these leading scholars used the metaphors of *kokka* in dramatically different ways, their metaphors commonly served as constitutional legitimacy.

The rich intellectual discourses on *kokka* emerged out of the *relatively* liberal atmosphere of Japanese society around the Taisho era (1912-1926). As Marius B. Jansen argues, in the Taisho era, “the sense of liberation that followed the desperate urgency of the rush to build a modern state was widespread.”²³⁰ The Meiji government was basically an oligarchy composed of the elites rooted in the *satsuma* and *choshu* clans. After the establishment of the Meiji Constitution, however, there had been multiple socio-political movements, which demanded for a democratic government in accord with the constitution. From the end of the Meiji period (1868-1911) to the beginning of the Taisho era, democratic movements called Taisho democracy appeared. *Taisho Seihen* (Taisho political crisis) of 1911 epitomized the movements, in which a popular uprising overthrew the Cabinet with the political slogan of “the Protection of Constitutional Government.” During this era, a democratic theorist Yoshino Sakuzo's *minpon shugi* (people as the basic principle) became a theoretical drive for Taisho democracy.²³¹ The era also saw the emergence of women's movements led by Hiratsuka Raicho. Moreover, the voting rights became expanded to all adult

²³⁰ Marius B. Jansen, *The Making of Modern Japan* (Cambridge: Harvard University Press, 2002), 537

²³¹ Yoshino's *minpon shugi* is not grounded on democracy as popular sovereignty. Rather he “posited democracy as a political system in which the welfare of the people was the end of the government.” Germaine A. Hoston, “The State, Modernity, and the Fate of Liberalism in Prewar Japan” *The Journal of Asian Studies* 51, no. 2 (1992):287-316.

males in 1925. Despite continuous political oppressions against socialism and communism, the Taisho era enjoyed the pinnacle of the freedom of expression in pre-war Japan.

However, why did the idea of *kokka* become prominent at that historical period? Two historical factors might have influenced the surge of the discourse of *kokka*. First, Japan's unsettling national identity became problematic as a result of its colonial expansion. Japan's territorial acquisition of Taiwan, Korea, and South Sakhalin, as a result of the First Sino-Japanese War in 1894 and the Russo-Japanese war in 1904, raised the significant question of national integration under the emperor, particularly in terms of ethnicity.²³² Especially, it was a demanding intellectual task to integrate Japanese mainland and other colonial territories while keeping distinction between them.²³³ Second, although a series of the wars brought to the fore the unjust socio-economic structure in Japan, the government did not take appropriate measures against it. In this situation, the legitimacy of a modern nation state started to be questioned. Thus, the dominant topic of *kokka* in intellectual discourse was to solve both the integrity of a national identity and the legitimacy of a modern state.

Built on Chapter II, which suggested the initial tension included in the legitimacy of the Meiji constitution, this chapter argues that the idea of *kokka* became the significant topic at the beginning of the 20th century for the purpose of accommodating the hybrid coexistence of the form of a constitutional governance and the ideological substance of the emperor's unbroken reign (or *kokutai*). As a result, *kokka* as the significant discursive premise served as constitutional

²³² Oguma Eiji 小熊英二, *Tanitsu-minzoku no Shinwa* 単一民族の神話 [The Myth of Mono-Ethnicity] (Tokyo: Shinyosha, 1995).

²³³ Ibid.

legitimacy. This is what I call “*kokka* as the unwritten constitution.”²³⁴ *Kokka* as constitutional legitimacy is the “unwritten” constitution in the sense that it is the unwritten (or tacit) foundation of the officially written constitutional document. The written constitution is only the tip of the iceberg of the entire constitutional system. What legitimizes the written constitution is the unwritten foundation of the written constitution, whose dominant part was the idea of *kokka* at the beginning of the 20th century of Japan.

With the view of this argument, I analyze the three metaphorical tropes of *kokka*: “*kokka* or the emperor”²³⁵ (国家即天皇 *kokka soku tenno*), “*kokka* as an organism (有機体 *yukitai*),” and “*kokka* as a legal person (法人 *hojin*).”²³⁶ The three metaphorical tropes of *kokka* served as a crucial inter-disciplinary discursive premise across law, history, and social and political thought, regarding the concept of *kokka*. The interdisciplinary perspective is necessary because then-dominant *kokka gaku* (the study of the state) tended to confine itself within the narrow field of legal positivism, which separated law from history, politics, and philosophy. This is because the study of the state was under the predominant influence of German *staatslehre* (the theory of the

²³⁴ For the term “unwritten constitution,” for example See Larry Catá Backer “Jiang Shigong 强世功 on ‘Written and Unwritten Constitutions’ and Their Relevance to Chinese Constitutionalism,” *Modern China* 40, no. 2 (2014): 119-132.

²³⁵ Here, I use “or” to indicate the immediacy between *kokka*’s body and the emperor’s body. In other words, *kokka*, that is to say, the emperor. This use of “or” is inspired by Spinoza’s “God or nature” in his *Ethics*.

²³⁶ In the following argument, I will keep the quotation mark in “*kokka* or the emperor”, “*kokka* as an organism,” and “*kokka* as a legal person” for the use of each metaphor.

state). Institutionally speaking, for instance, at the University of Tokyo in 1882, the faculty of law decided to adopt the German study of the national law. Instead, it abandoned the curriculum on the British constitution.²³⁷ Within the faculty of law at Japanese universities, the study of politics became the sub-category of the study of the state. By analyzing the three metaphors of *kokka*, this chapter will incorporate various intellectual resources outside of the narrowly defined field of “law” and demonstrate rich historical and political implications in the discourse of *kokka*.

I choose the texts for the analysis based on their inclusion of the three metaphors of *kokka* as well as their publication dates. The publication dates of the selected texts are between the promulgation of the Meiji Constitution and the end of the Taisho era. In particular, they are concentrated between 1910-20s. Thus, they were written in a relatively liberal socio-political circumstance. This historical context is significant for illustrating the prevalence of the topic of *kokka* among the intellectuals of diverse political orientations.

Based on this, the chapter examines the works of two intellectuals for each metaphor:

1) For “*kokka* or the emperor”

—Yakka Hozumi’s *Kenpo Teiyo* [The Summary of the Constitution] (1910) and *Kensei Taii* [The General Idea of Constitutional Governance] (1917);

—Shinkichi Uesugi’s *Kokumin Kyōiku: Teikoku Kenpo Kogi* [The National Education: The Lecture on the Constitution of the Empire] (1911), “*Kokutai ni kansuru Isetsu*” [The Heresy of *kokutai*] (1912), and *Kokka Shin Ron* [The New Theory on the State] (1921).

2) For “*kokka* as an organism”:

²³⁷ Ohno Tatsuji 大野達司, *Kindai Hoshisoshi Nyumon* 近代法思想史入門 [Introduction of the History of Modern Law] (Tokyo: Horitsu Bunkasha, 2016), Ch.5.

—Ikki Kita’s *Kokutaron Oyobi Junsei Shakai Shugi* [Theory of Japan's National Polity and Pure Socialism] (1906);

—Hiroaki Kato’s *Shizen to Rinri* [Nature and Ethics] (1912) and *Kokka no Tochiken* [The Sovereignty of the State] (1913).

3) For “*kokka* as a legal person”

—Tatsukichi Minobe’s, *Kenpo Kowa* [Lecture on the Constitution] (1912), “Uesugihakase no ‘*Kokutai* ni kansuru Isetsu’ wo yomu” [Commentaries on Dr. Uesugi’s ‘The Heresy of *kokutai*’] (1912), “*Kokka oyobi Seitairon*” [The Theory on the State and the Polity] (1912), and *Nihon Penpo* [The Japanese Constitution] (1924).

—Nagao Ariga’s *kokka’s kokka Gaku* [The Study of the State] (1889) and *Kokuho Gaku* [The Study of the State Law] (1901).

This chapter’s analysis of the *kokka* metaphors help to clarify the hybridity of the form of a constitutional governance and the ideological substance of the emperor’s unbroken reign, which the existing literature cannot fully capture. The literature on the theories of *kokka* within the history of modern Japanese political thought employs roughly two approaches: to categorize the theories of *kokka* in order to articulate the relationships between them,²³⁸ or to focus on each intellectual

²³⁸ For instance, Kazumasa Kado, an historian of Japanese political thought, examines the genealogy of intellectual transplantation of “*kokka* as an organism” and how the official interpretation of the Meiji constitution is well fit the organic body metaphor. As I will explain later, since the German “liberal” organic theory of the state required the spiritual core of the state, Japanese intellectuals places the emperor at that core. In this sense, Kado argues that the metaphor was to articulate the recipient of the unified spirit of the nation. A work of Osamu Ishida articulates the theoretical ambiguity between the organic theory of the state and the theory of the state as a legal person and attributes the popularity of the former theory to

immaturity of Japan's legal system and thought. Noriko Kokubun also elaborates on the similarities of the two theories and problematizes the Japanese reception of these theories without the 19th century German historical context.²³⁸ In her another article, she elaborates on the influence of social Darwinism on the theory of the state as a legal person. Regarding the theory of the imperial sovereignty, Toduka explains the theoretically subtle yet political significant difference between Yakka Hozumi and Shinkichi Uesugi.

Tomitsuka Akio 富塚 祥夫, "Nihon Kenpogaku niokeru Kokutairon no Tenkai—Hozumi Yakka to Uesugi Shinkichi no Hikaku wo Chushin ni" 日本憲法学における国体論の展開—穂積八束と上杉 慎吉の比較を中心に [The Development of *kokutai* Theory in Japanese Constitutional Studies—Comparison Between Hozumi Yakka and Uesugi Shinkichi], *Hogakukai* 法学会 26, no.1 (1985): 521-46;

Kokubun Noriko 國分 典子, "Nihon no Shoki Kenpo Shiso ni okeru Hojishoshugi to Shakairon 日本の初期憲法思想における法実証主義と進化論 [legal positivism and evolutionary theory in the early Japanese constitutional thought]," *Hogaku Kenkyu* 法学研究 82, no. 1 (2009): 687-710;

Kokubun Noriko 國分 典子, "Minobe Tatsukichi no 「*kokka hojin setsu*」 : Sono Nihonteki Tokushitsu 美濃部達吉の「国家法人説」 : その日本的特色 [Minobe Tatsukichi's 「theory of the state as a legal person」 : Its Japanese characteristics]," *Hogaku Kenkyu* 法学研究 66, no. 10 (1993): 29-57;

Ishida Osamu 石田雄, *Nihonkindaishisoshi ni okeru Ho to Seiji* 日本近代思想史における法と政治 [Politics and Law in the History of Japanese Thought] (Tokyo: Iwanami, 1976);

Kado Kazumasa 嘉戸 一将, "Shintai toshiten no Kokka — Meiji Kenpo Taisei to *kokka Yukitai Setsu* 身体としての国家—明治憲法体制と国家有機体説 [The State as a Body—the Meiji Constitutional Government and the Organic Theory of the State]," *Soai Daigaku Jinbunkagaku Kenkyujo Kenkyu Nenpo* 相愛大学人文科学研究所研究年報 4 (2010): 9-20.

figure and describes the details of their thought.²³⁹ My focus is on the rich hybrid nature and inter-disciplinarity of the discourse of *kokka*, and its role as a discourse of constitutional legitimization. This chapter's focus on the *kokka* metaphors allows us to see the trans-categorical complexity of legal-political thought within each metaphor at the beginning of the 20th century.

Specifically, my analysis examines 1) how the metaphors of *kokka* reconcile the inherent tension and contradiction between the liberal form of the constitutional governance and the ideological substance of *kokutai*; 2) how *kokka*'s such reconciliatory rhetoric serves to legitimize the constitution in the context of the continuous reign of the emperor. The analysis also focuses on the inter-relationships across the three metaphors as well as the inner difference within each metaphor in order to highlight the nuances of how each intellectual uses each metaphor as the rhetoric of reconciliation.

In the following paragraphs, first, the chapter offers Japan's *kokka* image/identity of the body politic in the late 19th century. This body politic reflects the hybrid nature of the constitutional governance in form and conservative political ideology in substance within the Meiji constitution. Then, it moves to the analysis of "*kokka* or the emperor," "*kokka* as an organism," and "*kokka* as a legal person." Afterwards, I offer a recapitulation of the analysis: a comparative

²³⁹ This approach is used, for example, in the work of Ryuich Nagao, a leading scholar on Japanese modern legal-political thought. In *The History of Japanese Constitutional Thought*, he focuses on the influential constitutional scholars, Yakka Hozumi, Shinkichi Uesugi, and Tatsukichi Minobe and comprehensively covers their various thought. Nagao Ryuichi 長尾龍一, *Nihon Kenpou Shisoshi* 日本憲法思想史 [The History of Japanese Constitutional Thought] (Tokyo: Kodansha, 1996).

perceptive of how the intellectuals use the same metaphor differently, and the common features of the *kokka* metaphors as the unwritten foundation of the written constitution.

As a result, the intellectual discourse in the early 20th century marks the reconciliation phase. Chapter II argued that before and after the establishment of the Meiji constitution, the tension between particularity and universality regarding Japan's political/constitutional legitimacy rose. The tension reflected the conflictual nature of the legitimacy of the Meiji constitution. Now in the early 20th century, leading scholars attempt to reconcile such a tension to stabilize and make sense of political/constitutional legitimacy.

4.1 The Body Politic in Meiji Japan

This section illustrates the influence of German organic theory of the state upon the Japanese discourse of *kokka*, especially upon the image of the body politic. This particular Japanese reception of the theory prefigures the typical hybridity of liberal constitutional governance in form and conservative political ideology in substance.

When attending von Stein's lecture in Vienna in 1887, Kaieda Nobuyoshi, a noble-class politician, drew the body image of *kokka* (Figure I in Chapter I). Kaieda was one of many other Japanese intellectuals and government officials, who learned from Loren von Stein's organic

theory of state and applied to Japan.²⁴⁰ Thus, the drawing highlights the particular way in which the Japanese intellectuals received the organic theory of the state quite differently from its original “liberal” implication. On the one hand, the German liberal implication of organism refers to the historical development of civil society into the state by suspending the conflict between the monarch and the bourgeoisie. Thus, it is an abstract and philosophical manifestation of the moral spirit of the state. On the other hand, the Japanese reception of the theory emphasized the *concrete* body image of the state. This concrete image of the body politics insinuates *kokka*’s constitutional form mixed with political conservatism.

The organic theory of state emerged in the mid 19th century Germany in order to solve the conflict between the monarchy and the bourgeoisie in the German Empire.²⁴¹ Carl Schmitt explains,

²⁴⁰ Takii Kazuhiro 瀧井一博 “「Nihon ni okeru Stein mondai」 heno apurochi 「日本におけるシュタイン問題」へのアプローチ [An Approach to 「The Issue of von Stein in Japan」]” *Jinbun Gakuho* 人文学報 77 (1996): 49.

²⁴¹ Schmitt summarizes the seven characteristics of the organic theory of state as follows.

“1. Not mechanistic. The word organic is here directed against all instrumental concepts of the state: that is, against the image of the state-machine, the state as an administrative apparatus...

2. Not from without. In this instance the monarch, who stands both within and outwith the state, is dragged down from his transcendent status into the state; he becomes an organ of the state...

3. Not top down. The state is consequently not at the command of a single master, but serves the general will of all: it is not power (*Herrschaft*) but fellowship (*Genossenschaft*), not an authoritarian state (*Obrigkeitsstaat*) but a people’s state (*Volksstaat*)...

“the monarchy was not strong enough to maintain absolutism, but neither was the German people in a position to ‘give itself its own constitution’. The constitution of the German constitutional monarchy was therefore built fundamentally upon a compromise.”²⁴² In the un-solving conflict between the monarchy and the bourgeoisie in the German Empire, the organic theory of the state aimed for the unification of Germany by integrating the latter into the existing constitutional monarchy.

Under the influence of the Hegelian philosophy of the state, the theory rejects the traditional body politic based on an established social hierarchy.²⁴³ Instead, it stresses the “liberal”

4. Not violent. Here the word organic stands in opposition to conflict and decisionism. It relates to the many and varied tendencies towards compromise, consensus, discussion, and evolution as opposed to revolution...

5. Neither atomistic nor individualistic. In this respect the word opposes liberal conceptions and becomes collectivist, at the same time as rejecting the personal rule of the monarch...

6. Not particularistic but holistic. Here, the unity of the whole in this concrete political situation has the meaning of unitariness (Unitarismus) rather than federalism. However, this meaning can also simultaneously negate the idea of the democratic party state.

7. Finally, the term ‘organic’ can stand in opposition to everything active and conscious. It can serve all possible forms of historicism, governmentalism and quietism and end in total agnosticism.”

in Carl Schmitt, “Hugo Preuss: His Concept of the State and his Position in German State Theory,” *History of Political Thought* 38, no. 2 (2017): 352.

²⁴² Schmitt, “Hugo Preuss.”

²⁴³ The body metaphor of the state in the Western tradition dates back to ancient Greece. Aristotle, for instance, argues in *Politics* “The polis is prior in the order of nature to the family and the individual.

or evolutionary nature of the state as a whole without assuming the existing hierarchy. Lorenz von Stein was one of such “liberal” theorists. His developed the theme of “the state as a person,” which

The reason for this is that the whole is necessarily prior to the part. If the whole body be destroyed, there will not be a foot or a hand.” (Aristotle, Book I Part II) In the middle ages, the vision of a political community as a whole developed in a theological context, for instance, in John of Salisbury’s *Policraticus* (Shogimen, *Yorropa Seiji*). Ernst Kantorowicz’s *King’s Two Body* elaborates on how the king’s body had been considered both a mortal natural body on the one side and the immortal divine body of a political-theological community on the other side. He argues, within medieval political theology, “‘mystical body of the Church the head of which is Christ,’ has been replaced by the ‘mystical body of the *res publica*, the head of which is the Prince’” (Kantorowicz, *The King’s Two Bodies*, 261). In the early modern period, Thomas Hobbes’s *Leviathan* depicted the artificial immortal body of a commonwealth in contrast with a human’s natural body. Towards the modern period, despite its artificial origin, Rousseau’s *Social Contract* did not shy away from the organic bodily description of the state. He argues, “The life-principle of the body politic lies in the sovereign authority. The legislative power is the heart of the State; the executive power is its brain, which causes the movement of all the parts. The brain may become paralyzed, and the individual still lives. A man may remain an imbecile and live; but as soon as the heart ceases to perform its functions, the animal is dead” (Rousseau, Book III). Aristotle, *Politics Book I Part II*.

<http://classics.mit.edu/Aristotle/politics.1.one.html>; Shogimen Takashi 将棋面貴己 *Yorropa Seiji Shiso no Tanjo* ヨーロッパ政治思想の誕生 [*The Birth of European Political Thought*] (Nagoya: Nagoya University Press, 2013); Ernst Kantorowicz, *The King’s Two Bodies: A Study in Medieval Political Theology* (Princeton: Princeton University Press, 1957); Jean-Jacques Rousseau, “The Death of the Body Politic” (Book III) in *Social Contract*. https://www.constitution.org/jjr/socon_03.htm

indicates that the state has the higher level of self-determining capacity.²⁴⁴ Each organ within the state has to function in cooperation with other organs for the sake of the whole. However, this does not embrace the human body analogy in the traditional body politic, in which the head or the brain becomes the ruler of the body. Stein claims, “each organ, even the State-sovereign, must at every point of its will and action be and will the whole.”²⁴⁵ In the end, Stein’s organic theory of state, like other similar theorists such as Fichte, Heinrich Leo, and Schelling, depicts the state as an *abstract* and philosophical entity.

Clearly, Kaieda’s drawing does not reflect von Stein’s liberal and abstract implication of the organic theory of state because the drawing visualizes *kokka* as a *concrete* human body. The sentence on the left says, “The blood vessel from top to down is connected. The body and the soul as *one* as it is drawn.” The head consists of *jingikan* (the oracle) and *shinsai* (the prayer by the emperor). The neck is the government. From the right shoulder to the right hand, they are the upper house, there is the minister of internal affairs, and the navy, respectively. From the left shoulder to the left hand, there is the lower house, the ministry of foreign affairs, and the army, respectively.

²⁴⁴ He argues, “the State is not an institution (Anstalt), or a requirement of law (Rechtsforderung), or an ethical form (Gestaltung), or a logical concept, any more than the ego of mankind. It is a form of personality, the highest material form. It is its essence to have its ground in itself... the community of mankind, outside of and above the will of the individual, has its own independent and self-active existence. The State has, therefore, by no means, as the former philosophy says, merely a destiny; ... it has also a life. Its life lies in its free self-determination.” Francis William Coker, *Organistic Theories of the State: Nineteenth Century Interpretations of the State as Organism or as Person* (New York: Columbia University Press, 1910), 68.

²⁴⁵ *Ibid.*, 71.

The body truck from top to down has the public prosecutor's office, the ministry of the imperial household, the ministry of education, and the ministry of finance. From the right hip joint to the right foot, there are the ministry of agriculture and the people. From the left hip joint to the left foot, there are the ministry of commerce and the people.

The human body analogy of *kokka* became an official ideology in *Kenpo Gikai* (*Commentaries on the Constitution of the Empire of Japan*) in 1890. The commentaries represented the government's official interpretation of the Meiji constitution. Its official English translation, prepared for the purpose of explaining the Meiji constitution to the Western countries, says, "territory and a people are the two elements out of which a State is constituted. A definite group of dominions constitute a definite State, and in it definite organic laws are found in operation. A State is like an individual, and its territories, resembling the limbs and parts of an individual, constitute an integral realm."²⁴⁶ The organic nature of the state was depicted as an individual body consisting of the human-like organs.

Ishida Osamu, a historian of Japanese political thought, articulates a few particular characteristics of the Japanese reception of the theory. First and the foremost, in the absence of the German context in which the theory emerged as a compromise of the political struggles between

²⁴⁶ Here, the word, "organic" is not found in the original Japanese text. However, the original texts uses other terms such as *genso* (元素) and *taiku* (体躯) in order to indicate the organic nature of the state. Thus, it is reasonable to assume that "organic" was employed to supplement these words lost in translation. Ito Hirobumi, *Commentaries on the Constitution of the Empire of Japan*, trans. Ito Miyoji (Tokyo: Chuo Daigaku, 1906), 5.

the monarch and the people, Japan lacked the consciousness of preventing one organ from having a concentrated power. In Japan, this facilitated the over-bureaucratization of the government. Second, on the one hand, in the German context, the state as an organism functioned as a highly abstract and liberal philosophical principle, sublimating internal conflictual politics. On the other hand, in Japan, the state as an organism became the concrete substance of *kazoku kokka* (the family state). Third, while the theory's "not top down" nature led to liberal implications in Germany, it became associated with the emperor's *paternalism* without individuals' political participation in Japan.

Thus, the concrete visualization of the body politic itself is the Japan's particular localization of the organic theory of the state in the late 19th century. Especially, it highlights a typical way in which Japanese intellectuals filled the *abstract* idea of both the state and a constitution with concrete and conservative ideologies. Japan's intellectual development of the rich and diverse set of discourse of *kokka* in the early 20th century set up its hybridity as the point of departure. Thus, my analysis of the following sections illustrates how each metaphor/vision of *kokka* made sense of the hybridity, which itself became constitutional legitimacy.

4.2 *Kokka* or the Emperor (*Tennō* 天皇)

4.2.1 Hozumi Yakka

Hozumi Yakka (1860-1912), as the first generation of constitutional scholars in Japan, had been a leading theorist of imperial sovereignty. His theoretical work similarly reflects the official ideology of the Meiji legal-political system by incorporating the Western legal language in form

while maintaining the emperor's supreme power and the idea of the family-state in substance. As a result, the Western legal language became a formal receptacle for accommodating his conservative political ideology, which made each legal and political term ambiguous. His “*kokka* or the emperor” lies at the core of this problematic intersection. Thus, this section argues that Hozumi's “*kokka* or the emperor” makes the emperor's imperial sovereignty and the constitutional governance *compatible*, leading to a constitutional monarchy, instead of an absolute monarchy. In particular, this reconciliatory rhetoric of “*kokka* or the emperor” include the three key elements: 1) *kokumin no kakushin* (the nation's conviction) as the source of sovereignty, 2) his neologism of *seitai* (polity), and 3) the *jinkaku* (personality) of *kokka* (the dual personality of the state). Combined together, “*kokka* or the emperor” eventually becomes Hozumi's legitimacy of the Meiji constitution.

The analysis is primarily based on *Kenpo Teiyo* [The Summary of the Constitution] (1910)²⁴⁷ and *Kensei Taii* [The General Idea of Constitutional Governance] (1917)²⁴⁸. The former was written two years before his death and the latter was posthumously edited by his academic disciple and successor, Uesugi. The two texts together represent Hozumi's comprehensive thought on the Meiji constitution almost two decades after the constitution was enacted in 1889.

Hozumi interprets *kokutai* and *kokka* in a way contrary to the premise of individualism in social contract theory. Where there are human beings, there must be an autonomous society, which

²⁴⁷ Hozumi Yakka 穂積八束, *Kenpo Teiyo* 憲法提要 [The Summary of the Constitution] (Tokyo: Yuhikaku Shobo, 1910).

²⁴⁸ Hozumi Yakka 穂積八束, *Kensei Taii* 憲政大意 [The General Idea of Constitutional Governance], ed. Uesugi Shinkichi 上杉慎吉 (Tokyo: Kawaiya Shoten, 1917).

is what he calls *kokutai*. Where there is such a society or *kokutai*, there must be the political relationship of power and obedience. Where there are power and obedience, there must be *kokka*. This series of logic led to his pithy assertion that in general where there are human beings, there necessarily are *kokutai* and *kokka*.

Hozumi defines *kokka* as “*kokutai* with an independent sovereignty, which rules a certain ethnicity and territory.”²⁴⁹ Then, he continues, “*kokutai* is a unit, in which the same ethnic group of people gathers and co-exists.”²⁵⁰ By definition, *kokutai* must be distinguished from the crowd, a simple gathering of people, because the former indicates an autonomous and unified society. In *kokutai*, a family serves as its fundamental unit. As a family has the patriarchal political system under the tutelage of the father, as its extension, *kokutai* also shares the same system.

If there is *kokutai*, then there must be *kokka* with sovereignty. According to Hozumi, sovereignty is the will of *kokka*. However, since *kokka* does not have a will as a natural person, a natural person’s will in turn must be *kokka*’s will. Accordingly, this natural person has sovereignty, which is “*kokka*’s life”.²⁵¹ The function of sovereignty is to provide the guardianship (*hogo* 保護) for the ruled as well as to create their *voluntary* obedience. In this sense, sovereignty is sole, supreme and infinite, thus, exceeding the law. Sovereignty does not derive from the law, while the law derives from sovereignty.

On the first point, Hozumi’s unique invention of *kokumin no kakushin* (国民の確信 the nation’s conviction) is the key to assign the legitimate source of sovereignty to the emperor in

²⁴⁹ Hozumi *Kenpo Teiyo*, 1.

²⁵⁰ Ibid.

²⁵¹ Ibid., 21.

“*kokka* or the emperor” without being labeled as an absolute monarchy. It relies on the Japanese people’s reception of the one whom they deem as having the sovereign will. Additionally, this reception is based on Japan’s socio-historical fact. Such a socio-historical fact does not indicate an objective reality. Instead, it is composed of a collective memory, ethos, and identity of the particular ethnic group. Thus, the socio-historical fact of sovereignty is an unreflective product since sovereignty naturally and even unconsciously occurs among the nation.²⁵² To this end, the collective reminiscence of the origin of sovereignty serves as an essential means. It helps the nation acquire a sense of justice. In turn, it also helps them find injustice, especially, when violence overthrows sovereignty.²⁵³ Moreover, Hozumi’s articulation of two kinds of *kokutai* further solidifies the nation’s conviction: monarchical (*kunshu*) *kokutai* and democratic (*minshu*) *kokutai*. While the former has sovereignty in the single person whose ancestors has been the head of an ethnic group, the latter has sovereignty in the whole will of the people.²⁵⁴ In this sense, Hozumi seeks the absolute and sole legitimacy of sovereignty within the common ethos of the nation.

²⁵² Ibid., 94.

²⁵³ Ibid., 72.

²⁵⁴ In doing so, he also makes clear distinction between *kokutai* as the particular *place* of sovereignty and *kokka* as the general political entity with sovereignty. As a result, the two kinds of *kokutai* suggest each different rhetorical source of the nation’s conviction as the political force of integration. Of the two, Hozumi’s political philosophy explicitly judges the superiority of monarchical *kokutai* to democratic *kokutai*, in terms of integrity. According to him, ideally, the ancestor worship should construct *kokutai*. However, democratic *kokutai* lacks this primary element of the ancestor worship. Instead, in democratic *kokutai*, the will of the people supplements the lack. The two kinds of *kokutai* are mutually exclusive. It is impossible for one country to have a mixed *kokutai* or change it arbitrarily. Because *kokutai*

On the second point, Hozumi's new conceptual distinction between *seitai* (polity) and *kokutai* introduces a crucial *compatibility* between the constitutional form and the ideological substance of *kokutai*, leading to a constitutional monarchy instead of an absolute monarchy. Hozumi's neologism, *seitai* (polity, lit. "ruling body"), a combination of *sei* (政 to rule) and *tai* (体 body). *Seitai* signifies the way in which sovereignty is exercised. Polity as the "ruling body" is subordinate to *kokutai* (lit. "national body") because it only works under the guidance of *kokutai*.

This conceptual divide articulates Hozumi's unique framework of a constitutional monarchy, in which the emperor's sovereignty (*kokutai*) is in-divisible while the governmental functions (*seitai*) are divided into legislation, judiciary, and administration. In order to explain the divisibility of polity, Hozumi introduces two kinds of polity: autocratic (*kunshu*) polity and constitutional (*rikken*) polity. While in the former sovereign power is exercised via a single person, in the latter it is exercised through the multiple organs in the government. As a constitutional monarchy, Japan decided to embrace a constitutional polity upon the Meiji Restoration. At the same time, Japan's *kokutai* did not change at all. It is because while polity is a changeable governmental institution, *kokutai* is the unchangeable essence of *kokka* or the emperor's external reign and his unbroken line in the case of Japan. As result, Japan's constitutional monarchy was the accommodation of constitutional polity into monarchical *kokutai*.

is the eternal *truth* of a political community, the change of *kokutai* happens only by political revolution. In this sense, Hozumi claims that the change of *kokutai* is equivalent to the change of *kokka*.

In this constitutional monarchy, the emperor exists as the ultimate source of power, from which each division is granted the rights of exercising functionally differentiated power.²⁵⁵ In this context, according to Hozumi, it is the emperor's voluntary act of grace (*oncho* 恩寵) and abstinence (*sessei* 節制) which caused the emergence of a constitutional monarchy upon the Meiji

²⁵⁵ Here, Hozumi's constitutional monarchy confronts a democratic issue, which constitutional *seitai* would bring. It is the people's participation in politics through legislative activities. Instead of giving the people sovereignty, which might cause a political disorder, he interprets the notational development of political morality as the *proof* of the people's political participation. According to Hozumi, the people's political morality is reflected on *koron* (just/public opinion 公論), which is different from *seron* (the popular opinion 輿論). While the former signifies the *just* political philosophy of *kokutai* commonly shared by Japanese people, the latter signifies the unreliable opinion of the masses. Therefore, *ko* (公) in *koron* should not be confused with "publicness." *Koron* is not the public opinion derived from deliberation among citizens. Rather, it refers to the neo-Confucian idea of Way (道), which articulates a *pre-established* hierarchy as a natural and stable social order. In this sense, *koron* is the mirror of the national-political morality, which Hozumi claims as "how people perceive *kokka*." (Hozumi, *Kensei Taii*, 33.) Thus, *koron* is not the discursive product coming out of free deliberation among citizens but the political morality of *kokutai*, which the people must obey. In this way, compared with autocratic *seitai*, constitutional *seitai* becomes a more *effective* political apparatus to spread the proper idea of *kokutai* to a wider audience.

Also see Sato Takumi 佐藤卓己 *Seron to Yoron: Nihonteki Mini no Keifugaku* 輿論と世論：日本的民意の系譜学 [Public Opinion and Popular Opinion: A Genealogy of The Japanese Popular Will] (Tokyo: Sinchosha, 2008). Sato observes a clear distinction between *yo* (世) *ron* as a public (rational) opinion and *seron* as a popular (sentimental) opinion, which emerged during the Meiji era.

Restoration. In Hozumi's narrative, the emperor decides to grant the parts of his power to the government's organs grounded on his grace and abstinence. The emperor's grace also led to the granting of human rights to the people. Because the primary purpose of human rights is the stability of people's mind (*anmin* 安民), human rights as a concept originally belongs to the emperor or the state rather than to individuals. To this end, the emperor's grace constructs the rights of the people as well as protecting them.

On the last point, his argument of the *jinkaku* (personhood 人格) of *kokka* most directly articulates the metaphor of "kokka or the emperor" as well as the metaphor's capacity of accommodating the constitutional form. He argues that the existence of personhood depends on both a socio-historical and a legal fact. As a social fact, *kokka* has an autonomous personhood. As a legal fact, *kokka*'s personhood must be legally recognized. Based on this dual nature of personhood, Hozumi rejects the theory of the state as a legal person (*kokka hojin setsu*). *Kokka* is not a legal person because this idea assumes no social-historical existence of *kokka*'s personhood. The duality of the socio-historical and legal personhood of *kokka* is inseparable in actuality (it is separable only in theory). Here, recalling Hozumi's argument that *kokka*'s will is a natural person's will, the personhood of *kokka* is that of the natural person. In Japan, it is the personhood of the emperor.

Therefore, this dual nature of personhood directly connects the personhood of *kokka* with that of the emperor. As a legal fact, *kokka* is an abstract legal personhood commonly expressed in modern legal lexicons. As a socio-historical fact, *kokka*'s personhood is the emperor's personhood. More importantly, the socio-historical personality of *kokka* exists *prior* to its legal personality. Hozumi's refutation of the theory of the emperor as a state organ (*tenno kikan setsu*) clarifies this point. As a derivative of "kokka as a legal person," the theory explains the emperor as a state organ

views the emperor as a supreme organ, which serves *kokka*'s best interest. Against this theory, Hozumi stresses that the emperor is the main body (*hontai* 本體) of *kokka*.²⁵⁶ The emperor neither legally "represents" *kokka* nor is a part of *kokka*'s organs. Thus, his is the body of *kokka* itself.

In this sense, "*kokka* or the emperor" is not a mere expression but becomes the real foundation of Japan's particular constitutional monarchy. As already discussed, Hozumi's constitutional monarchy is quite different from the Western liberal constitutional monarchies. On the one hand, he firmly endorses Louis XIV of France's "I myself am the nation," as opposed to Frederick II of Prussia's "I'm the first servant of the state".²⁵⁷ On the other hand, his "*kokka* or the emperor" differs from an absolute monarchy of "I myself am the nation." To this end, Hozumi transforms the emperor's bare political power into an apolitical symbolic authority. His explanation goes as follows. The emperor does not have his private *ie* (family or house 家). Instead, his *ie* is *kuni* (a country 国). Hence, it's called *kokka* (*kuni* + *ie*).²⁵⁸ Here, *kokka* is both the emperor's family and household. Nonetheless, the emperor does not privately own *kokka* nor his subjects. Instead, the emperor is immanently *kokka* as well as the father of his subjects. In doing so, "*kokka* or the emperor" rejects the implication of an absolute monarchy and leads itself to a constitutional monarchy.

Altogether, I argue that Hozumi's "*kokka* or the emperor" include the above three points in order to present the compatibility between the emperor's sovereignty and a constitutional governance as his unique version of a constitutional monarchy. His neologism of both the nation's

²⁵⁶ Hozumi, *Kenpo Teiyo*, 198.

²⁵⁷ Ibid., 201.

²⁵⁸ Ibid.

conviction and polity is able to attribute sovereignty to the emperor while rejecting to be an absolute monarchy. Also, the dual personality of the state identifies the ontological foundation of *kokka* with non-coercive and apolitical symbolic authority of the emperor. In this way, Hozumi's "kokka or the emperor" suggests Japan's particular way of constitutional monarchy.

In the end, Hozumi's "kokka or the emperor" renders the absolute legitimacy to the Meiji constitution.²⁵⁹ Hozumi articulates the foremost purpose of the Meiji Constitution, together with the Imperial Household Law in 1889, was the clarification of *kokutai*.²⁶⁰ According to Hozumi, since Japan had had the unwritten constitution of *kokutai* without a written constitution, the Meiji constitution did not change *kokutai*, but only made *kokutai* explicit in the written document along with the institutional reform²⁶¹. It was the rise of the nation's awareness (*jikaku* 自覚) of *kokutai*

²⁵⁹ He also attribute the origin of the Meiji constitution of 1889 to the Charter Oath of 1868 (*gokajo no goseimon* 五箇条の御誓文). Promulgated in the way that the Meiji emperor made an oath to *kami* of Shinto, the latter marked the onset of the Meiji Restoration. The Charter Oath claimed that Japan under the guidance of the emperor would aim for the establishment of deliberative assemblies, equality among citizens, and the pursuit of new knowledge. Hozumi highlights the *seed* of a constitutional monarchy in the Charter Oath *before* the establishment of the Meiji constitution which was written under the influence of foreign laws. By assigning the origin of the Meiji constitution to the Charter Oath, Hozumi claims that "kokka or the emperor" already contained the potentiality of *becoming* to a constitutional monarchy. Hozumi Yakka 穂積八束 "Kenpo Seitei no Yurai 憲法制定の由来 [The Origin of the Constitutional Making]" (1912) in *Hozumi Yakka Hakase Ronbunshu* 穂積八束博士論文集 [An Essay Collection of Dr. Hozumi Yakka] (Tokyo: Yuhikaku, 1943), 980.

²⁶⁰ Ibid.

²⁶¹ Ibid.

that led the correction of *kokutai* via the Meiji Restoration and the following Meiji constitution. Thus, the legitimacy of the Meiji constitution must rest on the unwritten constitution of people's conviction embodied in "the emperor or *kokka*." In turn, "*kokka* or the emperor" is the absolute precedence of the Meiji constitution.

4.2.2 Uesugi Shinkichi

As a disciple and official academic successor of Hozumi, Uesugi Shinkichi (1878-1929) further solidified "emperor or *kokka*" by framing *kokutai* as a metaphysical as well as theological principle. In a nutshell, while Hozumi's *kokutai* is grounded in the people's conviction in the emperor's sovereignty, Uesugi renders *kokutai* itself an *a priori* legitimacy because people's conviction might fluctuate in the future.²⁶² Uesugi is best known for his scholarly debates in 1912 (the *kokutai* debates) with Minobe Tatsukichi, a leading scholar of the theory of state as a legal person (*kokka hojin setsu*). The debates became "theological" in nature since Uesugi calls his "the emperor or *kokka*" the orthodoxy and attempts to eliminate the heresy of other *kokutai* theorists, including Minobe.

In this context, this section argues that Uesugi's "*kokka* or the emperor" as a theological orthodoxy offsets any democratic elements within a constitutional governance. My analysis below starts with Uesugi's core thought of "*kokka* or the emperor" in his lecture on the constitution and national education delivered in 1911. This lecture is significant because it clearly presented his "*kokka* or the emperor" as an *a priori* truth and became the trigger of the *kokutai* debates. Then,

²⁶² Tomitsuka, "Nihon Kenpogaku niokeru Kokutairon no Tenkai".

my analysis examines two key elements, which presents his “*kokka* or the emperor” as the orthodoxy of Japanese politics: 1) the articulation of heresies and 2) the emperor’s moral supremacy. First, Uesugi is able to claim his “*kokka* or the emperor” as a theological orthodoxy by articulating the existence of heresies. Second, he reinforces such a claim by identifying the emperor as a supreme moral being. In the end, the legitimacy of the Meiji constitution rests on his orthodoxy of “*kokka* or the emperor.”

Uesugi presented “*kokka* or the emperor” as an *a priori* truth in his lecture note, *Kokumin Kyōiku: Teikoku Kenpo Kougi* (National Education: Lecture on the Constitution of The Empire) published in 1911.²⁶³ The lecture was a response to the socio-political situation of Japan, in which he perceived the moral degradation among Japanese people due to the widespread influence of utilitarianism and materialism imported from Euro-America. He claims that contemporary Japan lacks a “national education,” which aimed to nurture strong moral beliefs among people regarding the principle of *kokka* and *kokutai*. These moral beliefs include *chuko* (忠孝 loyalty and filial piety) and *messhi hoko* (滅私奉公 the diminish of the self for authority). Uesugi suggests that the teaching of the constitution would help to save Japanese people from the moral depravity of Japanese people. In this sense, he attributes the value of the constitution not merely to its supreme legal and political principles, but also to its teaching of socio-political morality. Therefore, the existence of heretical theories of the constitution is not unacceptable because to him there is only one truth in the constitution.

²⁶³ Uesugi Shinkichi 上杉慎吉, *Kokumin Kyōiku: Teikoku Kenpo Kougi* 国民教育：帝国憲法講義 [National Education: Lecture on the Constitution of The Empire] (Tokyo: Yuhikaku, 1911).

In this context, Uesugi argues that the truth of the constitution, including socio-political morality, lies in the *a priori* truth of *kokutai*. Unlike Hozumi's nuanced rhetoric of *kokutai* as the nation's conviction in sovereignty, Uesugi eliminates such popular beliefs from the elements of *kokutai*. Hence, Uesugi keeps the Hozumi's definition of *kokutai* as the person(s) who holds sovereignty while removing the unstable element of the popular beliefs.²⁶⁴ As an *a priori* truth, Japan's *kokutai* is the emperor.

This *a priori* truth of *kokutai* leads to his “*kokka* or the emperor.” In order to do so, he prohibits visualizing any material body of *kokka* as the emperor's body. Uesugi's logic goes as follows. If the Japanese *kokka* had its own independent body, it should not be a body other than the emperor's. If it is not the emperor's body, it would necessarily include people's body, making itself “democratic.” In this way, Uesugi equates the material existence of *kokka* with the emperor's body.²⁶⁵ Uesugi's strict ontology of *kokka* also claims that the legal existence of *kokka* is empty because it is just an expression without indicating a real body.²⁶⁶ As a result, by identifying *kokka*'s ontology exclusively to the emperor's body, Uesugi removes any possible room for *kokka* to be “democratic.”

Here, Uesugi labels “*kokka* or the emperor” as Japan's political orthodoxy by articulating its heresies and the emperor's moral supremacy. In the end, “*kokka* or the emperor” aims to offset the influence of any democratic politics. Firstly, he constructs “*kokka* or the emperor” as a

²⁶⁴ Uesugi equates *tochiken soran* (統治権総覧 lit. the holding of ruling rights) with sovereignty (主権 *shuken*).

²⁶⁵ Ibid., Ch 2.

²⁶⁶ Ibid., 1-5.

theological orthodoxy by articulating Minobe's heresy through their *kokutai* debates. The debate started after Minobe severely criticized Uesugi's above lecture in 1912. As a response to Minobe, in "The Heresy of *Kokutai*" (1912)²⁶⁷ Uesugi argues that Minobe's theory of *kokka* as a legal person is based on radical democratic political thought. For Uesugi, the term "democratic" means more than just popular sovereignty. In democratic *kokutai*, the emperor shares sovereignty with the people. As a result, the emperor becomes the people's servant. It is because in democratic *kokutai*, the emperor exercises his power on behalf of others. This creates a huge problem for Uesugi's vision of the family state. In the same way as Hozumi, he argues that the emperor's sovereignty requires people's obedience. As an exchange, the emperor grants rights and guardianship to them. Nonetheless, democratic *kokutai* would level the patriarchal relationship between the emperor as the virtuous fatherhood and his faithful subjects. His ideal vision of the family state is expressed in the Chinese classic political adage, *tenka ha hitori no tenka ni arazu, tenka no tenka nari* (天下は一人の天下にあらず乃ち天下の天下なり; the realm is not the realm of one person; it is that of the multitude).²⁶⁸ He compares this with European monarchs. On the one hand, European monarchs historically have abused their sovereignty and privately owned their realm and subjects. On the other hand, the greatness of the Japanese emperor(s) historically has lied in his benevolence and care for his subjects. As a result, while the abuse of power by the

²⁶⁷ Uesugi Shinkichi 上杉慎吉 "Kokutai ni kansuru Isetsu" 国体に関する異説 [The Heresy of *Kokutai*] (1912) in *Saikin Kenporon* 最近憲法論 [The Recent Constitutional Theory], ed. Hoshijima Jiro 星島二郎 (Tokyo: Misuzu, 1989).

²⁶⁸ It appears in 文韜 from *The Six Secret Teachings* (六韜).

monarchs has led European countries to adopt democratic *kokutai*, Japan has kept monarchical *kokutai*.

In the same year of 1912, Minobe responded that his theory could not be “heretical” in any sense. Minobe argues that it is because his theory perfectly fits the national ethos articulated in Article 1 of the Meiji Constitution, “The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal.” Uesugi immediately published “Again, About the Heresy of *Kokutai*” (1912)²⁶⁹ in order to clarify Minobe’s heresy. In this context, the gravity of the argument has shifted to the interpretation of Article 1 of the constitution. Uesugi’s claim on the orthodoxy of “*kokka* or the emperor” demands a strict adherence to the *literal* meaning of the text of Article 1. According to him, the text has only one true meaning, and there is no need to prove what the text says by logic or evidence because what’s written is the factual truth. In this way, he makes Article 1 inviolable, which allows no one to cast a doubt on or even interpret. Article 1 becomes as the ultimate discursive terminal point, which cannot resort to other references and guarantees every legal and political discourse in Japan.

In doing so, Uesugi pointed out a self-contradiction in Minobe’s theory. In his previous work, Minobe argued, “the imperial Japan has been reigned by the emperor eternally since its origin.”²⁷⁰ By citing this sentence, Uesugi claims that all the rest of Minobe’s claim on *kunmin*

²⁶⁹ Uesugi Shinkichi 上杉慎吉 “Futatabi Kokutai ni kansuru Isetsu ni tsuite” 再び国体に関する異説に就て [Again, About the Heresy of *Kokutai*] (1912) in *Saikin Kenporon* 最近憲法論 [The Recent Constitutional Theory], ed. Hoshijima Jiro 星島二郎 (Tokyo: Misuzu, 1989).

²⁷⁰ Minobe Tatsukichi 美濃部達吉, *Kenpo Kowa* 憲法講話 [A Lecture of the Constitution] (Tokyo: Yuhikaku, 1918), 49-50.

douchi (the joint governance of the emperor and the people) contradicts his “alleged” adherence to Article 1. Therefore, Minobe is not faithful enough to Japan’s *kokutai* and confuses the Japanese people. This contradiction further marks Minobe’s work as the heresy of *kokutai*.

Secondly, Uesugi’s articulation of the emperor as a supreme moral being reinforces “*kokka* or the emperor” as the orthodoxy of Japan. His motive for this articulation comes from an inherent problem within the orthodoxy of “*kokka* or the emperor.” Uesugi finds it difficult to maintain the *a priori* truth of “*kokka* or the emperor” without appealing to popular beliefs. In effect, Uesugi was very unsecure about the discursive ambiguity of *kokutai* for the people. For instance, his motive for the lecture, *National Education*, reflects this anxiety. As a result, he is caught in the conflict between *kokutai* as an *a priori* truth and the need of people’s common belief to sustain *kokutai*.

Uesugi’s answer is to argue that the emperor is the ultimate reification of morality, which accurately reflects the people’s will. According to Uesugi, *kokka* in general embodies the superior morality because it is the ultimate development of human relationships.²⁷¹ Additionally, in *kokka*, the will of the people must appear as one unity. Uesugi calls this *taisei ishi* (体制意思 the organizational will). Like Rousseau’s general will, “the organizational will” is neither the total accumulation of the members’ wills nor the collection of the majority’s wills. Nonetheless, how it appears is radiationally different from the Rousseauian counterpart. It appears in the divine will of the emperor, which Uesugi calls *toitsu ishi* (統一意思 the integral will). Hence, the divine will of the emperor must reflect the people’s moral development.²⁷²

²⁷¹ Uesugi Shinkichi 上杉慎吉 *Shinko Teikoku Kenpo* 新稿帝国憲法 [A New Manuscript of the Constitution of the Empire] (Tokyo: Yuhikaku, 1922), 528.

²⁷² It is the reflection of the people’s belief but is not composed of it. *Ibid.*, 545.

Moreover, Uesugi asserts that the superiority of the emperor as an ultimate moral being lies in his apolitical personality. He argues, “the absolute omniscient emperor is like the mirror, which reflect everything...the emperor is absolutely selfless and embraces all the Japanese. Inherently, there is nothing personal about the emperor, who transcends and encompasses everything.”²⁷³ Here, the emperor as the mirror of every Japanese is an empty signifier and exists as a transcendent *self-less* figure. In this way, the emperor as an empty signifier appears not as a simple political authority but as the apolitical patriarchal figure who reflects the unity of the Japanese people. In the end, Uesugi’s orthodoxy of “*kokka* or the emperor” makes the connection between the emperor and the people without relying on the people’s beliefs.

On the whole, I argue that Uesugi’s “*kokka* or the emperor” as a theological orthodoxy offset any democratic element within a constitutional governance. First, by articulating its heresies, it rejects any democratic participation of the people. For Uesugi’s “*kokka* or the emperor,” the emperor’s sovereignty articulated in Article 1 should be the inviolable text. Second, being aware of the possible need of people’s belief to sustain “*kokka* or the emperor,” his “*kokka* or the emperor” identifies the emperor as the ultimate reification of morality, which accurately reflects the people’s will. In this way, while “*kokka* or the emperor” rejects any democratic voice, it claims to retain a constitutional form, instead of becoming absolute monarchy.

Finally, his orthodoxy of “*kokka* or the emperor” gives a divine legitimacy to the Meiji constitution. In this sense, the Meiji constitution is *kintei kenpo* (欽定憲法 a constitution granted by the emperor) as opposed to *mintei kenpo* (民定憲法 a constitution granted by the people). In the latter, the constitution is the contract between the people and the government. If a contrast,

²⁷³ Cited in Tomitsuka, “Nihon Kenpogaku niokeru Kokutairon no Tenkai,” 542.

then it could be infringed. According to Uesugi, while the separation of powers and human rights based on natural law are the features of a so-called *modern* constitution, they are not the essence of a constitution in general. He argues that the essence of a constitution is to lay down a country's *kokutai* and polity (*seitai*). Thus, “*kokka* or the emperor” describes the constitutional essence of Japan.

In the next section, my analysis moves to “*kokka* as an organism.” While Hozumi & Uesugi’s “*kokka* as an emperor” explicitly identifies *kokka* as the emperor’s body, “*kokka* as an organism” rejects such a view. Thus, the metaphor’s recognition of *kokka*’s body as “organism” creates a smoother reconciliation between the emperor’s sovereignty and the constitutional governance.

4.3 *Kokka* as an Organism (*Yūkitai* 有機体)

4.3.1 Kato Hiroyuki

As a prominent philosopher and political theorist learned both from Western knowledge and Confucianism, Kato Hiroyuki (1836-1916) develops the metaphor of “*kokka* as an organism.”

Kato was one of the first Japanese intellectuals, who studies German language and philosophy and became the fervent supporter of social Darwinism. Kato’s metaphor is built on particular understandings of “nature” as the absolute law of the evolution of organisms. It finds two specific meanings within his “*kokka* as an organism.” One is that his “*kokka* as an organism” indicates the evolutionary nature of *kokka*, whose primary element is the evolution of morality. The other is the organic nature of *kokka* is exactly analogous to the human body. This framework

is grounded on his disciplinary application of natural sciences, in particular evolutionary biology, to the human science of *kokka*. In this method of application, Kato's motive is to impose a certain framework upon the uncertain world of human affairs by applying natural scientific methods.

His “*kokka as an organism*” *reconciles* the coexistence of the conservative political ideology of the emperor's sovereignty and a constitutional governance. For the sake of this argument, I divide my analysis in the two parts in the following paraphrases. In the first section, I unfold Kato's his application of the natural sciences into human affairs in order to articulate his framework of “nature” as the absolute law of the evolution of organisms. I do so by highlighting his refutation against the metaphysical understandings of human morality,

In the second section, I will examine 1) how his *absolute* law of the evolution of organisms founds his “*kokka as an organism*” and 2) how the metaphor neutralizes the emperor's sovereignty in a constitutional governance. In the end, I claim that his “*kokka as an organism*” legitimizes the Meiji constitution because the natural development of *kokka* as an organic entity *necessitates* its acquisition of a constitution while keeping its substance of the emperor's reign intact.

The texts for the analysis are *Shizen to Rinri* (Nature and Ethics)²⁷⁴ in 1912 and *Kokka no Tochiken* (The Ruling Rights/The Sovereignty of the State)²⁷⁵ in 1913, published consecutively. Recall that 1912 was the year of the Uesugi-Minobe debates. In the same year and the year after, Kato, who was already 78 years old, culminated his thought in the two works. This historical fact

²⁷⁴ Kato Hiroyuki 加藤弘之, *Shizen to Rinri* 自然と倫理 [*Nature and Ethics*] (Tokyo: Shueisha, 1912).

²⁷⁵ Kato Hiroyuki 加藤弘之, *Kokka no Tochiken* 国家の統治権 [*The Ruling Rights/The Sovereignty of the State*] (Tokyo: Shueisha, 1913).

is important. While the discourse of *kokka* was primarily in the field of law, Kato's philosophical work of *kokka* demonstrates that the topic of *kokka* exceeded the interest of legal scholars around that historical period.

4.3.1.1 “Nature” as the Absolute Law of the Evolution of Organisms

This section unfolds Kato's application of natural sciences to human affairs appeared in in *Shizen to Rinri* (1912) in order to articulate his definition of “nature” as the absolute law of the evolution of organisms. I do so by highlighting his refutation against three metaphysical understandings of human morality: free will, the artificial theory of morality, and Christianity's anti-historical materialism. As the title *Shizen to Rinri* implies, his entire thesis of the book is to unify “nature” and “morality.” In other words, his argument is to regard morality a part of “nature.” In this work, Kato's “nature” refers to the absolute *certain*ty of the evolution of organisms. It also implies that Kato does not regard anything *uncertain*, especially anything not in the field of natural sciences (e.g. metaphysics), as the part of “nature.” In this context, his application of natural sciences, particularly evolutionary biology, to the study of human affairs seeks the *certain* way of studying human beings and morality, which are full of *uncertainty*. For Kato, the most *certain* principle is that human beings are evolutionary organisms with what he calls “*konponteki rikoteki doukou* (根本的利己的動向 the only selfish basic instinct).”²⁷⁶ This fundamental selfish instinct must be the absolute cause of the moral development of human beings. Therefore, Kato opposes any metaphysics of human morality.

²⁷⁶ “The only selfish basic instinct” is Kato's own English translation of the term. Thus, I will use it in the following paragraphs.

Social Darwinism influenced his application of biological evolution to the human world. Kato observes three evolutionary stages of organisms: *tan saibotai* (single-cellular organism), *fukusu saibotai* (multi-cellular organism), and *fukufuku saibotai* (multi-multi-cellular organism).²⁷⁷ *Fukusu saibotai* is any multi-cellular organisms, including humans, animals, and plants. *Fukufuku saibotai* is a group of multi-cellular organisms, which is society or *kokka* for humans (Kato does not make any distinction between the two) and crowds for animals and plants. *Fukufuku saibotai* is his neologism by adding another *fuku* (multi) to *fukusaibotai*.²⁷⁸ In the course of evolutionary development, each individual organism serves as each cell of a larger organism. However, although each individual organism “altruistically” cooperates with each other to form a larger organism, they do so solely for the purpose of self-interest and self-survival.

His absolute law of the evolution of organisms finds three adversaries. Firstly, it is Kantian metaphysics, in particular, the existence of free will. Based on Hobbes’s materialism and Spinoza’s pan-theism, Kato argues that the will is the combined product of desires and motives derived from one’s interaction with the material world. What is seemingly free will is not *free* because the will is a causal result coming from a competition among different motives and desires. According to Kato, what distinguishes between humans from other animals is a biological evolution as opposed to Kantian metaphysics which attributes the distinction to the existence of free will. Being exposed

²⁷⁷ His terms are translated from the corresponding German terms as follows: *tan saiboutai* (Einzelligon oder Protistou) *fukusu saibotai* (Vielzelligeu oder Histonen); *fukufuku saiboutai* (Stook oder Cormus).

²⁷⁸ Kato invents the term, being inspired by a cormus, an organism made up of a number of individuals budding from a parent stalk.

to the material world, human beings are always in motion by a variety of desires and motives. The vulnerability of human beings to the external material world has caused evolution as the essential way of their survival.

Secondly, he rejects “artificial theory of morality” which disjoins nature from morality. His criticism of the separation of morality and nature targets two schools of thought: utilitarianism and what he calls *jinzo gakuha* (人造学派) translated from *die künstliche moral* (the artificial moral). First, Kato argues that the utilitarian claim on the greatest happiness for the greatest number is not “natural” enough. In other words, compared with Kato’s morality as a part of “nature,” which grows as an organic unity, utilitarian morality is still artificial by not considering society as an indivisible unity. Second, his criticism of *jinzo gakuha* targets the arguments of four historical intellectuals, Xúnzǐ(荀子)’s *xìng è lùn* (性惡論 the theory of evil human nature), Ogyu Sorai’s morality originated from a virtuous emperor, Ninomiya Sontoku’s separation between nature and morality, and Thomas Hobbes’ morality based on social contrast. For Kato, all of the four consider morality as the metaphysical principle imposed as an artificial abstract principle rather than as the product of “natural” or evolutionary development of human beings.

Thirdly, Kato rejects the role of Christian morality for the development of what he calls *joge heikin teki dotoku* (上下平均の道德 the morality of the top-bottom average). According to Kato, this morality refers to a historical stage where freedom, equality, and rights expands to those who used to be the ruled. As opposed to Christianity’s appeal to the transcendent origin of such human equality and freedom, Kato argues that “the morality of the top-bottom average” is the historical product of class-struggle. At the beginning, the ruler and the privileged invented the first morality to maintain an existing social hierarchy, which is what he calls *joatsu gekutsu teki dotoku* (上圧下屈の道德 the morality, which the ruler imposes upon the ruled). It was the only recent

historical development that saw the evolution of this morality into the morality of the top-bottom average. Thus, for Kato, morality is a necessary invention in the course of human history rather than a divine and ahistorical product.

All in all, Kato's "nature" as the absolute law of the evolution of organisms is built on its particular method of understanding human morality. His inquiry for human morality pits the *certainty* of his law of the evolution of organisms against the *uncertainty* of the metaphysical separation of nature and morality. For Kato, natural scientific method guarantees the certainty of knowledge while non-natural scientific method of metaphysics causes the uncertainty of knowledge.

4.3.1.2 The Analogical Metaphor of "Kokka as an Organism"

This section starts with the argument that his analogical metaphor of "*kokka* as an organism" aims to be a rigorous science. Kato's framework of "nature" as the absolute law of the evolution of organisms informs his human body analogy of *kokka*. Then, the section argues that this metaphor neutralizes the conservative political ideology of the emperor's sovereignty within a constitutional governance. He does so by incorporating Confucian political thought and the political ideology of *chu-ai* (忠愛 loyalty and love based on filial piety) into his "*kokka* as an organism." Eventually, I show that the metaphor of "*kokka* as an organism" necessitates and legitimizes the historical emergence of the Meiji constitution.

Kato extensively develops his analogical metaphor of "*kokka* as an organism" in 1913, in a political treatise, *Kokka no Tochiken* (*The Ruling Rights/The Sovereignty of the State*), published in 1913, a year after the publication of *Shizen to Rinri*. The rigorous human analogy of *kokka* is the corollary of Kato's the absolute law of the evolution of organisms. The analogical body of

kokka consists of the core organ of a cerebral cortex and other supplemental organs. In this body, the cerebral cortex controls the entire body with the help of other organs.

With such a human body analogy, Kato's "*kokka* as an organism" aims to be rigorous science. It does so by articulating the "unscientific" feature of "*kokka* or the emperor." For instance, his primary theme of "the brain or the body" in the analogy claims that a head which holds the cerebral cortex expresses a person. It is a straight rejection of Hozumi & Uesugi's "*kokka* or the emperor," which identifies the body of *kokka* with that of the emperor. It is because "the brain or the body" expresses *kokka*'s identity rather than its ontology. In the same way as the media, including currencies, paintings, statutes, and pictures, what identifies someone as a person is the head, not the arms or legs.²⁷⁹ Thus, the emperor is not the entire body of *kokka*. Instead, he is the identity of *kokka*. Moreover, Kato articulates another "unscientific" feature of "*kokka* or the emperor" in its interpretation of Article 1 of the constitution. According to Kato, "*kokka* or the emperor" is the result of their too much literal reading of Article I without considering the organic development of *kokka*. As a result, compared with his metaphor, "*kokka* or the metaphor" is not "scientific" enough.

Furthermore, the metaphor refutes the theory of "*kokka* as a legal person" in order to claim its rigorous scientific method. Kato argues, that, by assuming the existence of *kokka* as an artificial legal person, the theory deprives *kokka* of its natural or organic origin. As a result, it fails to regard *kokka* as an organism *per se*. Additionally, because of its failure of recognizing *kokka* as an organism, according to Kato, it mistakenly juxtaposes every organ in *kokka* equally. In a real organism, organs have each different function, according to which they have a hierarchical

²⁷⁹ Kato, *Kokka no Tochiken*, 40.

configuration. It results in a wrong understanding of *kokutai* by “*kokka* as a legal person.” On the one hand, Kato’s “*kokka* as an organism” and “*kokka* as a legal person” share the definition of *kokutai* as an autonomous political entity, which is simultaneously both the subject and the object of governance. However, with the lack of “scientific” understanding of the body, “*kokka* as a legal person” misunderstand that sovereignty exist in the entire body, instated of in the brain or the emperor.

Nonetheless, no matter how much Kato’s metaphor claims its “scientificness,” it serves as particular political ideologies. More often than not, it works to neutralize such ideologies. In this sense, his “*kokka* as an organism” accommodates the emperor’s sovereignty based on Confucian political thought and *chu-ai* (loyalty and love based on filial piety) within Japan’s constitutional governance.

First of all, his “*kokka* as an organism” based on Social Darwinism incorporates Confucian political thought, serving as Kato’s conservative political ideology. Fundamentally speaking, Confucian political thought and Social Darwinism similarly legitimizes the already existing social order. In other word, they are both concerned with the “secular” existence of a social order. Here, I articulate that his metaphor based on Social Darwinism offers a “secular” solution to Confucian problem of a social disorder. In Confucian thought, a socio-political order (治 *chi*) is a hierarchical order, for example, between the older and the younger, and the ruler and the ruled. In the absence of *chi*, a social disorder (乱 *ran*) appears, in which the stronger rules the weaker. Kato’s Confucianism views human nature as unrestricted desires, which rituals (*li* 礼) and centralized authority must control. This idea opposes natural rights theorists, who claim inviolable rights as the protection of self-interests. Recalling his anti-rhetorical motive, his rejection of the metaphysical framework of human morality include his objection of natural rights theory.

Regarding this point, Bob Wakabayashi articulates that Kato's well-known translation of "natural rights" into *tenpujinken* (天賦人權 the heavenly-endowed rights), embraces the Confucian premise of the prior existence of a state or society to individual human rights. In other words, natural rights is not metaphysically or divinely given but also exist because the secular entity of *kokka* gives it to the individuals.

In this context, for Kato, Social Darwinism is a "secular" (or non-divine or metaphysical) alternative solution, instead of Confucianism, which lacks its "scientific" methodology and framework to solve a social disorder. In this way, the evolution of organism based on social Darwinism gives a robust secular solution to the Confucian problem of the human nature of unrestricted desires. Julia Adeney Thomas, an intellectual historian of Japan, argues, "In the absence of Christian theories of *creation*, adapting Darwinian principles to social theory in Japan was virtually painless."²⁸⁰ As a result, Kato's traditional Confucian political thought becomes neutralized and legitimized by merging itself with the then cutting-edge "scientific" discourse of social Darwinism.

Secondly, Kato's "*kokka* as an organism" also incorporates the particular Japanese political idiom, *chuai*, with the purpose of articulating the reason why the metaphor never leads to an absolute monarchy. Kato's introduces *chu-ai* as a part of *jinseteki shizenryoku* (人世的自然力 the human-natural force)." The "human-natural" force is a social apparatus to limit the abuse of power by political authority. Most importantly, it is a result of the "organic" or "natural" development of *kokka*. As a primary element of such a force, *chu-ai* suggests Japanese people's emotional tie (情

²⁸⁰ The emphasis is mine. Julia Adeney Thomas, *Reconfiguring Modernity: Concepts of Nature in Japanese Political Ideology* (Berkeley: University of California Press, 2001), 104.

緒 *jo-cho*) with the father figure of the emperor. In *chu-ai*, his subjects hold a filial piety to the emperor and the emperor reciprocally loves his subjects. His subjects' eternal loyalty to the emperor is what distinguishes Japan from other countries. Thus, *chu-ai* provides an emotional foundation, which prevents the emperor's abuse of power against his subjects.

Chu-ai bolsters Kato's analogical metaphor with its emphasis of the harmonious association between the brain (the emperor) and the entire body (*kokka*). Kato argues that in Japanese history, *chuai* has been identical to patriotism. He calls this equivalence between loyalty to the emperor and patriotism *chukun aikoku* (忠君愛国 loyalty to the emperor and patriotism). In a previous short essay "Waga Rikkenteki Zokuchi Tochi no Seitai (Our Polity of Constitutional Patriarchy)"²⁸¹ in 1905, Kato argues that Japan is not a constitutional monarchy but a constitutional patriarchy (*rikken-teki zokuchi tochi* 立憲的族父統治). It is because the emperor rooted in a primitive ethnic religion has continuously been a patriarchal head of Japan. As a result, Japan's historical continuity of the imperial court has fused the country and the emperor into "loyalty to the emperor and patriotism." According to Kato, "loyalty to the emperor and patriotism" is a distinguished political principle compared with other countries. For instance, while absolute monarchies in Europe prioritizes the king over the country, the Mandate of Heaven in China reversely prioritizes the country over the emperor.²⁸² As a result, the natural association between

²⁸¹ Kato Hiroyuki 加藤弘之, *Waga Rikkenteki Zokuchi Tochi no Seitai* 吾が立憲的族父統治の政体 [Our Polity of Constitutional Patriarchy] (Tokyo: Kodokan, 1905).

²⁸² In 盡心下 - Jin Xin II, Mencius said something similar, 民為貴, 社稷次之, 君為輕 [The people are the most important element in a nation; the spirits of the land and grain are the next; the sovereign is the lightest.]

the brain and the body in his “*kokka* as an organism” immediately lead to “loyalty to the emperor and patriotism “ or “loyalty to the emperor means to love the country and vice versa.”²⁸³

Overall, I assert that his “*kokka* as an organism” harmonizes the emperor’s sovereignty within Japan’s constitutional governance. First, its incorporation of Confucian ethics justifies Japan’s pre-established socio-political hierarchy in the “scientific” language of Social Darwinism. Second, it presents *chu-ai* as a natural development of Japan as an evolutionary organism. Thus, the metaphor’s inclusion of the two elements illustrates the emperor’s sovereignty as a natural phenomenon according to the absolute law of the evolution of Japanese *kokka*.

Finally, Kato’s “*kokka* as an organism” assigns the evolutionary nature of *kokka* as the exclusive cause of the emergence of the constitutional (patriarchal) government upon the Meiji Restoration. In other words, the organic and evolutionary nature of *kokka* necessitates and

²⁸³ Accordingly, Kato’s analogical metaphor with the aims for the organic integrity of *kokka* criticizes the separation of powers as well as republican governance. Following Johann Kaspar Bluntschli’s organic theory of state, Kato argues that the complete separation of powers would weaken the unity of *kokka*. In *The Theory of The Modern State*, Bluntschli argues, “the favourite expression ‘separation (Trennung) of powers leads to false applications of a true principle. A complete separation or sundering of powers would be a dissolution of the unity of the State. Just as in the body natural all the several limbs are connected together, so in the body politic the connection of the organs is no less important than their difference. In the State there must be a unity of power, and so the powers, though distinguished according to their functions, must not be absolutely separated.” The integrity of the body needs a supreme organ to harmonize the relationships of the other organs. While Bluntschli designates legislation as the supreme organ in the German polity, Kato subordinates it to the supreme organ of the emperor in the Japanese polity.

legitimizes Japan's adoption of a modern constitutional governance. In this sense, according to Kato's application of the evolution of organism to the study of *kokka*, the Meiji constitution is a definite proof of "*kokka* as an organism."

4.3.2 Kita Ikki

Before World War II, there were arguably few Japanese scholars as unique, complicated, and provocative as Ikki Kita (1883-1937).²⁸⁴ His political philosophy of "state socialism" has been both the target of criticism because of its influence over totalitarianism centered upon the emperor as well as that of praise due to his radical liberal critique of imperial sovereignty and promotion of individual freedom and social equality.²⁸⁵ The 2-26 incident in 1936 also made him one of the most controversial figures in pre-war Japan, when young Imperial Japanese Army (IJA) officers attempted an coup d'état against high political officers with a view to a radical political reform. Although Kita was not directly involved in the incident, his work *Nihon Kaizo Hoan Taiko* (An Outline Plan for the Reorganization of Japan) published in 1919 inspired many of the IJA officers. As a result, he was arrested and executed in 1937. This section analyzes his first work *Kokutai-*

²⁸⁴ Furuya Tetsuo 古屋哲夫, "Kita Ikki Ron 北一輝論 [On Kita Ikki]", *Jinbun Gakuho* 人文学報 36 (1973): 123-163.

²⁸⁵ Ibid.

ron oyobi Junsei Shakaishugi (The Theory of Japan's National Polity and Pure Socialism)²⁸⁶ published in 1906, in which Kita elaborated on his metaphor of “*kokka* as an organism.” His first work does not include the element of totalitarianism, which appeared later in *Nihon Kaizo Hoan Taiko*.

This section argues that Kita’s “liberal” metaphor of “*kokka* as an organism” accommodates the historical existence of the emperor by reinterpreting the characteristic, origin, and legitimacy of the Meiji *kokka* and constitution. It is “liberal” because his metaphor rejects the conservative framework of the emperor’s sovereignty and a human body analogy such as Kato’s “*kokka* as an organism.”

My analysis below starts with the two dominant “liberal” features of Kita’s metaphor, *kokka*’s historically progressive characteristic towards social equality and its distinctive personhood. Then, it moves to examine how his metaphor reinterprets the conservatives’ three theoretical linchpins: *kokutai*, the constitution, and Japanese history. The analysis shows that by reinterpreting the three elements, Kita’s “*kokka* as an organism” is finally able accommodate the paradoxical co-existence of the emperor and a liberal constitution. As a result, the metaphor gives an ultimate legitimacy to the Meiji constitution.

As a general background, the book was published a year after Japan’s victory of the Russo-Japanese War in 1905, which Kita firmly supported, unlike other socialists in Japan. The work shows Kita’s growing nationalism resulting from the victory. The book is a 1000 page long

²⁸⁶ Kita Ikki 北一輝, *Kokutaron Oyobi Jyunsei Shakai Shugi: Jihitsu Shusei Ban* 国体論及び純正社会主義: 自筆修正版 [Theory of Japan's National Polity and Pure Socialism: A Self-Revised Version] (Tokyo: Minerva, 2008).

political treatise on Kita's state socialism. It articulates his basic political philosophy that every *kokka* follows the necessary path of evolutionary steps, whose final stage is state socialism. Kita argues, while Japanese *kokka* entered the stage of state socialism since the Meiji Restoration in 1886, it still requires further socialist reforms. To this end, he criticizes conservative scholars who adheres to the old imperial monarchy.

As the first feature, “*kokka* as an organism” includes *kokka*'s distinctive personhood or which he calls “the existential theory of the state's personhood (*kokka jinkaku jitsuzai setsu* 国家人格実在論).” According to Kita, *kokka*'s organic body unifies humans living in distance. However, it is *by no means* similar to a human organism. Kita argues that social cohesion (*danketsu* 団結) made by the people's consciousness is what renders *kokka* its organic body. In this sense, Kita uses society and *kokka* interchangeably. *Kokka*'s power lies in this people's consciousness for social cohesion rather than in particular individuals.

His emphasis on social cohesion rejects the human body analogy of *kokka*, which identifies the power of the body with its brain or the emperor. In this sense, Kita's “*kokka* as an organism” shares the liberal nature of the 19th century German organic theory of the state, as opposed to the conservative nature of the human body analogy of the state developed in the European middle ages. Kita draws a specific attention to the expression, *kuni no genshu* (国の元首 the head of the state) which appears in Article 4 of the Meiji constitution. *Genshu*, which literally means “above the neck”, is an anachronistic residue from the human body analogy of *kokka*. With the analogical metaphor, *kokka* embodies the pre-established social hierarchy without social equality. Additionally, Kita claims, such an analogy does not make any sense, for example, when the French people, the legs or the arms of the body, executed Louis XVI, the head of the body. Kita's lengthy

sarcasm highlights the implausibility of the analogical metaphor to describe *kokka*'s unique existence.

As the second feature, “*kokka* as an organism” includes *kokka*'s historically progressive characteristic towards social equality. According to Kita, the evolution of *kokka* is linear-progressive along with the development of *equality* regarding law, morality and social norms. Japanese *kokka* started with monarchy in the ancient period, developed through oligarchy in the middle ages, and finally became democratic *komin kokka* (公民国家 the citizen state) upon Meiji *ishin* (“the Meiji Restoration” in English). Instead of the common term Meiji *ishin*, Kita frequently uses *ishin kakumei* (reform and revolution) to highlight its progressive characteristics and eliminate backward connotations (which the English translation, “Restoration,” well captures). Kita's idea of equality and democracy in the citizen state, however, is a unique kind. The citizen state is Kita's neologism, which suggests his socialist vision of statism (*kokka shugi*). Unlike the patriarchal state (*kacho kokka*) or the class-based state (*kaiku kokka*), in which the ruled directly serves for the ruler, the citizen state is an integral political community, in which the rights and duties of both individuals and the emperor are directed at *kokka*.

Additionally, the progressive nature of *kokka*'s history entails the drastic change of *kokka*'s characteristic or which Kita calls *kokutai*. In its development from the patriarchal to the citizen state, *kokka*'s characteristics (*kokutai*) changes from *bukkaku* (物格 the object which someone governs) to *jinkaku* (人格 the personhood which has people and the emperor as equal organs).²⁸⁷

²⁸⁷ The historical change of the legal character of *kokka* from *bukkaku* to *jinkaku* appears the change of the discourse among people from “for the sake of Kunshu (the monarch)” to “for *kokka*”: for instance,

Nonetheless, *kokka* as “the object” still has its personhood, but it is yet recognized by the law or the constitution. As the citizen state, *kokka* finally acquires its legal personality. While as the patriarchal state, *kokka* is like a slave to the ruling class, it is impossible to eliminate its personhood.

As a whole, the “liberal” nature of Kita “*kokka* as an organism” modifies the conservative framework of the emperor’s sovereignty in order to accommodate the existence of the emperor into his own liberal framework. It does so by offering reinterpretation of the three elements: *kokutai*, the constitution, and Japanese history.

First of all, Kita’s metaphor replaces “the vulgar *kokutai*” with “the genuine *kokutai*” in order to show that Japanese *kokka*’s evolutionary nature. On the one hand, Kita calls the conservative’s framework of *kokutai* as the emperor’s imperial sovereignty as “so-called *kokutai* theory (*iwayuru kokutairon*: a.k.a the vulgar *kokutai*).” On the one hand, his reinterpretation of *kokutai* presents “the genuine *kokutai*”, which regards *kokka* as an evolutionary organism. Kita’s metaphor’s two features exactly reflect the two significant characteristics of “the genuine *kokutai*. First, “the genuine *kokutai*” indicates its own personhood of *kokka*, as opposed to the “vulgar *kokutai*,” which only regards *kokka* as an object. Second, “the genuine *kokutai*” indicates social equality, which the citizen state or Meiji Japan achieves. In contrast, “the vulgar *kokutai*” widely deviate from Meiji Japan’s socio-political actuality as the citizen state. Kita labels its deviant

he argues, the idea the people fought for the benefits of the emperor in Japanese-Russian war is not only constitutionally wrong but also contradicts common beliefs among the Japanese people.

nature “restorative revolutionism”²⁸⁸ since “the vulgar *kokutai*” advocate a political revolution by insisting on its “backward” idea. In this way, Kita presents his metaphor of “*kokka* as an organism” much less radical than it might look.

Secondly, Kita re-interprets Meiji Japan as a constitutional democracy instead of a constitutional monarchy for the purpose of articulating Japan’s joint governance of the emperor and the people.²⁸⁹ This comes from his unique understanding of *seitai* (polity). Although he shared the same definition of *seitai* (polity) with Hozumi and Uesugi as “the way in which sovereignty is exercised,” he introduces a unique classification. While Hozumi & Uesugi’s introduces two classification (constitutional or autocratic polity), Kita classifies three kinds of polity: monarchy, republic, and democracy. Kita’s democracy refers to the joint governance of the emperor and the people. Thereby, he entirely reframes Japan’s constitutional monarchy as constitutional democracy. He derives the classification from the definition of the supreme organ of *kokka*, which appears in Article 72 of the constitutional amendment procedure. Article 72 says, “[w]hen it has become necessary in future to amend the provisions of the present Constitution, a project to that effect shall be submitted to the Imperial Diet by Imperial Order.” Kita interpret this Article as the proof of the joint alliance between the emperor and the people for constitutional

²⁸⁸ The main chapter of the book is the chapter IV, which is titled “Iwayuru Kokutai-ron no Fukko-kakumeishugi (The Restorative Revolutionism of So-Called *kokutai* Theory).”

²⁸⁹ Kita Ikki 北一輝, *Kokutaron Oyobi Jyunsei Shakai Shugi*, 9-9.

amendment. This joint alliance is the supreme organ of *kokka* as *pouvoir constituant* (constituent power).²⁹⁰

Thirdly, with the aim of emphasizing Japan's current status of a citizen state, Kita's metaphor overturns the dominant conservative historical narrative centered upon the emperor. First, he does so by twisting the targeted audience of the political ideology of *chu-ko* (忠孝 loyalty and filial piety). The conservative narrative bases its historical narrative on people's loyalty and filial piety to the emperor throughout the history of Japan. On the contrary, Kita argues, Japanese history until the Meiji Restoration has been full of rebels against the emperor, including the Fujiwara clan, the Taira clan, the Minamoto clan, the Hojo clan, the Ashikaga clan, and the Tokugawa clan. By flipping the historical narrative of the conservatives, Kita also pits people's

²⁹⁰ Nonetheless, this re-interpretation is at odds with Article 4 of the Meiji constitution, which states the emperor's sovereignty. Thus, Kita develops his own interpretative method based on the essence of *kokka* and the spirit of the constitution, both of which are expressed in his metaphor. He asserts "to say that scholars have freedom to interpret the constitutional texts means that they have independent thought to select an interpretation in accord with the spirit of the constitution when they encounter the mutually contradictory texts...it is because the letter of the law does not determine *the spirit of the law* and *the essence of kokka*" (Kita, 9-9). For instance, he finds the contradiction between Article 5, which states the restrictive power of emperor's legislative power, and Article 4, which states the emperor's sovereignty. Of the two, he prioritizes Article 5, according to his metaphor's evolutionary nature of *kokka*. In this way, Kita's constitutional interpretation rejects the literal reading of the constitutional texts. He believes that because a constitution is a historical artifact, which always includes conflicting and contradictory elements from the beginning, the change of its meaning necessarily occurs. His belief in the changing meaning of the constitution reflects the evolutionary nature of *kokka*.

loyalty and filial piety against the emperor. In other words, Kita's historiography articulates that Japanese people had loyalty and filial piety towards their immediate clans instead of the emperor. After the centralized government centered upon the emperor collapsed around the 9th century, powerful clans had alternatively taken over Japan. During such a period of what Kita calls "the noble state" (貴族国家 *kizoku kokka*), each individual's sense of belonging and obligation was only directed toward their immediate clans through loyalty and filial piety. *Chu*, filial piety, is a morality derived from economic dependency; *ko*, loyalty, is another morality derived from a blood relationship.²⁹¹

More importantly, his re-interpretation of Japanese history invented a novel historical narrative, the Meiji emperor as the *eiya* (英雄 the hero) of the Meiji Restoration. He asserts, "the current emperor, the head of democracy realized by the Meiji Revolution, is active as a *hero*. The meaning of the emperor is no longer the patriarchal head who possesses *kokka* in the ancient period,

²⁹¹ Through this re-interpretation of Japanese history, Kita's "*kokka* as an organism" also decouples *chukun* (loyalty to the emperor) from *aikoku* (patriotism), which the conservatives conflate together as *chukun aikoku* (忠君愛国 loyalty to the emperor or patriotism). For *kokka*'s integrity, Kita's "*kokka* as an organism" only demands patriotism. Furthermore, the rejection of *chukun aikoku* also entails the denial of another conservative political ideology, *kunshin ikka* (君臣一家 Japan as a family composed of his subjects and the emperor). This ideological apparatus emphasizes the mono-ethnicity of Japanese *kokka*. However, Kita acknowledged Japan's multi-ethnicity, particularly as a result of Japan annexation of Taiwan in 1895. Therefore, for Kita, only patriotism based on "*kokka* as an organism" is able to unify Japan's multi-ethnic people.

but one of privileged individuals within *kokka*".²⁹² Why is the emperor the hero of the Meiji Restoration? Kita's rhetoric of the Meiji emperor as a hero does not describe an accurate historical fact. However, it aims to invent the emperor's heroic role as the core drive of Japan's organic *progress* to the citizen state. Kuno and Tsurumi, both intellectual historians, call this Kita's rhetoric as *cho-kokka shugi* (ultra-statism), as a way to urge the overarching reform of the contemporary statism of the Meiji government.²⁹³ Kita argues, the Meiji emperor is a never patriarchal head who possesses *kokka* for his own sake but "as a sole and supreme organ, became an active representative who expresses the will of *kokka* for the benefits of Japan until the Meiji constitution was made."²⁹⁴ Therefore, the Meiji emperor is the historical hero for both Japanese *kokka*'s evolution and its discontinuity of the previous patriarchal state.

Given the above reinterpreted methods, I claim that Kita's metaphor of "*kokka* as an organism" accommodates the co-existence of the emperor and a liberal constitution. First, its replacement of "the vulgar *kokutai*" aims to identify Japanese *kokka* as an evolutionary organism. Second, it reinterprets Meiji Japan as constitutional democracy, instead of a constitutional monarchy, in order to articulate its joint governance of the emperor and the people. Third, it reinterprets the dominant conservative Japanese history centered upon the emperor in order to highlight that Japan has reached the status of a citizen state. It presents that Japanese history has been full of rebels against the emperor. Also, it presents that the Meiji emperor was an exceptional

²⁹² Kita, *Kokutaron Oyobi Jyunsei Shakai Shugi*, 14-5.

²⁹³ Kuno Osamu & Tsurumi Shunsuke 久野収&鶴見俊輔 *Gensainihon no Shiso* 現代日本の思想 [Contemporary Japanese Thought] (Tokyo: Iwanami, 1956), 138.

²⁹⁴ Kita, *Kokutaron Oyobi Jyunsei Shakai Shugi*, 14-7.

hero to have made Japan's progress into a citizen state. As a result, his "*kokka* as an organism" features the contemporary Japanese *kokka* as an evolving citizen state, which the emperor and the people jointly govern.

Finally, Kita's "liberal" metaphor of "*kokka* as an organism" legitimize the Meiji constitution. In other word, the legitimacy of the Meiji constitution rests neither on the emperor nor the people, but on "*kokka* as an organism." In this sense, Kita argues that *kokka* has that freedom to create and reform a constitution because the constitution is a "Western cloth," which does not change "her build."²⁹⁵ The personhood of *kokka* exists "outside" of such constitutional restrictions and has absolute freedom to change the constitution. He asserts, thereby, the personhood of *kokka* becomes the ultimate and supreme *de facto* source of the constitution.²⁹⁶

²⁹⁵ Ibid., 9-14; 13-1. Also, this seems to contradict the aforementioned Kita's constitutional hermeneutics on Article 72, in which Kita finds constituent power within the combined democratic organ of the emperor and the people. Here, I suggest understanding this as Kita's absolute *deification* of *kokka*. In other words, while the supreme organ is *given* constituent power only *within* the constitution, *kokka* exists outside of the constitution.

²⁹⁶ Ibid., 9-14. As opposed to the often-misunderstood impression of Kita's "*kokka* as an organism" as totalitarianism, Kita frequently stresses the importance of the freedom of expression and thought. What he rejects is the presumption of natural rights, which argues that individuals have the freedom of thought *prior* to the existence of society. Instead, based on the Aristotelian premise that humans are social animals, Kita argues that the freedom of thought needs to exist for the development of social conscience. Thus, his statism does not envision the suppression of individuals under the total control of *kokka*. This is also clear from his firm rejection of the moral imposition of loyalty and filial piety onto people because "*kokka* cannot invade individuals' conscience" (14-8). Therefore, Kita believes that social conscience, including morality

“*Kokka* as an organism” is deeply related to “*kokka* as a legal person,” which I examine in the next section. It is because “*kokka* as a legal person” shares the same sensitivity to capture the invisible body of *kokka*. In this sense, as I will discuss, “*kokka* as an organism” also serves as a basis of “*kokka* as a legal person.” Nonetheless, when “*kokka* as a legal person” uses “*kokka* as an organism” as its basis, we have to take into account the different implications of “*kokka* as an organism,” which Kato and Kita suggest respectively.

4.4 *Kokka* as a Legal Person (*Hojin* 法人)

4.4.1 Minobe Tatsukichi

Minobe Tatsukichi (1873-1948) had been a leading liberal constitutional scholar as his *tenno kikan setsu* (天皇機関説 the theory of the emperor as an organ of the state) became one of the most dominant constitutional theories until the 1930s. Nevertheless, the political dispute over his *tenno kikan setsu* in 1935 eventually banned his works due to his *lèse-majesté*.²⁹⁷ The foundation of his *tenno kikan setsu* is the metaphor of “*kokka* as a legal person.” With his liberal

and patriotism, developed only through the individual freedom of thought becomes the basis of social evolution

²⁹⁷ See the National Diet University, “4-4 Dispute over Emperor as an Organ of Government Theory” in *Modern Japan in archives: Political history from the opening of the country to postwar*.

<https://www.ndl.go.jp/modern/e/cha4/description04.html>

constitutionalism, his “*kokka* as a legal person” is the clear antithesis of the emperor’s sovereignty in “*kokka* or the emperor.” For the analysis of “*kokka* as a legal person,” this section engages with Minobe’s earlier works, which laid his theoretical groundwork: *Kenpo Kowa* [Lecture on the Constitution] in 1912, *Kenpo Satsuyo* [The Summary of the Constitution] in 1923, and *Nihon Penpo* [The Japanese Constitution] in 1924.

This section argues that Minobe’s “*kokka* as a legal person” is the hybrid product of “liberal” constitutionalism and political conservatism. Thus, my analysis below focuses on both the liberal and conservative aspects of his “*kokka* as a legal person.” On the one hand, his “*kokka* as a legal person” is primarily a liberal thought. The analysis highlights its two liberal features: the antithesis of “*kokka* or the emperor” and Minobe’s legal philosophy, including social psychologism and liberal constitutional interpretation. On the other hand, the analysis focuses on how the primarily “liberal” nature of his “*kokka* as a legal person” also embraces political conservatism based on “*kokka* as an organism.” In the end, his metaphor’s creation of the hybridity of “liberal” constitutionalism and political conservatism becomes the fundamental legitimacy of the Meiji constitution.

First of all, Minobe’s “*kokka* as a legal person” constructs itself as the antithesis of “*kokka* or the emperor.” Especially, it provides a solution to the unavoidable contradiction that “*kokka* or the emperor” insinuates. “*Kokka* or the emperor” assumes the emperor or *kokka* as the subject of ruling and the people as the object of being ruled. This creates an *absurd* situation where the people exist *outside* of *kokka*. Instead, Minobe regards *kokka* both as the subject of ruling and the object of being ruled simultaneously. “*Kokka* or the emperor” also equates two distinctive terms, *shuken* (sovereignty 主権) and *tochiken* (統治権 lit. the right of ruling). Minobe argues that while *shuken* (sovereignty) means the supreme attribute of the state’s rights, *tochiken* (the right of ruling)

indicates one of its substances. The difference is significant since it suggests that while *shuken* is indivisible, *tochiken* (the right of ruling) can be divided and shared by some organs and branches. In doing so, Minobe maintains the supremacy of the emperor, who holds and exercises *tochiken* (the right of ruling) as the supreme “organ” of *kokka*, while keeping *shuken* (sovereignty) as the distinctive rights of *kokka*.

Based on this understanding of *kokka*, Minobe views *kokka* as the joint governance of the emperor and the people. This leads Minobe to redefine the familiar distinction between *seitai* (polity) and *kokutai* in “*kokka* or the emperor.” According to the distinction, *kokutai* indicates the source of sovereignty and *seitai* means the way of exercising sovereignty. For Minobe, there is no difference between the two. It is because *kokka* as the joint governance of the emperor and the people is *both* the source and implementation of sovereignty. As a result, he retains the term *seitai* (polity) –monarchical or democratic– as a means of governance, while giving a new meaning to *kokutai* as a general body of a political community.

According to Minobe, if *kokka* is an autonomous subject, then it is a legal person with a *de fact* body. A legal person is not a biological organism but has its own will and capacity to seek a particular legal objective and benefit. He also insists that *kokka* is not a legal fiction but a *de fact* entity. Thus, similarly with Hozumi’s duality of personhood, Minobe’s idea of a legal person is based on a socio-historical existence of *kokka*. *Kokka*, then, acquires its personhood via the law. Where there is *kokka*, there is the law.

Secondly, Minobe’s “*kokka* as a legal person” is not a mere expression but reflects his legal philosophy: social psychologism and liberal constitutional interpretation. Under the influence of

Georg Jellinek,²⁹⁸ a German legal scholar, Minobe develops a legal philosophy of “social psychologism”²⁹⁹, which considers the law as the normalized social facts approved by people’s social consciousness.³⁰⁰ In this framework, people’s social consciousness is the source of both social facts and values. Thus, people’s social consciousness of the law becomes the ground of both legal norms and the actual effectiveness of the law. In other words, the law cannot exist solely as a norm or as an institution apart from the fact of people’s social approval. If *kokka* is a legal person, such a legality must derive from people’s social psychology. Thus, *kokka* as a legal person is not an abstract legal entity but is an embodiment of people’s social consciousness.

A more significant aspect of his legal philosophy is liberal constitutional interpretation because it suggests the joint governance of the emperor and the people, which is the core of “*kokka* as a legal person.” As a start, his interpretative method rejects both textual originalism as well as idealism. Textual originalism adheres to the founder’s intention expressed in what is literally written in the constitution, which is typically considered *infallible*. Idealism aims to explain the constitutional texts according to a set of abstract principles by means of inferential reasoning. The two approaches are the two sides of the same coin because both mistake the primary aim of

²⁹⁸ There is an interesting twist of Jellinek’s influence on Japanese scholars given that Uesugi also studied under him.

²⁹⁹ While Minobe merges the law and people’s social psychologism, Jellinek acknowledges the importance of the two for the study of the state with a methodological difference. The latter emphasizes “the necessity of a complete methodological break between the study of the state in its social aspect (historical and political) and the study of the state as a juristic phenomenon.” Frank O. Miller, *Minobe Tatsukichi: Interpreter of Constitutionalism in Japan*. (Berkeley: University of California Press, 1965), 11.

³⁰⁰ Nagao, *Nihon Kenpou Shisoshi*, 144-145.

constitutional studies, which is to discover what the law is rather explaining what is written. In other words, the original intention of the founder and the strict logical reasoning are only two of various means to the end of the discovery of rich legal sources.

Minobe's liberal constitutional interpretation does not limit the sources of the constitutional interpretation to a written constitution but includes history, precedents, customs, and comparison with foreign laws. The criterion of these legal sources is based on the beneficiality for humans who make it. He argues, "the law is not the law of nature, but is made by men. As a whole, what humans make must serve useful to them. All the human artifacts are made since they give some values to them; one cannot understand the essence of the artifacts without considering such values attached to the benefit of humans."³⁰¹ This benefit is not just utilitarian value. It includes religious, emotional, ethical and aesthetical values. Thus, the inherent contingency of legal interpretation and humans' social life informs Minobe's liberal constitutional interpretation.

In this context, Minobe's liberal interpretative method advocates the joint governance of the emperor and the people, as opposed to Uesugi's emperor's sovereignty based on the combined method of originalism and idealism. As discussed earlier, in their *kokutai* debates in 1912, Uesugi calls Minobe's argument a heresy because it contradicts Article 1 of the Meiji constitution. The key term is "the emperor's reign." Uesugi's combined method adheres to the literal meaning of Article 1 and interpretation must be strictly deducible from this absolute principle. Thus, Uesugi argues that "the emperor's reign" exclusively means the emperor's external sovereignty. In contrast, Minobe's interpretation stresses that no one can deprive people of their rights of

³⁰¹ Minobe Tatsukichi 美濃部達吉 *Ho no Honshitsu 法の本質 [The Essence of Law]* (Tokyo: Nihon Hyoronsha, 1935), 56.

interpretation and the substance of the constitution changes without changing its letters. As a result, Minobe suggests interpreting “the emperor’s reign” as the joint governance of the emperor and the people.

The key of Minobe’s interpretation of “the emperor’s reign” as the joint governance lies in how he reads the political adage of *tenka ha hitori no tenka ni arazu, tenka no tenka nari* (the realm is not the realm of one person; it is that of the multitude). On the one hand, as discussed already, Uesugi’s reading deprives the emperor of his private characteristics at all, making him a “selfless” public figure. On the contrary, Minobe’s reading attributes a secular and virtuous characteristic to the emperor. Minobe argues, if “the emperor’s reign” is interpreted as the sole imperial sovereignty, then, it necessarily suggests that the emperor holds absolute power for his own sake. If so, that is against Japan’s long historical tradition. In this context Minobe turns Uesugi’s selfless divine emperor into the secular virtuous one. The emperor is not a selfless theological figure but a secular man of supreme morality. In other words, the emperor has reigned Japan in his joint governance with the people by preventing himself from holding absolute power. This highlights Minobe’s idea of liberal constitutionalism as the self-restraining apparatus of *kokka*.

Nonetheless, despite its liberal implications, Minobe’s “*kokka* as a legal person” also embraces political conservatism based on the analogical metaphor of “*kokka* as an organism.” According to him, *kokka* legally recognized as a person reifies people’s social consciousness and facilitates their beneficial co-existence. Minobe identifies this socio-psychological aspect of *kokka* with an organic metaphor. He argues, “although calling *kokka* a legal person originated in the West, the idea that *kokka* has its own will and vitality has existed from the ancient time... *the organic*

theory of the state claims the same thing in a different language.”³⁰² Furthermore, as a response to Uesugi’s accusation of Minobe’s democratic *kokutai*, Minobe uses the organic metaphor: “when I say that *kokka* is a *kokutai*, it is the metaphor in which *kokka* is like an individual, the emperor is like a brain, the officials are like arms, legs, ears and eyes, and the people are like the cells of the human body...the people are not *kokka* as cells are not human per se.”³⁰³ Thereby, “*kokka* as a legal person” and “*kokka* as an organism” become almost identical.

His identification of the two metaphors gives him rhetorical advantages and disadvantages. In terms of the advantages, it gives a more embodied visualization of *kokka*. It also gives a more organic connection between the emperor and the people. Minobe argues that in “*kokka* or the emperor”, the connection between the emperor and the people is lost because the people are placed outside of *kokka*.³⁰⁴ The organic theory of the state renders his “*kokka* as a legal person” a more organic integrity and explicit connections among every organ.

At the same time, “*kokka* as a legal person” as an originally liberal thought suffers from the conservative political ideology of the pre-established social hierarchy of “*kokka* as an organism.” In other words, his identification between the two creates a hybridity of the opposing

³⁰² The emphasis is mine. Minobe Tatsukichi 美濃部達吉, “Kokka oyobi Seitairon 国家及び政体論 [The Theory on the State and the Polity]” (1912) in *Saikin Kenporon 最近憲法論 [The Recent Constitutional Theory]*, ed. Hoshijima Jiro 星島二郎 (Tokyo: Misuzu, 1989), 404. (The emphasis is mine)

³⁰³ Minobe Tatsukichi 美濃部達吉, “Uesugi-hakase no ‘Kokutai ni kansuru Isetsu’ wo yomu [Commentaries on Dr. Uesugi’s ‘The Heresy of kokutai’]” (1912) in *Saikin Kenporon 最近憲法論 [The Recent Constitutional Theory]*, ed. Hoshijima Jiro 星島二郎 (Tokyo: Misuzu, 1989), 50.

³⁰⁴ Minobe, “Kokka oyobi Seitairon,” 453.

political ideologies. Additionally, in this context, Minobe even appeals to Hozumi's political conservatism. By incorporating Hozumi's rhetorical identification between the will of *kokka* and the will of the emperor, Minobe argues that *kokka*'s source of activities is exclusively rooted in the emperor as its supreme organ.

As a whole, I assert that Minobe's "*kokka* as a legal person" generates the hybridity of "liberal" constitutionalism and political conservatism. First, it develops itself as the antithesis of "*kokka* or the emperor." Its liberal feature rests on its understanding of *kokka* as both the subject and object of governance, which leads to the joint governance of the emperor and the people. Second, Minobe's legal philosophy, including social psychologism and liberal constitutional interpretation, informs the liberal constitutionalism of "*kokka* as a legal person." His social psychologism articulates the law's existence as the embodiment of the people. His liberal constitutional interpretation allows him to interpret "the emperor's reign" as the joint governance. On the contrary, he identifies "*kokka* as a legal person" with the conservative kids of "*kokka* as an organism." This justifies Japan's pre-established social hierarchy centered upon the emperor. As a result, "*kokka* as a legal person" embodies a complex mixture of two opposing elements.

Finally, Minobe's "*kokka* as a legal person" becomes the legitimacy of the Meiji constitution. On the one hand, as a fervent supporter of human rights and modern liberal constitutionalism, Minobe aims to make the Meiji constitution join the club of modern Anglo-Saxon constitutions. On the other hand, Minobe acknowledges the emperor's supreme role in *kokka* as the political and historical fundamental of the Meiji constitution. Thus, his "*kokka* as legal person" harmoniously unified these two opposing elements. At the same time, it also shows the historical limitation of liberal constitutionalism in Japan at the beginning of the 20th century.

4.4.2 Ariga Nagao

Ariga Nagao (1860-1921), an early legal scholar in the Meiji era, studied in Germany under Lorenz von Stein, who also influenced Ito Hirobumi, one of the primary drafters of the Meiji constitution. This section analyses his *kokka gaku* [The Study of the State], which was published a month earlier than the enactment of the Meiji constitution on Feb 11th, 1889. The work was the crystallization of his study as a primary member of the scholars who contributed to making the constitution. My analysis below demonstrates that Ariga's "*kokka* as a legal person" is composed of three elements: the extension of an organism, *kokka*'s progressive history, and the emperor's public characteristic. Accordingly, I argue that with the three components, his "*kokka* as a legal person" constructs the harmony between the progressive nature of the citizen state and the restorative nature of the emperor's reign within the Meiji constitution. In the end, the metaphor's compatible rhetoric legitimizes the existence of the Meiji constitution.

First and foremost, Ariga's "*kokka* as a legal person" exists as the extension of "an organism." As an essence, Ariga claims that *kokka* has *jintai* (人体 a human body) *kokutai*, which indicates that *kokka* has its integral body with functionally differentiated organs. Ariga's definition of *kokka* starts with the people. He argues, "there is *kokka* where there are the people, and vice versa. Thus, *kokka* and the people are the same."³⁰⁵ However, the people only don't constitute *kokka* because it is formless without the law. Therefore, the law gives the discernable "bodily configuration" and legal personhood to *kokka*. In this way, Ariga's "*kokka* as a legal person" is

³⁰⁵ Ariga Nagao 有賀長雄, *Kokka-gaku* 國家学 [The Study of the State] (Tokyo: Makinoshobo, 1889), 1.

neither a mere metaphor nor an external appearance. Instead, *kokka*'s legal personhood indicates *kokka*'s integral body, will, and series of pulses.

The legal personhood of *kokka* acquires the three essences as “a person”, *shinshiki* (神識 lit. divine intelligence), the will, and the action, each of which is attributed to the emperor, the legislation, and the executive, respectively. The legislation as the will makes the law derived from the people's consciousness, the executive as the action implements the law according to external circumstances, and the emperor as the divine intelligence both harmonizes the law's vacillating wills and interests and finalize the law. Compared with the modern principle of the separation of powers, Ariga attributes the similar role of the constitutional court to the emperor along with his political authority. The Meiji constitution does not establish the judicial review system due to the strong political power of the emperor. Even Minobe, as one of the most liberal constitutional scholars, does not support the judicial review system. In this context, Ariga insists, the separation of powers guarantees the freedom of people but does not create harmony. The separation of powers only works in logic, but *kokka* is an organism made of multiple wills and interests. In this sense, the emperor's role is the sole mediator of contested wills and interests. Without such a mediator or intelligence, the balance of the entire body would be lost.

Second, his “*kokka* as a legal person” highlights *kokka*'s progressive history and nature. It's historical view is similar to Kita's “*kokka* as an organism.” Japan has historically evolved from *ketsuzoku* (the bloodline 血族), through *touzoku* (the same clan 等族), to *komin* (the citizen 公民) *kokka*. In the first stage, “the bloodline” *kokka* controlled the people under the clan and hereditary title system (*shisei seido* 氏姓制度) with the single will of the emperor. In the second stage of “the same clan” *kokka*, some clans acquired military power and governed the country. Therefore, the will of the governing clans became the will of *kokka*. Lastly, in “the citizen” *kokka*, the will of the

people becomes the will of *kokka*. This stage finally attains the political freedom of the people, in which *kokka*'s will is the reflection of each individual's will.

Ariga's emphasis on *kokka*'s progressive nature also appears in his unique distinction between *kokka* and society. It is because although society is the foundation of *kokka*, society and *kokka* operate under each different force and motive. The basic difference between the two is in that the base of society is inequality among the people and that of *kokka* is equality. This leads to the different conceptual understanding of freedom in each entity. While freedom in society (socio-economic freedom) is individuals' free mobility in socio-economic structure, freedom in *kokka* (political freedom) lies in the governing structure, which equally reflect each individual's free will. Thus, without the legal equality established in *kokka*, there is no *political* freedom. Despite the differences, society and *kokka* are inseparable because the legal entity of *kokka* always emerges from the historical entity of society. Therefore, for instance, political oppression in *kokka* derives from the social structure of inequality. However, simultaneously, the nature of *kokka* always seeks equality and freedom. Accordingly, Ariga's view of *kokka*'s predisposition towards political freedom reflects his legal historicism. Under the influence of von Stein, Ariga's legal historicism argues that, instead of logic, the historical changes of society should determine the characteristics of the law. Therefore, when it comes to Meiji Japan as a citizen state, a constitution as the supreme way of achieving political freedom must emerge as the law of *kokka*.

Third, Ariga's "*kokka* as a legal person" includes the *retroism* of the emperor's public characteristic as its essence. Ariga attributes the root of the political equality of the citizen state not only to *kokka*'s evolution but also to the public characteristic of the emperor's reign *already* existent in the ancient time. He seeks the proof of the latter in the ancient Japanese term, *shirasu*

(知らず lit. to be known), as opposed to *ushihaku* (領く).³⁰⁶ While *ushihaku* signifies someone's private possession, *shirasu* signifies a shared governance. Thus, the emperor's reign as *shirasu* was a public service for the people. Based on this, Ariga asserts that there was a clear distinction between the emperor and *kokka* from the ancient time in the sense that the emperor did not personally possess *kokka*.

Ariga's restorative rhetoric find the equivalence of *shirasu* in *tochiken* (lit. the rights of ruling) in the Meiji constitution. He interprets *tochiken* as the integration of both sovereignty (*shuken*) and the governing rights (*shihaiken*).³⁰⁷ Here, sovereignty refers to the supreme authority and the governing rights refers to the actual political/ruling power. In the ancient Japan, the emperor unified the two as one (*shirasu*). However, in the course of Japanese history, particularly in the second stage of "the same clan" *kokka*, sovereignty and the governing rights became separated in the way that the emperor delegated the latter to the ruling clans. Upon the arrival of the citizen state in the Meiji era, the two again becomes integrated as *tochiken*. As a result, Ariga identifies *shirasu*, an ancient Japanese term, with *tochiken* in the Meiji constitution.

Altogether, the above three elements in Ariga's "kokka as a legal person" make the emperor's sovereignty compatible with a constitutional governance. First, as the extension of "an organism," his metaphor articulates the supreme role of the emperor as the mediator of other governmental organs within a constitutional governance. Second, the progressive nature of "kokka

³⁰⁶ Ariga Nagao 有賀長雄, *Kokuho-gaku* 國法学 [The Study of the State Law] (Tokyo: Waseda Sosho, 1901), 196-9.

³⁰⁷ Ariga also uses German terms to express sovereignty (*Souveränität*) and governing law (*Regierungsrecht*).

as a legal person” necessitates the emergence of a modern constitution as the law of a civil state. Lastly, the metaphor’s inclusion of the emperor’s public governance of *shirasu* aligns itself with a modern liberal constitutionalism.

In the end, Ariga’s “*kokka* as a legal person” firmly legitimizes the Meiji constitution by appealing to both the progressive “liberal” characteristic of the citizen state and the “conservative” political idiom of *shirasu*. In other words, Ariga’s metaphor’s legitimizing rhetoric was to merge each different “temporary” of *kokka* (progressive) and the emperor (backward) within the Meiji constitution.

4.5 Kokka as the *Unwritten* Constitution

My analysis above has shown that, at the beginning of the 20th century in Japan, *kokka* became an important intellectual topic as the *reconciling* rhetoric of the tension between constitutional governance in form and the political history of the emperor’s unbroken reign in substance. As a result, the idea of *kokka* became the legitimacy of the Meiji constitution as the “unwritten” foundation of the written constitution. As a recapitulation, this section offers a comparative perspective within each school of the metaphors as well as the implications of *kokka* as the “unwritten” constitution.

4.5.1 A Comparative Map

First, two conservative constitutional scholars, Hozumi Yakka and Uesugi Shinkichi, employ “*kokka* or the emperor” as their core legal and political premise. Hozumi’s “*kokka* or the

emperor” suggests the *kokka*’s legal ontology is solely based on the socio-historical existence of the emperor. At the same time, his “*kokka* or the emperor” articulates the essential role of the people’s conviction in the emperor’s sovereignty in order to solidify the integration of the people and the emperor. In this way, the metaphor makes the emperor’s sovereignty compatible with the “democratic” form of constitutional governance.

Uesugi modifies Hozumi’s “*kokka* or the emperor” as a more robust political principle by elevating the metaphor as a “theological” orthodoxy. Uesugi does so by eliminating the unstable “democratic” element of people’s conviction and refuting any “heresies” of the emperor’s sovereignty. Also, Uesugi’s “*kokka* or the emperor” adds a moral supremacy of the emperor so that it can distinguish itself from an absolute monarchy. In the end, his metaphor claims itself to include constitutional governance by being different from an absolute monarchy while offsetting any democratic nuance of modern Western constitutionalism.

Second, Kato Hiroyuki and Kita Ikki both utilize the same metaphor, “*kokka* as an organism.” Nevertheless, each metaphor is full of radically different substances and political purposes. On the one hand, Kato’s “*kokka* as an organism” is “conservative.” Built on the absolute law of the evolution of organisms, the metaphor means to be a rigorous science of *kokka* by eliminating the uncertainty of studying human affairs. This produces two significant meanings of the metaphor. One is that *kokka* must be viewed as an organism analogously to a human body. The other is that *kokka* must be viewed as an evolutionary organism. In the end, while the metaphor’s human analogy of *kokka* incorporates the conservative Confucian ethics of the pre-established social hierarchy, it also includes the progressive/evolutionary nature of *kokka*. In this way, Kato’s “*kokka* as an organism” neutralizes the conservative aspect of a Japanese-Confucian social hierarchy within the progressive aspect of constitutional governance and

On the other hand, Kita's same metaphor leans towards "liberal" in the sense it completely rejects the human body analogy of *kokka*. Instead, his "kokka as an organism" emphasizes kokka's whole evolutionary nature towards social equality similarly to the German counterpart in the mid 19th century. Besides, his metaphor suggests reinterpreting the origin, history, and legitimacy of the Meiji Japan. With the reinterpetative method, his "kokka as an organism" accommodates the existence of the emperor not as a divine external ruler but as a "liberal" hero of Japan's development for the citizen state.

Third, Minobe Tatsukichi's and Ariga Nagao's "kokka as a legal person" is not a mere abstract legal expression, rather the articulation of the specific body of *kokka*. On the one hand, Minobe's "kokka as a legal person" is an antithesis to "kokka or the emperor." By identifying the legal personhood of *kokka* with the embodiment of people's social consciousness, his liberal "kokka as a legal person" argues for the joint governance of the people and the emperor. However, his "kokka as a legal person" also embraces the political conservatives of an established social hierarchy centered upon the emperor by identifying itself with "kokka as an organism." In this way, his "kokka as a legal person" generates the hybridity of liberal constitutional and political conservatism.

Ariga's "kokka as a legal person" suggests that *kokka* has an integrated body with a will and intellect. It features the progressive nature of *kokka*, which aims to attain political freedom among citizens. What it distinguishes from Minobe's same metaphor is that it identifies itself as the extension of "kokka as an organism." The difference is subtle but noticeable. Instead of identifying it with an organism (Minobe), his "kokka as a legal person" as the extension of an organism highlights its liberal nature based on the distinction between *kokka* (political freedom and inequality) and society (political unfreedom and inequality). At the same time, the metaphor

also includes the ancient Japanese word, *shirasu*, as the substantial political ideology. In this way, Ariga's metaphor harmonizes the different "temporalities" of *kokka* (progressive) and the emperor (backward) within the Meiji constitution.

4.5.2 Kokka as the Unwritten Constitution

What matters for the analysis of how Japan's constitution is legitimized during this period is not the differences in how these scholars used the metaphors of *kokka*, but their common motive of reconciling the opposing elements of constitutional governance and political-historical ideology of the emperor's external reign. These scholars' use of the *kokka* metaphors as the foundation of their constitutional legitimacy discourse shows the following features: 1) *kokka*'s dual-interpretative nature between the constitutional governance in form and the political ideology of the emperor's unbroken reign in substance; 2) *kokka* as the creator of the constitution, not vice versa; 3) the constitution as the method of inscribing an existing social order; 4) *kokka*'s secularism.

1) *kokka*'s dual-interpretative nature

The hybridity of the constitutional governance in form and the political ideology of the emperor's unbroken reign in substance necessarily entails a vacillating dual-interpretative nature.³⁰⁸ As a matter of course, since there is no clear-cut boundary between the two, the three metaphors exist within the *spectrum* of this dual-interpretative nature.

³⁰⁸ Kuno and Tsurumi's Buddhist metaphor of *kenkyo* (exoteric, 顯教 lit. open teachings) and *mikkyo* (esoteric, 密教 lit. secret teachings) well describes this dual-interpretative nature of the Meiji *kokka*. The former is to interpret the emperor as both absolute political and religious-authoritative figure, and the

For instance, “*kokka* or the emperor” fits a constitutional governance within the absolute principle of the emperor’s sovereignty. In this way, although the emperor’s political power always *exceeds* the constitution, his own benevolence and care for the people works as the self-regulative method of constitutionalism. On the contrary, “*kokka* as a legal person” rather presents itself in the *middle* between the historicism of the emperor and the legalism of a modern constitutional governance. Additionally, “*kokka* as an organism” demonstrates different positionalities between Kita and Kato. While Kita’s liberal metaphor is more on the side of the constitutional governance, Kato’s conservative metaphor leans towards the side of the emperor’s sovereignty.

2) *kokka* as the creator of the constitution, not vice versa

What all the metaphors commonly *refuse* is the idea that the people create *kokka* and a constitution. Following Ariga’s definition, while in *minshu seitai* (democratic polity based on social contract) there is no *kokka* without a constitution, in *kunshu seitai* (monarchical polity), *kokka* exists *prior* to the constitution. Therefore, in all the metaphors, *kokka* exists as the *creator* of the constitution, rather than vice versa. Even Minobe, a leading “liberal” constitutional scholar, endorses this view. On the one hand, he argues that once a constitution is established, it becomes the absolute rule of *kokka*. On the other hand, he argues that only *kokka*’s internal legal reform leads the establishment of the first constitution.³⁰⁹

3) the constitution as the method of inscribing an existing social order

latter is to interpret the emperor within a complex bureaucratic system with a definite political power. The audience of *kenkyo* is the general public and that of *mikyō* is the elite officials. Kuno & Tsurumi, *Gensainihon no Shiso*.

³⁰⁹ Minobe, *Kenpo Satsuyo*, 89.

When *kokka* is the creator of a constitution, the constitution becomes the method of inscribing an existing social order. For the theorists, the Meiji constitution serves to articulate the *already* existing socio-political order, rather than creating a new order. Thus, all the three metaphors suggest that the Meiji constitution inscribes and *enshrines* Japan's historical origin and order in a written document.

4) *kokka*'s secularism

All the metaphors eventually assume *kokka* as a secular entity because of the particular existence of the emperor. It is apparent when compared with the modern constitution based on social contract and natural rights. The latter type of the constitution pursues transcendental ideals to become actualized in the secular government. On the contrary, the Meiji constitution is not based on such ideals but only on Japan's particular historicism. Even Kita and Ariga's emphasis on *kokka*'s evolution towards social equality and freedom suffers from the existence of the emperor. The emperor only represents the *particular* interest of the Japanese people rather than universal ideals. Borrowing the theological term of Maruyama Masao from the previous chapter, the Meiji constitution does not embrace the spirit of transcendent *purity*, which could endure within the impurity of *kokka*'s secular flesh body.

All in all, the above four features of *kokka* have been the *unwritten* foundation and legitimacy of the written Meiji constitution at the beginning of the 20th century. The four features together made *kokka* as a dominant topic among these leading Japanese intellectuals and offered them a way to reconcile the inherent tension of the Meiji constitution, constitutional governance in form and political ideology of the emperor's reign in substance.

4.6 Chapter Conclusion: Reconciliation

The idea of *kokka* served as a primary topic, particularly in the form of the metaphors, in Japan's legal-political discourse from the promulgation of the Meiji constitution and towards the end of the Taisho era. The abundance of the discourse of *kokka* was a particular intellectual phenomenon during this historical period. As this chapter has demonstrated, the discourse of *kokka* had a common purpose of reconciling the internal tension within the Meiji constitution.

The development of the metaphors of *kokka* at the beginning of the 20th century, occupied a specific discursive space in the history of constitutional legitimacy in Japan. I call this phase reconciliation. In this reconciliation phase, the leading scholars found significant common topics, one of which was *kokka*, to reconcile the existing tension of the Meiji constitution, a constitutional governance in form and the ideological substance of political conservatism. This phase also features the development of the diverse scholarly opinions on the common topic.

The abundant discourse of *kokka* was nurtured in the relatively liberal social atmosphere of the Taisho era. However, towards the end of the Taisho era, such an atmosphere was disappearing. In 1925, *Chian Iji Hō* (The Public Security Preservation Law), which aimed to suppress socialism and communism gave a critical blow to the freedom of academic discourse. A decade later, in 1935, *Kokutai Meichō Seimei* (The Declaration of Clear Evidence of the National Polity) completely shut down any “heretical” discourse on *kokutai*. The government's series of repressive measurement against the freedom of thought aimed to establish “*kokka* or the emperor” as the sacred principle.

After the 1930s, Japan's aggressive imperialism became strengthened along with the government's censorship of the *kokutai* discourse. Eventually, Japan's participation in World War II brought its complete defeat and the need of another legal and political transformation. The core

of this transformation was the adoption of liberal democracy and the new postwar constitution (the Constitution of Japan) in 1946. However, the postwar “democratic” transition also confronted the divide of constitutional legitimacy between liberal and conservative scholars because of the remaining emperor system as the apolitical symbol of Japanese people. Thus, the last chapter will examine this legitimacy-divide in the immediate postwar period. In the end, it will demonstrate that this divide has overshadowed the contemporary dispute of constitutional revision.

5.0 (Dis-) Continuity of Tradition: The Rhetorical Invention of Constitutional Legitimacy in Postwar Japan

The rhetorical issue of constitutional legitimacy—how a constitution can convincingly lay claim to its fundamental legitimacy within itself—becomes most apparent when a constitution radically changes its characteristics. This was the case in Japan’s constitutional transition from the Meiji Constitution (1889-1946) to the Constitution of Japan (1946-). In such a transition, the invention of a new legitimacy in place of the previous legitimacy becomes a significant intellectual issue. Postwar Japan’s particular conundrum rested on the legal-logical impossibility of transforming the “theocratic”³¹⁰ constitution with the emperor’s sovereignty (the Meiji constitution) into the democratic constitution with popular sovereignty (the Constitution of Japan) combined with the symbolic emperor system (the emperor being an *apolitical* symbol of Japanese people).

³¹⁰ It highlights the particular way in which the Meiji constitution operated under the political theology of the emperor’s unbroken line. *Shinken Tennosei* 神権天皇制 (theocratic emperor system) is also a commonly accepted term. For instance, see 角田 猛之 Tsunoda Takeshi, “Shinken Tennosei to Shocho Tennosei niokeru ‘Seitōteki Sanzetsusei to Ishikiteki Renzokusei’ - Houshakaigaku, Houbunkaron no Shiza kara” 神権天皇制と象徴天皇制における‘制度的断絶性と意識的連続性’ - 法社会学、法文化論の視座から [‘The Institutional Discontinuity and the Conscious Continuity’ Between the Theocratic Emperor System and the Symbolic Emperor System - From the Perspective of Legal Sociology and Legal Culture], *Kansai Daigaku Hougaku Ronshu* 関西大学法学論集 56, no. 2-3 (2006).

In this chapter, I ask how four well-known Japan's postwar intellectuals responded to this conundrum by inventing new constitutional legitimacies in the form of rhetorical tropes. Tropes are figurative languages, which twist and turn words, including metaphors, analogies, and allegories. In the previous chapter, I defined rhetoric as the impersonal capacity of making legitimacy. Together, this section considers rhetorical tropes as a means to create a new legitimacy by turning and twisting the existing previous legitimacy.³¹¹ With a focus on tropes, I illustrate that the leading intellectuals, both on the liberal and the conservative sides, confronted the task of *turning* the previous legitimacy in distinctive ways. On the one hand, the conservatives recognized “the wartime *kokutai*” as a provisional deviancy from the genuine Japanese tradition and restored the latter, which is originally peaceful. On the other hand, the liberals completely abandoned Japanese tradition and created a new legitimacy based on Western liberal democracy.

The leading intellectuals whom this chapter examines are those who actively engaged with the issue of legitimacy in the immediate postwar period: for the conservatives, Tsuda Sokichi and Watsuji Tetsuro; for the liberals, Miyazawa Toshiyoshi and Masayama Maruo. The primary focus of my analysis is on their tropes, including Miyazawa's *Hachigatsu Kakumei* (August Revolution), Maruyama's *Bunmei Seishin no Jyūniku* (Incarnation of the Spirit of Civilization), Tsuda's *Tenno no Seishinteki Ken-i* (The Emperor's Spiritual Authority), and Watsuji's *Kokumin Zentaisei no Hyogensha toshiten Tenno* (The Emperor as the Expression of the Whole Nation).

³¹¹ Similarly, Keeling regards many intellectual “turns” including linguistic turn, deconstructive turn, and affective turn as “tropes.” Diane Marie Keeling, “Of Turning and Tropes,” *The Review of Communication* 16, no. 4 (2016): 317-333. DOI: 10.1080/15358593.2016.1215627

My analysis of these tropes focuses on the way in which each intellectual discovered these tropes as a new legitimacy in place of the myth of *kokutai*. The analysis pays attention to the new legitimacy divide between the conservatives and the liberals. The tropes of the conservatives represent their discovery of alternative Japanese traditions that exclude the *kokutai* myth. The tropes of the liberals show their attempt at incorporating the new democratic values that existed outside of Japan. Additionally, my analysis focuses on differences within each trope within each circle so that it does not lose a sensitivity to the nuance of each leading intellectual's distinctive response to the historical crisis.

Overall, this chapter makes two arguments. The first is that the building of a new constitutional legitimacy in the immediate postwar period was sharply divided between the conservative and the liberals, in terms of the continuity (conservatives) or discontinuity (the liberals) of tradition. The second is that this postwar divide of constitutional legitimacy prefigures the contemporary divide over constitutional revision. The second argument is built on Oguma Eiji's historical view of the emergence of the contemporary divide. Oguma argues that the long-term dispute over constitutional revision between the pro-revision (*kaiken*) conservative and the anti-revision (*goken*) liberal did not appear until the mid-1950s due to changes in the international political climate during the Cold War.³¹² This is because in the immediate postwar period both sides of the political spectrum favorably accepted the postwar constitution through each ideological device: the symbolic emperor system for the conservative, and democratic

³¹² Oguma Eiji 小熊英二, <Minshu> to <Aikoku> — *Sengo Nihon no Nashonarizumu to Koukyousei* <民主>と<愛国>—戦後日本のナショナリズムと公共性 [<Minshu <democracy> and <Aikoku (patriotism)> — Postwar Japan's Nationalism and Publicness] (Tokyo: Shinyousha, 2002).

constitutionalism for the liberal. However, I argue that the fundamental issue of legitimacy was not solved and instead gradually developed into the later-born dispute. On the one hand, conservatives have claimed the invalidity of the postwar constitution because The Supreme Commander for the Allied Powers (the SCAP) “imposed” it. Consequently, they have argued for constitutional revision with an emphasis on the allegedly Japanese traditional value of collectivism.³¹³ On the other hand, liberals have argued for the protection of the constitution since it has functioned as the guardian of postwar Japanese democracy.

Towards the end of this chapter, I suggest that Japan today has not yet reached a consensus on constitutional legitimacy, lacking the foundation of constitutional interpretative activities. Such activities are the essence of a constitutional society because the meaning of the constitution must change according to changing socio-political circumstances. This practice needs a collective faith in the constitutional text and its legitimacy.³¹⁴ The prolonged legitimacy -divide over the postwar constitution between the conservatives and the liberals demonstrates the substantial lack of such a faith.

In the following sections, I provide the historical background of the postwar constitution and a survey of literature and explain the selection of the texts and the method of analysis. Then, I conduct a close textual analysis with a focus on key tropes that appeared in each intellectual’s work on constitutional legitimacy. After the analysis, the chapter offers a comparative overview of the tropes and articulate each trope’s intellectual positionalities. Lastly, it argues that the

³¹³ Lawrence Repeta, Japan’s Democracy at Risk – The LDP’s Ten Most Dangerous Proposals for Constitutional Change, *The Asia-Pacific Journal* 11, no.28 (2013).

³¹⁴ Francis J. Mootz, “Faithful Hermeneutics,” *Michigan State Law Review*, 2009, 364.

immediate postwar divide on constitutional legitimacy has overshadowed the contemporary divide over constitutional revision.

5.1 The Postwar Exigency of Rhetorical Invention: A Historical Context

Postwar Japan faced the national exigency of its transition from the emperor's theocratic (Meiji) constitution to the democratic (postwar) constitution. The peculiarity of the legal form of the transition marks this exigency. Despite its completely new articles, the Constitution of Japan was officially ratified as a revision to the Meiji constitution in 1946. Based on the Constitution of Prussia, the Meiji constitution adopted a constitutional monarchy bestowing the monopolized comprehensive power, including executive, legislative, and judicial power, to the divine emperor.³¹⁵ This monopolized power was backed up by a distinctive political ideology of the emperor as living God or *manifest deity*. Article 3 describes the emperor's absolute-theocratic power, which states that the emperor himself did not take any responsibility for the state's political and legal action.³¹⁶ Thus, in making the new constitution, an urgent question was how to make sense of the transition from the emperor's sovereignty to popular sovereignty.

³¹⁵ Article 4 of The Constitution of the Empire of Japan states "The Emperor is the head of the Empire, combining in Himself the rights of sovereignty, and exercises them, according to the provisions of the present Constitution."

³¹⁶ Article 3 states "The Emperor is sacred and inviolable." "The Constitution of the Empire of Japan | Birth of the Constitution of Japan," 国立国会図書館—National Diet Library, accessed May 17, 2019, <https://www.ndl.go.jp/constitution/e/etc/c02.html>.

After its defeat in the Second World War, postwar Japan ratified the new postwar constitution under the strong guidance of the SCAP. The SCAP aimed to incorporate strong liberal principles and pacifism such as popular sovereignty, fundamental human rights, freedom of speech and religion, and the abandonment of military force. Nevertheless, the Japanese government's draft of a new constitution—a simple revision of the Meiji Constitution—retained the Emperor as the sovereign power and Japan as an imperial monarchy. Gen. MacArthur, disappointed by this revision, launched his constitutional project in February 1946 with what is known as MacArthur's Three Basic Points: the emperor as the head of the state, the renouncement of the military, and the abolishment of the nobility class.³¹⁷

Of the three points, Gen. MacArthur's proposal of a constitutional monarchy restricted by the basic will of the people was a compromising solution to the thorniest rhetorical problem due

³¹⁷ The three basic provisions are also known as Macarthur notes: "I. Emperor is at the head of the state. His succession is dynastic. His duties and powers will be exercised in accordance with the Constitution and responsive to the basic will of the people as provided therein. II. War as a sovereign right of the nation is abolished. Japan renounces it as an instrumentality for settling its disputes and even for preserving its own security. It relies upon the higher ideals which are now stirring the world for its defence and its protection. No Japanese Army, Navy, or Air Force will ever be authorized, and no rights of belligerency will ever be conferred upon anti-Japanese force. III. The feudal system of Japan will cease/ No rights of peerage except those of the Imperial family will extend beyond the lives of those now existent. No patent of nobility will from this time forth embody within itself any National or Civic power of government." "MacArthur Notes (MacArthur's Three Basic Points), February 3, 1946 | Birth of the Constitution of Japan," 国立国会図書館—National Diet Library, accessed May 17, 2019, <https://www.ndl.go.jp/constitution/e/shiryo/03/072shoshi.html>.

to the divided opinions regarding the war guilt of the emperor. While the Japanese conservatives believed the emperor should be immune from the war responsibility due to his passive role and status in the war-time politics, the liberals thought he should hold political and moral responsibility for Japanese imperialism. A rhetorical scholar, Takeshi Suzuki articulates the rhetorical aspect of this divide, in which the former appears as a comic framework and the latter as a tragic one.³¹⁸ While the comic framework makes the emperor a weak agency at the mercy of an overarching political structure, the tragic framework places the emperor as an oppressor who should be sacrificed for the salvation of a victim or the ordinary people in Japan. Within the divided rhetorical paradigm, the liberals regarded the punishment of the emperor as a sacrificial offering for the nation's salvation. On the contrary, the conservatives considered him the victim of the war. The SCAP needed to compromise. Additionally, outside of the internally divided opinions, the Allies firmly held anti-emperor sentiment. Therefore, a significant rhetorical task of Gen. MacArthur was to accommodate the opposing emotions towards the emperor's war guilt.³¹⁹

As a result, Gen. MacArthur decided to keep the emperor as the head of the state as an apolitical symbol, according to which Article 1 of the postwar constitution states the emperor as “the [apolitical] symbol of both the State and the unity of the people.” In his memoir, he says, “I believed that if [the] emperor were indicted, and perhaps hanged, as a war criminal, military government would have to be instituted throughout all Japan, and guerrilla warfare would probably

³¹⁸ Takeshi Suzuki, *The Rhetoric of Emperor Hirohito: Continuity and Rupture in Japan's Dramas of Modernity* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2017), 117-18.

³¹⁹ Ibid.

break out.”³²⁰ Thus, MacArthur foresaw the significance of the emperor’s role in the rhetorical construction of the stable socio-political order and unity of postwar Japan.

While it seems that the new democratic constitution with the symbolic emperor system created an apparent consensus between the conservatives and the liberals, this seeming consensus on the constitution hid a radical disagreement on the foundation of legitimacy. On the one hand, the new constitution accommodated both the liberals’ demand for liberal democracy and the conservatives’ demand for the maintenance of the emperor system. Nonetheless, there was no agreement on legitimacy. While the conservatives grounded the legitimacy of the new constitution in its continuity with Japanese tradition, the liberals its discontinuity.

Dirk Moses’ *German Intellectuals and the Nazi Past* provides a parallel example regarding the (dis)continuity of tradition in postwar Germany.³²¹ The (dis)continuity of tradition becomes an important intellectual issue when a country faces its responsibility for its past wrongs and an entailing reconstruction of its identity. Having faced its defeat and the Allies’ demand for a complete political-legal reformation, postwar Germany experienced the issue of (dis)continuity of its tradition. There was the critical divide between the liberals and the conservatives regarding how to re-construct a postwar German identity. On the one hand, Moses calls the liberals, who invented a new collective identity by divorcing from the atrocious past, “redemptive non-German German.” On the other hand, he calls the conservatives, who protected the continuous German ethnic identity

³²⁰ Douglas MacArthur, *Reminiscences* (New York: McGraw-Hill, 1964), 288.

³²¹ Dirk Moses, *German Intellectuals and the Nazi Past* (Cambridge: Cambridge University Press, 2007).

by rejecting only the Nazi past as a temporary deviation, “integrative German German.”³²² The contrast between the redemptive liberals and the integrative conservatives similarly existed in postwar Japan regarding the issue of constitutional legitimacy. The former (redemptive non-Japanese Japanese) claimed the radical break from Japanese tradition. In contrast, the latter (integrative Japanese Japanese) preserved its ethnic continuity while rejecting only the prewar imperialism and *kokutai* as a non-genuine Japanese tradition.

5.2 Literature on the Postwar Constitution

The postwar discourse of constitutional legitimacy among constitutional scholars has centered on Toshiyoshi Miyazawa’s *hachigatsu kakumeisetsu* (The August Revolution Theory), which I will examine in detail later in my analysis as one of the key concepts. *Hachigatsu kakumeisetsu* argues that due to the legal-logical difficulty of the shift from the theocratic constitution to the democratic constitution, we have to assume that a “*houteki kakumei* (legal revolution)” occurred upon Japan’s acceptance of the Potsdam Declaration, which required Japan’s unconditional surrender. The majority of the postwar constitutional scholarship has commonly accepted the theory as it explains the legal transformation as well as highlights the postwar constitution’s nature of international democracy.³²³ With regards to the latter aspect, particularly,

³²² Moses, *German Intellectuals*, 9-10.

³²³ For example, Higuchi Yoichi 樋口陽一, *Kindai Kenpogaku nitottento Ronri to Kachi* (Sengo Kenpogaku wo Kangaeru) 近代憲法学にとっての論理と価値(戦後憲法学を考える) [The Theory and

the Japanese and German postwar constitutions featured transnational constitutionalism based on a set of *jus cogens* (non-derogatory laws) of human rights, which critically functioned as outward legitimacy for an international community.³²⁴

However, scholars have criticized the theory's claim on the legal discontinuity and its fictionality.³²⁵ In particular, severe criticism comes from legal positivism, which generally grounds the legitimacy of the constitution on institutional authority. Kanno argues that the enforceability of domestic legal institutions must explain a constitutional legal order without relying on normativity or international enforcement.³²⁶ For legal positivists, constitutional legitimacy must

Value of Modern Constitutional Studies (A Consideration of the Postwar Constitution)] (Tokyo: Nihon Hyoronsha, 1994); Ashibe Nobuyoshi 芦部信喜, *Kenpo* 憲法 [the Constitution] (Tokyo: Iwanami Shoten, 2015).

³²⁴ Larry Cata Backer, "God(s) Over Constitutions: International and Religious Transnational Constitutionalism in the 21st Century," *Mississippi Law Review* 27 (2008), 101-154.

³²⁵ For example, see Aizu Akirou 會津明郎, "Nihonkoku Kenpo no Seitōsei to Seitōsei" 日本国憲法の正当性と正統性--続・八月革命説への疑問 [The Validity and the Legitimacy of the Constitution of Japan-- Continued Questions of August Revolution Theory], *Aomori Hou Gakkai* 青森法学会 9 (2008): 19-37; Aihara Yoshikazu 相原 良一, "Genko Kenpo no Kouryo ni tsuite" 現行憲法の効力について [On the Efficacy of the Current Constitution], *Nihon Kouho Gakkai* 日本公法学会 16 (1957): xx.

³²⁶ Kihachiro Kanno 菅野喜八郎, *Zoku Kokken no Genkai Mondai : Junsui Hougaku to Kenpoougaku* 続・国権の限界問題：純粹法学と憲法学 [The Issue on the Limit of State Authority, Continued: The Pure Theory of Law and Constitutional Studies] (Tokyo: Bokutakusha 木鐸社, 1988).

come from the sheer fact that Japan institutionally has accepted the postwar constitution.

Most importantly, the legal scholarship on *hachigatsu kakumeisetsu* has evolved around the issue of legitimacy regarding the postwar constitution's continuity or discontinuity with the past one. Simon Serverin well articulates this point. By employing Weberian concepts of legal sociology, he argues that any discourse on *hachigatsu kakumeisetsu* necessarily makes a judgment on the legitimacy of the constitution based on its historical (dis-)continuity.³²⁷ The historical nature of the constitutional legitimacy demands scholars to expand the scope of their studies to the constitution's wider cultural and political implications. For instance, Tsunoda articulates the complex set of the continuity of the ritualized culture of the emperor and the discontinuity of the prewar political institutions, both of which the postwar constitution embraces.³²⁸ He emphasizes the historically continuous gap between the *form* of the modern democratic constitution and the practice of the civil religion of the emperor system among the Japanese people. Thus, the mixture of both continuous and discontinuous elements from the Meiji constitution has caused the indeterminacy of legitimacy in the postwar constitution.

However, scholarship has not paid substantive attention to the ongoing issue of contested legitimacy in the postwar constitution. The existing Japanese legal scholarship has shown its

³²⁷ Simon Serverin, "Nihon Kenpogaku no Seitōseiron ni kansuru Kenkyū" 日本憲法学の正当性論に関する研究-ヴェーバー法社会学を視座にして-[Research on the Japanese constitutional theories of legitimacy-from the point of view of Max Weber's sociology of law-], *Kobe Daigaku Daigakuin Ningen Hattatsu Kankyogaku Kenkyūka Kenkyū Kikō* 神戸大学大学院人間発達環境学研究科研究紀要 3, no. 3 (2009): 1-18.

³²⁸ Tsunoda, "Shinken Tennosei to Shocho Tennosei.

methodological limit, which only focuses on the logical-legal validity. Of a few works on the constitution and rhetoric in Japanese legal scholarship, Okudaira's work holds the most significance since it articulates how the imagination, history, and shared memory of the constitution plays a critical role in legal discourse, including the issue of legitimacy.³²⁹ But a deeper theoretical development, especially derived from rich rhetorical reservoirs, has not been seen yet.

5.3 Rhetorical Analysis and Text Selection

Therefore, my analysis of rhetorical tropes demonstrates that constitutional legitimacy is not about legal validity or logic but about *making* persuasive narratives based on common history and memory or newly invented ideals. It aims to discover the unwritten foundation or underlying

³²⁹ Okudaira Yasuhiro 奥平 康弘, *Kenpo no Souzouryoku* 憲法の想像力 [The Imaginative Faculty of the Constitution] (Tokyo: Nihon Hyoronsha 日本評論社, 2003), 2-25. Also for an overview of the current scholarship in Japan on constitutional narratives, see 巻 美矢紀 Maki Misaki, "Nihonkokukempo ni 「Monogatari (narrative)」 ha aruka - Rekishishugi to Hanrekishishugi" 日本国憲法に「物語 (narrative)」はあるか - 歴史主義と反歴史主義 [Are There 「Narratives」 in the Constitution of Japan? - Between Historicism and Anti-Historicism], *Houritsu Jihou* 法律時報 80, no. 6 (2008): 48-54.

ethos³³⁰ of a written constitution. A written constitution is the tip of the iceberg in the entire constitutional system. The written text must be interpreted according to unwritten “constitutional ethos”³³¹ composed of historically contingent cultural norms and customs.

To access unwritten constitutional ethos, tropes are one of the most accessible and enriched resources. Tropes are figurative languages, which twist and turn words, including metaphors,

³³⁰ As a rhetorical term, “ethos” has been defined not only as individual characteristic but also “gathering place.” Judy Holiday, “In[ter]vention: Locating Rhetoric’s Ethos,” *Rhetoric Review* 28, no. 4 (2009): 388-405.

In the scholarship of law and politics, ethos signifies the unwritten foundation of political and constitutional values in society. In this sense, Alexander Tsesis argues, “an underlying ethos permeates the written text (7).” He uses the term “constitutional ethos,” which provides “an overarching mandate for government, while being abstract enough to enable each succeeding generation to build on the wisdom of its predecessors and discard their failures to uphold the ideals of liberal equality for the common good (19).” Alexander Tsesis, *Constitutional Ethos: Liberal Equality for the Common Good* (Oxford: Oxford University Press, 2017).

Martin Rhonheimer also defines “political ethos of constitutional democracy” as an accumulated historical foundation of a political community. He argues, “the political ethos of constitutional democracy is the product of a long history of conflicts and struggles, in which much blood was shed and which left tracks of misery and hatred (18).” Martin Rhonheimer, “The Political Ethos of Constitutional Democracy and the Place of Natural Law in Public Reason: Rawls’s ‘Political Liberalism’ Revisited,” *The American Journal of Jurisprudence* 50, no.1 (2005); 1-70. <https://doi-org.pitt.idm.oclc.org/10.1093/ajj/50.1.1>

³³¹ Tsesis, *Constitutional Ethos*.

analogies, and allegories.³³² Tropes are a rich reservoir of cultural ethos, which congeals communal memory, history, and imagination. The study of major tropes reveals how knowledge and ideas are shaped and changed at each different historical moment. For example, in *Tropes of Politics: Science, Theory, Rhetoric, Action*, John S. Nelson, a political theorist, argues that the study of political theory and tropes are inseparable.³³³ It is because the study of political theory is to trace the persuasive contributions of made by figures of speech.³³⁴ Particularly, tropes indicate “the turn that we trace in apprehending the world.”³³⁵ As I already mentioned, this chapter’s analysis of rhetorical tropes demonstrates how each intellectual used a trope as “the turn” of the previous legitimacy.

The selected texts for the analysis are four well-known postwar intellectuals’ work that engaged with the issue of constitutional legitimacy:

³³² Keeling, “Of Turning and Tropes”; Childers, Joseph & Hentzi, Gary (1995). “Trope,” *The Columbia Dictionary of Modern Literary and Cultural Criticism* (New York: Columbia University Press, 1995), 309

³³³ John S. Nelson, *Tropes of Politics: Science, Theory, Rhetoric, Action* (Madison: The University of Wisconsin Press, 1998).

³³⁴ For example, he claims, “tropical analysis can display a political argument for free trade as a symbol solution for an economic problem.” *Ibid.*, 30. Also see, Wang Zhang, “Politics, History and Aesthetics as Tropes: An Introduction,” *Forum for World Literature Studies* 7, no. 2 (2015): 282+.

³³⁵ He also argues that tropes work together with yet slightly different from “ideology.” While ideology is overly argumentative, tropes as “the turn” presents narratives or stories. *Ibid.*

—On the side of the conservatives, Tsuda Sokichi’s “*Kenkoku no Jijo to Banse Ikkei no Shiso*” (The Circumstances of the Founding of the Land and the Thought of the Unbroken Imperial Lineage) and Watsuji Tetsuro’s *Kokumin Tougou no Shocho* (The Symbol of National Unity).

—On the side of the liberals, Miyazawa Toshiyoshi’s “*Hachigatsu Kakumei to Kokumin Shuken Shugi*” (The August Revolution and The People’s Sovereignty) and Masayama Maruo’s *Seitō to Itan* (Orthodoxy/Legitimacy and Heresy).

While the two liberals were active promoters of postwar Japan’s democratization, the two conservatives were labeled as “old liberalists.” What characterizes the old liberalists is their claim on freedom from authority.³³⁶ They were anti-Marxist or elitist “liberalism,” who worshipped individual liberty yet rejected unconditional equality among people, along with their great respect for the emperor.³³⁷ In postwar Japan, these old liberalists formed a new conservative intellectual group.

There are four reasons for the selection of these texts. First, in the texts, the four intellectuals employ each particular trope for the construction of constitutional legitimacy. Second, their prominent influence both over the public and other intellectuals. Third, while scholarship has studied intellectual connections within each circle of the conservatives (Tsuda and Watsuji) and the liberals (Miyazawa and Maruyama), it has not examined their work together as significant intellectual resources on constitutional legitimacy.³³⁸ It is only possible to articulate the lingering

³³⁶ Oguma, <*Minshu*> to <*Aikoku*>, 191-202.

³³⁷ Ibid.

³³⁸ For example, Akasaka thoroughly examines the postwar conservative intellectuals’ discourse on the symbolic emperor system, including Tsuda, Watsuji, Yukio Mishima, and Akasaka Norio 赤坂憲雄

issue of constitutional legitimacy in postwar Japan by looking at the texts of both the liberals and the conservatives together. Lastly, in order to articulate the underlying constitutional ethos, the texts should include both legal and non-legal texts and scholars. Thus, the selected four intellectuals show intellectual diversity. Miyazawa, the founder of August Revolution Theory, is a legal scholar, Maruyama is a historian of political thought, Tsuda is a historian of eastern thought and cultural anthropologist, and Watsuji is a philosopher in Kyoto school.

The rhetorical analysis of the four tropes —Miyazawa's *Hachigatsu Kakumei*, Maruyama's *Bunmei Seishin no Jyūniku*, Tsuda's *Tenno no Seishinteki Ken-i*, and Watsuji's *Kokumin Zentaisei no Hyogensha toshiteno Tenno*—pays close attention to their persuasive use for building a new constitutional legitimacy. In particular, it will focus on how each intellectual appropriated each trope to legitimize the constitution. In order to do so, I examine these tropes based on three rhetorical axes embedded in the tropes: continuity-discontinuity, historicity-normativity, and particular audience-universal audience. First and foremost, the (dis-) continuity of Japanese tradition is the core theme coagulated in the four tropes. The axis of historicity-

, *Shocho Tenno toiu Monogatari* 象徴天皇という物語 [The Narrative of the Symbolic Emperor] (Tokyo: Chikuma Shobo, 2007). Also for the two liberals' intellectual connection, in particular regarding August Revolution Theory, see Takami Katsutoshi 高見 勝利, "Maruyama Masao no Kenporon -- Miyazawa Toshiyoshi tonon Kankei" 丸山眞男の憲法論--宮沢俊義との関係 [Maruyama Masao on Constitutional Theories -- the Relationship with Miyazawa Toshiyoshi], *Shiso* 思想 988 (2006): 104-119; Sakamoto Naofumi 阪本 尚文, "Maruyama Masao to Hachigatsu Kakumei (1)" 丸山眞男と八月革命 (1) 東京女子大学丸山眞男文庫所蔵資料を活用して [Maruyama Masao and August Revolution (1)], *Gyosei Shakai Ronshu* 行政社会論集 28, no. 1 (2015): 1-75.

normativity refers to one of the primary sources of constitutional legitimacy for the intellectuals, ranging from culturally-specific historical memories and events to universality accepted norms. The particular-universal audience axis indicates the type of an audience that each text assumes, ranging from an ethically limited audience to a universal one beyond ethnicity. Every axis has a nuanced spectrum rather than a simple binary. In the following analysis, I retain the original tropes in Romanized Japanese instead of English translation lest the tropes lose their cultural embeddedness in the process of translation.

5.4 The Postwar Liberals on the Discontinuity of Tradition

5.4.1 Miyazawa on *Hachigatsu Kakumei*

Miyazawa Toshiyoshi (1899-1979)'s August Revolution Theory first appeared in the article "Hachigatsu Kakumei to Kokumin Shuken Shugi" [The August Revolution and The People's Sovereignty] published in May 1946. Miyazawa wrote the article after the government published a new constitutional draft. As a constitutional scholar, Miyazawa explained the sudden legal transition of sovereignty from the Meiji Constitution to the Constitution of Japan using his unique idiom, *hachigatsu kakumei* (August Revolution). Since its first publication, the idea has drawn a lot of critical attention from political and legal scholars. Despite some criticisms that accuse the fictionality of *hachigatsu kakumei*, it has been accepted as the dominant framework in postwar legal studies in Japan because it is expedient to explain the legal transition of sovereignty. However, legal scholars have not examined how its "fictionality" has become an important framework for constitutional legitimacy. I claim that the trope of *hachigatsu kakumei* is

Miyazawa's rhetorical invention of a novel constitutional legitimacy. In particular, I argue that the trope aims to create a novel origin that fulfills the logical impossibility of the transition from the Meiji constitution to the Constitution of Japan.

According to Miyazawa, "revolution" is a legal logic, which explains the transition of sovereignty from the God emperor to the people.³³⁹ He articulates the legal *impossibility* of this transition via means of the amendment procedure stated in the previous constitution. He calls this impossibility "*logical suicide* and legally invalid."³⁴⁰ By drawing attention to a paragraph in the Potsdam Declaration, "in accordance with the freely expressed will of the Japanese people," he argues that the end of the war caused *kakumei* (revolution), in which a change from theocracy to democracy realized a radical legal reform. This legal form was "beyond the expectation of the previous constitution."³⁴¹

While Miyazawa insists that he uses "*kakumei*" as a legal term, when he uses it to overcome the logical impossibility, the rhetorical agenda of *hachigatsu kakumei* becomes obvious. The trope aims to fill the "empty seat" left open after the renouncement of the previous theocratic constitution.³⁴² Overall, the trope of *hachigatsu kakumei* includes three rhetorical functions for the

³³⁹ Toshiyoshi Miyazawa 宮沢俊義, "Hachigatsu Kakumei to Kokumin Shuken Shugi" 八月革命と国民主権主義 [The August Revolution and The People's Sovereignty], *Sekai Bunka* 世界文化 1, no. 4 (1946), 70.

³⁴⁰ The emphasis is mine. Ibid, 67.

³⁴¹ Ibid, 68.

³⁴² Ebara articulates this point in relation to the previous constitution. He argues that the renouncement of *Tenchiken Soran* (the emperor's rights of reign and sovereignty) in the postwar

new construction of constitutional legitimacy: 1) as the metaphor of the “re-founding,” an internalization of foreign-made law; 2) as the rhetorical identification and construction of the people of Japan with the new subjects of constitutional democracy; 3) as the invention of the historical discontinuity of the myth of *kokutai*.

Before analysis, I have to clarify the term, *kakumei*. *Kakumei* (革命), rooted in Chinese political thought, is a combination of two concepts, “change” and “destiny.” It originally meant political change according to the mandate of heaven.³⁴³ Until the Meiji era (1868), the term indicated the change of a dynasty due to the lack of the moral characteristic of an emperor *without* the implication of radical social change and the overthrow of the government. The term was often used in combination with *ekisei* (易姓), which means the alteration of a name. It was the Meiji intellectuals who adopted *kakumei* for the translation of the English word “revolution.” As a result, *kakumei* contained the political implication of radical liberalism.

Here, I articulate that Miyazawa’s *kakumei* indicates a radical socio-political change derived from revolution’s specific signification after the 19th century. For example, in *History’s*

constitution left a new constitutional legitimacy wide open, which August Revolution Theory attempted to fill. Ebara Yoshiyasu 額原 善徳, “Hachigatsusetsu Saikou notameno Oboesho” 八月革命説再考のための覚書 [Memorandum for Reconsideration on Toshiyoshi Miyazawa's Theory of August Revolution], *Memoirs of the Research Institute of the Cultural Sciences of Ritsumeikan University* 97 (2012): 37-61

³⁴³ Huang Rong 黄容, “Chu-nichibun 「Kakumei」 no Jishoteki Imi no Bunseki 中日文「革命」の辞書的意味の分析 [The Analysis of the Dictionary Meanings of ‘Kakumei’ in Japanese and Chinese], *Qing Chun Sui Yue* 青春岁月 23 (2012): 470-71.

Locomotives, historian Martin Malia argues that in the modern consciousness, revolution “reorder[s] the coordinates of legitimacy in the *res public* [or common wealth]: they seal the end of old regimes and inaugurate new orders; and they mark the turn from one era to another.”³⁴⁴ At the same time, a term revolution has historically acquired its rich yet ambiguous connotation, which indicates “any change in any aspect of human activity that is either sudden or brutal or deep or sweeping.”³⁴⁵ The prominent pre-modern use of revolution appeared in Copernicus’ astronomy in which revolution meant a return to an origin or restoration. This pre-modern sense of change, such as revolution and reformation (e.g., The Protestant Reformation in the 16th century), also existed within the realm of religion, arts, and letters.³⁴⁶ Towards the end of the 18th century, revolution started acquiring its modern political signification through the two world-historical events, the American Revolution in 1776 and the French Revolution in 1789. Thus, the 18-19th century saw revolution as a primary political phenomenon in which the name of equality and liberty among citizens overthrew an absolute monarchy. Additionally, another turn of a conceptual change began at the onset of the Revolutions of 1848, or the Spring of Nations in Europe, through which the idea of socialism emerged and incorporated into the idiom of revolution. Because Miyazawa’s *kakumei* suggests a radical political change from theocracy to liberal democracy, he clearly uses the term as the replacement of an old regime by a new one in the modern political consciousness of revolution.

³⁴⁴ Martin Malia, *History's Locomotives: Revolutions and the Making of the Modern World* (New Haven, CT: Yale University Press, 2006), 287.

³⁴⁵ *Ibid*, 289.

³⁴⁶ *Ibid*.

By means of the people's active participation in accomplishing the radical change to liberal democracy, his trope of *kakumei* aims to turn the *legally unimaginable* transition into the *rhetorically imaginable* revolution.³⁴⁷ In order to do so, his rhetorical trope of *kakumei* implies the sudden flip of the passive-active relationship between the people and the “imposed” foreign legal doctrine.³⁴⁸ For example, he argues that “Japan is liberated from God, or Japan expelled God from its politics.”³⁴⁹ This “or” signifies the active role of the people, who consummated *minshu kakumei* (democratic revolution), rather than their passive role being salvaged by the third party. Thus, Miyazawa regards *kakumei* as a collective civic-political force.

³⁴⁷ Legally speaking, Miyazawa takes the position of limited constitutional amendment (Kenpou Kaisei Genkaisetsu), which made him assert that the postwar constitutional transition is a logical suicide and legally invalid. For the details, see 高見 勝利 Takami Katsutoshi, *Miyazawa Toshiyoshi no Kenpogakushiteki Kenkyu* 宮沢俊義の憲法学史的研究 [A Study of Toshiyoshi Miyazawa's History of Constitutional Theories] (Tokyo: Yuhikaku, 2000), 315-322.

³⁴⁸ Some scholars claim that Miyazawa's use of *Kakumei* is directly or indirectly influenced by Carl Schmitt's political theology in which the legitimacy of the constitution is attributed to a sovereign's decision on the state of exception. While Schmitt and Miyazawa share the idea that legitimacy comes outside of the existing legal system, they differ significantly in the substance of their rhetorical tropes. In the state of exception where the legitimacy of the constitution is left empty, while Schmitt places the decision of a *personal* sovereign, Miyazawa places *Kakumei* as an impersonal civic political force. The impersonal political force of *Kakumei* existed in the civil sphere. For example, Shinoda Hideaki 篠田英朗, *Hontouno Kenpou — Sengo Nihon Kenpougaku Hihan* ほんとうの憲法 — 戦後日本憲法学批判 [A True Constitution — A Critique of the Postwar Constitutional Scholarship] (Tokyo: Chikuma Shinsho, 2017).

³⁴⁹ Miyazawa, *Hachigatsukakumei*, 68.

Kakumei, as a collective civic-political force, leads us to reflect upon its first rhetorical function: the rhetorical articulation of Japanese people's new collective identity in the postwar period. Miyazawa points out that the new constitution of Japan incorporated the same spirit of the preface of the American constitution. He argues both expressions, "Nihon kokumin ha" in the Japanese constitution and "We, the people of the United States of America" in the U.S constitution, claim popular sovereignty. What is "the people" and where did "the people" come from? Jacques Derrida articulates the rhetoricity of the birth of the people in popular sovereignty. By reading the Declaration of Independence, he argues, the people "do not exist as an entity, the entity does not exist before this declaration, not as such. If it gives birth to itself, as free and independent subject, as possible signer, this can hold only in the act of the signature. The signature invents the signer."³⁵⁰ Derrida's point is to argue that the *pouvoir constituant* (constituent power) of the people does not exist prior to the enunciation of the signifier of the people in the Declaration. Thus, by means of written enunciation in such a document as the Declaration, the people are retrospectively constituted. Simultaneously, the document rhetorically claims the existence of the people as such prior to itself.

The constitution is one of the most critical apparatuses for the people to identify and imagine themselves as members of a large political community. Maurice Charland, a rhetorical scholar, argues that the people as the collective subjects are rhetorically constituted in political-

³⁵⁰ Jacques Derrida, "Declarations" in *Negotiations: Interventions and Interviews 1971-2001*, ed. Elizabeth Rottenberg (Stanford: Stanford University Press, 2002), 49.

legal texts.³⁵¹ In his study of the political independence movements among people in Quebec, he articulates the constitution as a significant apparatus to transcend the social and historical limits of the biological individuality. What he calls “constitutive rhetoric” is one of the constitution’s rhetorical functions, which expresses the people’s collective identity and their political autonomy. In the context of postwar Japan, Miyazawa employs the trope of *kakumei* in order to render the people’s imagined autonomy. His reading of the constitution as the product of *kakumei* aims for the rhetorical reconstruction of the people as the autonomous subjects actively involved in the postwar democratic reform.

Miyazawa’s trope of *kakumei* implies another rhetorical function of “re-founding,” which was his unique way of solving the conundrum of the origin and legitimacy of the new constitution. Japan’s defeat of the war and its simultaneous acceptance of the new democratic constitution made by the SCAP highlights this conundrum. Since the third party gave the constitution, its legitimacy faced the serious issue of “foreignness.” In *Democracy and the Foreigner*, Bonnie Honig articulates the necessity of the foreignness of the law to establish a democratic society and the entailing practice of re-founding, thus the process of internalizing the law brought by foreigners. She touches upon Japan’s postwar experience and argues that “foreignness may benefit the regime [the domestic people] (re)founds, but it is also a threat to the regime at the same time.”³⁵² This ambivalent outcome of the foreignness of the law precisely reflects the political tension between the liberals and the conservatives with regard to constitutional legitimacy.

³⁵¹ Maurice Charland, “Constitutive Rhetoric: The Case of the Peuple Québécois,” *Quarterly Journal of Speech* 73, no. 2 (1987): 133-150.

³⁵² Bonnie Honig, *Democracy and the Foreigner* (Princeton, Princeton University Press: 2001), 32.

Miyazawa's trope of *kakumei* regards the foreign origin of the constitution as a stepping-stone of re-founding instead of a threat. Although his text does not explicitly mention the foreignness of the constitution, it embraces the trope of re-founding as a new political principle. For example, towards the end of the text, he refers to Time's article titled "We, the Mimics...," which came out after the new constitutional draft was published. The very sarcastic title implies Japan's inability to create its own democratic constitution as well as their passivity in adopting what is given. While admitting that the constitution's principles and language are similar to the American counterpart, Miyazawa believes that the Japanese constitution should not be a simple mimicry by insisting that people must turn it into *jishu kenpo* (the self-made constitution).³⁵³ Otherwise, the constitution will keep being the target of mockery. His text seems to forecast the political problem that the foreignness of the constitution would cause to Japan. Miyazawa's argument implies that re-founding or taking up something given as its own is an important rhetorical process of persuasion, which converts something alien to something familiar.

The above two rhetorical functions further suggest the most important rhetorical effect of the trope of *kakumei*: the discontinuity of the myth of *kokutai*. He argues that *hachigatsu kakumei* eliminated *kokutai*, which founded the theocracy of the emperor in the Meiji constitution. His rhetoric of the discontinuity appears where he discusses the new symbolic emperor system. Miyazawa separates the new constitution's emperor system, which is the symbol of both the State and the unity of the people, from *kokutai*. He argues that the remaining emperor system in the new constitution is not equivalent to the conservative's claim of "*kokutai hoji* (the protection of

³⁵³ Ironically, the term *Jishukenpou* is now almost exclusively used in the conservative circle to indicate their desire to replace the imposed constitution by a self-made one.

kokutai)” because of the two reasons. First, the nature of the emperor changed to the apolitical symbol. Second, the emperor system could be abolished later by the will of the people of Japan.

Here, he opens up the radical possibility (and fearful possibility for the conservative) of the abolishment of the emperor system by rejecting any possible association of *kokutai* with the new de-politicized emperor system. He also argues that “Ningen-sengen” or “the Humanity Declaration” of the emperor, in which the emperor repudiated his own divinity, is understandable only along with *hachigatsu kakumei*. By emphasizing the radical nature of *kakumei*, through which the divine God became a secular human, his rhetoric aims for the theoretical closure of the continuity of *kokutai*.

Overall, Miyazawa’s rhetorical trope of *kakumei* encompasses the three rhetorical functions, all of which aim for making a new constitutional legitimacy in the process of the dynamic change of the political system from theocracy to democracy. At the same time, however, the trope fails to explain the continuity of the emperor system. His rhetoric of discontinuity only accounts for the change of the legal nature of the emperor system. However, it does not explain why the emperor system remained in the different form after the war. Thus, Miyazawa’s discontinuity opens up not only the rhetorical possibility of the abolishment of the emperor system in the future but also that of the conservative rhetoric of the continuity of Japan’s preceding tradition in the postwar period.

5.4.2 Maruyama on *Bunmei Seishin no Jyūniku*

One of the most influential modernist scholars in postwar Japan, Maruyama Masao (1914-1996)’s work has been the canonical text of postwar democracy. Despite his heavy intellectual investments in the postwar democratic theory, his work on the postwar constitution and the issue

of its legitimacy has barely been published except for his alleged influence on Miyazawa's idea of *hachigatsu kakumeisetsu*.³⁵⁴ While there is no affirmative evidence of his definite influence upon *hachigatsu kakumeisetsu*, there were occasional references to the revolutionary nature of Japan's postwar democracy and constitution in his works published soon after the war.³⁵⁵ While Maruyama does not explicitly argue that Japan experienced *kakumei* in August 1945, his rhetorical narratives and tropes explain the revolutionary nature of the new constitution and the historical discontinuity of the previous constitutional legitimacy. However, a recently published collection of notes from the Maruyama-led study group called *Seitō to Itan* (Legitimacy/Orthodoxy and Heresy) includes his original intellectual concern of the constitutional legitimacy of the postwar constitution. In this section, I will examine the concept of *seitō* (Legitimacy/Orthodoxy) along with his trope of *bunmei*

³⁵⁴ Shimizu Yasuhisa 清水靖久, "Eikyu Kakumei toshiteno Minshushugi 永久革命としての民主主義 [Democracy as Eternal Revolution]," *Chikyu Shakai Togo Kagaku* 地球社会統合科学 24, no. 2 (2017): 18.

³⁵⁵ Takami denies Maruyama's influence on August Revolution theory because while Miyazawa's revolution refers to a legal-political shift including the issue of legitimacy, Maruyama's revolution refers to a spiritual shift (what he calls *Eikyu Kakumei toshiteno Minshushugi* [democracy as eternal revolution]), thus, the creation of new modern subjectivity among the Japanese people. However, recently Sakamoto argues that Maruyama's strong interests in legitimacy in his study group *Seitō to Itan*, overlaps with the concern of legitimacy that August Revolution theory attempted to solve. Sakamoto, "Maruyama Masao to Hachigatsu Kakumei," 1-75.

seishin toiu O-seitō no jyūniku (the incarnation of the orthodoxy of the spirit of civilization).³⁵⁶ In doing so, I will articulate his rhetorical interest in accounting for the sharp discontinuity of constitutional legitimacy from the previous one. Accordingly, I will argue that his rhetorical trope is Maruyama's unique expression of hope for postwar Japan's potentiality on nurturing the constitution as a new *orthodoxy*.

Maruyama's initial project of *Seitō to Itan* started in 1959 as a part of the book series on the history of modern Japanese thought.³⁵⁷ The study group started its meetings in the early 60s and continued until the late 80s. Nonetheless, of the series, only the book on *Sietou to Itan* was not published due to both the complexity of the relevant concepts such as *seitō* (legitimacy/orthodoxy) and *itan* (heresy) and the difficulty of their applicability within the Japanese context. The study group covered a wide range of subject matters and perspectives, including the etymology of the concepts in Chinese and Indo-Eurasian languages and comparative religious-political thought. Maruyama was primarily interested in understanding Japan's long-term historical trajectory of political thought from the perspective of orthodoxy/legitimacy.

Most importantly, for this chapter, the study group contains important materials on

³⁵⁶ Maruyama Masao 丸山眞男, *Maruyama Masao Shu Beshuu 4: Seitō to Itan I* 丸山眞男集別集 4: 正統と異端 1 [Maruyama Masao special collection 4: Legitimacy/Orthodoxy and Heterodoxy 1] (Tokyo: Tokyo Joshi Daigaku Maruyama Masao Bunko 東京女子大学丸山眞男文庫, 2018), 52.

³⁵⁷ Ishida Takeshi 石田 雄, *Maruyama Masao tono Taiwa* 丸山眞男との対話 [A Dialogue with Maruyama Masao] (Tokyo: Mizuzu Shobou みすず書房, 2005), 36-95.

Maruyama's underexamined thought on constitutional and political legitimacy.³⁵⁸ Even though the originally planned book has never been published, the notes and records taken during the study meetings were recently published in 2018. I will examine this book in order to re-construct Maruyama's thought on constitutional legitimacy from the rhetorical perspectives of audiences and metaphors with a specific focus on his trope of the new constitution as *bunmei seishin toiu O-seitō no jyūniku*.

In Japanese, the word *seitō* (正統) alone include two distinguished concepts in European languages, legitimacy and orthodoxy. While in the latter legitimacy and orthodoxy are two related yet clearly distinctive words, in Chinese and Japanese, which borrowed many concepts from Chinese, *seitō* intrinsically contains both of the concepts and suggests intimate dynamics between the two.³⁵⁹

³⁵⁸ There are a few works on the project and Maruyama's thought on constitutional and political legitimacy. Compared with the scholarship on Maruyama's other works, the number of the scholarship on this subject and the project is significantly low. For Maruyama's political and constitutional legitimacy developed in the project, see Kawano Yūri 河野有理, "Legitimacy no Fujyo to sono Airo" Legitimacy の浮上とその隘路 [the rise of legitimacy and its bottleneck], *Gendai Shiso* 現代思想 42, no. 11 (2014): 176-88; Sakamoto "Maruyama Masao to Hachigatsu Kakumei." For the perspective of members of the study group, see Fujita Shozou 藤田 省三, *Itanron Dansho* 異端論断章 [A Fragment of the Theory of Heresy] (Tokyo: Misuzu Shobou みすず書房, 1997); Ishida, *Maruyama Masao tono Taiwa*.

³⁵⁹ Maruyama Masao 丸山眞男, *Maruyama Masao Shu Beshuu 4: Seitō to Itan 1* 丸山眞男集別集 4: 正統と異端 1 [Maruyama Masao special collection 4: Legitimacy/Orthodoxy and Heterodoxy 1] (Tokyo: Tokyo Joshi Daigaku Maruyama Masao Bunko, 2018), 32.

For the purpose of conceptual distinction, Maruyama calls legitimacy *L-seitō* and orthodoxy *O-seitō*. Legitimacy (*L-seitō*) is the matter of governance or the people's submission to authority. Orthodoxy is the matter of ethical doctrines typically articulated in religion. While the relationship between orthodoxy and legitimacy varies according to each cultural sphere, he divides it into two types of orthodoxies. The first type is the orthodoxy which originally does not contain the matter of legitimacy, that is to say, the doctrine that does not include explicit thought on governance. This type of orthodoxy, however, transforms itself into the source of legitimacy since orthodoxical doctrines require believers to shape a political community to preserve such doctrines. An example of this type is how Christianity has historically developed its political community around its sacred text and doctrines.

The second type is the orthodoxy that *originally* contains principles of legitimacy. Thus, such orthodoxical doctrines are *immediately* the principles of governance. An example is Confucianism with the political principle of virtuous governance.³⁶⁰ In Confucianism, the doctrine of the self-cultivation of the ruler has direct relevance to a harmonious social order (治国平天下). Maruyama also adds that in the modern world, Marxist-Leninism has functioned as a new secular religion whose doctrine necessarily contains the legitimacy of a certain governance (e.g., a communist vanguard party). This second type of orthodoxy unifies ethical doctrines and political thought on governance.

In addition to the above two, both of which he regards as genuine orthodoxy, Maruyama discovers the third type of what he calls the *pseudo-orthodoxy*. The *kokutai* myth epitomizes this third type. It is “pseudo-” orthodoxy because this type of orthodoxy lacks intelligible positive

³⁶⁰ Maruyama, *Seitō to Itan*, 13.

doctrines. It starts solely as the matter of legitimacy without which later becomes transformed into pseudo-orthodoxy. For example, despite its similar appearance to genuine orthodoxy, the *kokutai* myth lacks solid and positive doctrines. As a result, *kokutai* ends up functioning as an empty-signifier, which defined itself solely by excluding any thought that does not accord with the emperor's divinity.³⁶¹ For Maruyama, *kokutai*, which exclusively concerned the matter of legitimacy grounded on the emperors' divinity, functions only as the pseudo-"substitution" of genuine orthodoxy.³⁶²

Based on the above comparative models, Maruyama's overarching goal is to discover and develop genuine orthodoxy in the history of Japanese political thought.³⁶³ Maruyama's search for

³⁶¹ Regarding this point, Hiroaki Matsuura nicely points out that the empty signifier of Kokutai does not signify anything, thus, reversely functions to signify everything. Rather than being positively articulated, the concept of Kokutai was simply banned from being discussed. Thus, it was an impossible subject matter in which a simple question of "what is it?," was not even allowed to ask. Matsuura Hisaaki 松浦 寿輝, *Meiji no Hyosho Kukan* 明治の表象空間 [The Representative Space of Meiji] (Tokyo: Shinchosha, 2014), 32.

³⁶² Ibid, 33

³⁶³ A possible Japanese orthodoxy in the pre-modern period is a version of the Confucian orthodoxy of social harmony with its own unique emphasis on the unbroken bloodline of the emperor instead of rulers' individual virtues, which potentially justifies revolution and destabilizes social order. See, Maruyama Masao 丸山 眞男, "Ansaigaku to Ansaigakuha" 闇齋学と闇齋学派 [Ansai's Confucian Studies and the School of Ansai's Confucian Studies], in *Maruyama Masao Shu 1979-1981* 丸山眞男集 〈第1 1 卷〉 1979-1981 [Maruyama Masao Collection 1979-1981] (Tokyo: Iwanami, 2003), 229-321.

genuine orthodoxy includes not only in pre-modern Japan but also in modern Japan.³⁶⁴ His particular focus is to reconsider the transformation of orthodoxy from the Meiji Restoration to postwar Japan. According to the above distinction, Maruyama's classification is as follows: pre-modern Japan's (- 1886) second type of orthodoxy based on Confucianism, the modern Japan's (1886) the pseudo-orthodoxy of *kokutai*, and postwar Japan's (- 1945) first type of orthodoxy based on *bunmei no seishin* (the spirit of civilization).

In *Seitō to Itan*, his metaphorical assentation that the postwar constitution is “*bunmei seishin toiu O-seitō no jyūniku*” holds a great significance for this chapter. It is because this rhetorical trope of *jyūniku* (*incarnation*) is Maruyama's unique way of articulating the new legitimacy of the constitution and his rhetorical wager on Japan's potentiality on nurturing the constitution as a new orthodoxy. His search for orthodoxy in the postwar constitution is inherently rhetorical since it aims to identify common ethos, which can exceed ethnical and geographical particularism. In addition, this leads to his rhetorical invention of historical discontinuity embraced within the new constitution. With a focus on his trope, my reading will reveal that the invention of discontinuity is his rhetorical solution to explain the change of legitimacy, particularly regarding audiences, from the Meiji constitution to the postwar constitution.

Before proceeding to my analysis, his word choice of *jyūniku* and *bunmei seishin* needs more clarification. Maruyama uses *jyūniku* as an exact translation of incarnation in the Christian context. The literal meaning of *jyūniku* is to “receive the flesh.” *Bunmei seishin* should be translated as “the spirit of civilization.” Fukuzawa Yukichi used *bunmei* as the translation of

³⁶⁴ His pre-modern study of Japanese orthodoxy is about the orthodoxy debate that occurred within the school of Ansai Yamasaki's Neo-Confucianism. Masao Maruyama “Ansaigaku to Ansaigakuha.”

civilization (see Chapter II). As a fervent supporter of Fukuzawa's work, it is reasonable to assume Maruyama's *bunmei* is built on Fukuzawa's use of civilization.³⁶⁵ As I discussed in Chapter II, Fukuzawa's core of civilization is the development of multiple world views among people through the active exchange of diverse opinions. At the same time, as I will discuss later, Maruyama, to some extent, uses *bunmei* in order to signify the idea beyond ethnic particularism. *Seishin* is also not a monolithic concept. Its meanings range from mind to spirit. *Seishin* as spirit is close to a German word, *geist*, as it refers to a broader ethos shared by a collective of people. For instance, the Japanese translation of "intellectual" in intellectual history (*seishin-shi*) has adopted it. Thus, combined, Maruyama's *bunmei seishin* suggests a shared ethos beyond ethnic particularism.

Maruyama's distinction between genuine orthodoxy, including both the first and the second type, and pseudo-orthodoxy rests on two differences: the audience and the existence of positive doctrines. First, in terms of the audience, while the former assumes an ethno-national audience, the latter a universal audience. He argues that genuine orthodoxy articulates the existence of a community of believers regardless of a particular ethnicity. In contrast, he claims that in the pseudo-orthodoxy of the *kokutai* myth, a community of believers in the emperor's eternal reign of Japan was limited to the Japanese ethnicity.³⁶⁶ Second, the existence of positive

³⁶⁵ Maruyama's work on Fukuzawa is abundant. His commitment to Fukuzawa's framework of civilization can be observed in his book series of *Bunmeiron no Gairyaku wo Yomu* (Reading 'An Outline of Civilization').

³⁶⁶ It is important to note that the question of who was qualified as the ethnical Japanese audience was extremely complicated because Japan's colonization of Korea and Taiwan raised a question of their political and legal status in terms of their relationship to the emperor and Japanese people in Japan.

doctrines in genuine orthodoxy facilitates discursive development among a community of believers regardless of ethnicity. The pseudo-orthodoxy, on the contrary, lacks such doctrines, and its relevant discourse never exceeds its ethno-national assumptions. In this sense, Maruyama's problematization of the Japanese characteristic of "non-commitment to the values that exceed the ethnic-political realm"³⁶⁷ well articulates the problem of the pseudo-orthodoxy of the *kokutai* myth.

The unbridgeable rhetorical differences between genuine orthodoxy and pseudo-orthodoxy reflect a sheer historical discontinuity between the Meiji constitution and the postwar constitution. Maruyama's trope of *bunmei seishin toiu O-Seitō no jyūniku* heavily weighted the theme of discontinuity. Maruyama tropologically understands that the postwar constitution should function like a new religious cannon. Thus, the constitution forms a community of the believers who are not limited to the Japanese ethnicity is formed. The trope serves as his own rhetorical solution to the problem of the lack of genuine orthodoxy in the history of Japanese political thought.

His trope's emphasis on discontinuity depends on a more "universal" value that *bunmei seishin* includes. In order for the postwar constitution to incorporate such a "universal" value, Maruyama uses the Christian concept of *jyūniku* (incarnation). Maruyama understands *jyūniku* as the tension between *seishin* and *nikutai* (the flesh) or "the spirit of purity endured within the impurity of the flesh."³⁶⁸ In Christianity, Jesus is both fully God and fully a human, or the union

³⁶⁷ Maruyama Masao 丸山眞男, *Maruyama Masao Kogiroku Dai Roku Satsu* 丸山眞男講義録 第六冊 [Maruyama Masao Lecture Note no.6] (Tokyo: Tokyo Daigaku Shupan Kai 東京大学出版会, 2000), 127.

³⁶⁸ Maruyama, *Seitō to Itan*, 53.

of the two natures, which makes the incarnated flesh being exposed to its own bodily weakness and instability. In this trope, while the nature of secular political legitimacy represents the bodily weakness of human flesh, the divine *bunmei no seishin* keeps living within the flesh of the constitution as genuine orthodoxy. The postwar constitution is the embodied flesh of the genuine orthodoxy of *bunmei no seishin*. However, this flesh of the divine being, which appears as the postwar constitution, cannot avoid the possibility of being adulterated by secular political authority. The tension between the two natures always exist within the postwar constitution, which requires the people in Japan to nurture it constantly. In contrast, within the same trope, the Meiji constitution is understood as a human flesh without a divine spirit, which collapses easily.

I suggest that Maruyama's invention of the metaphorical trope opens up the new discursive space of the radical discontinuity of the historical past, as a method of making possibility. In contrast, Kawano Yūri, a historian of Japanese political thought, finds Maruyama's theme of discontinuity problematic.³⁶⁹ Kawano is wary of the possibility, in which Maruyama's theme of discontinuity might justify bare sovereign power, instead of morality and ethics, in constructing a new political regime. However, my reading of Maruyama's trope has revealed that the theme of discontinuity in the trope explicitly rejects such a cult of personality and leads to the possibility of genuine orthodoxy shared by a community of people.

Here it is important to elaborate on what his trope "universal" value suggests. I claim that it suggests the discursive function of widely accepted ideas, which facilitate people's democratic interpretive activities, rather than specific contents.³⁷⁰ In this sense, Maruyama asserts that there

³⁶⁹ Kawano "Legitimacy no Fujyo to Sono Airo."

³⁷⁰ Thus, one should be careful not to succumb to the urge to interpret his inquiry with his popular

is no direct correlation between the existence of genuine orthodoxy and universal values. Thus, in theory, genuine orthodoxy without universal values is possible. For instance, he mentions a possible alternative historical scenario, in which actual rich scholarly attempts would have turned the *kokutai* myth, which yet lacks universal values, into genuine orthodoxy in prewar Japan.³⁷¹

Thus, what matters for his trope is to establish genuine orthodoxy, upon which a wide audience engages with democratic interpretive practice. Borrowing from Max Weber, Maruyama calls the process of a political community building through believers' hermeneutical practice *Vergesellschaftung* (socialization).³⁷² On the contrary, suffering from its original lack of positive doctrines and ethically limited audience the pseudo-orthodoxy of *kokutai* did not enjoy such democratic interpretive practice. Robert Bella, a sociologist of Japanese religion, who popularizes the term "civil religion," summarizes this point. He argues, "though sometimes referred to as an 'orthodoxy,' it should be evident that emperor-system thought was not an abstract philosophical or religious system. It was rather an assertion about ultimate authority and value that for many proximate purposes need not be invoked at all."³⁷³ Therefore, *kokutai* remained as the pseudo-

image of a "western liberal universalist." It might be the case that his use of Christian tropes gives the reader the impression that his argument seems a simple and risky application of the Christian model to the newly emerging Japanese political context. He indeed considers Christian doctrines to have values beyond ethnic particularism, which he seeks in Japan's new constitutional legitimacy. At the same time, this image of Maruyama as a liberal universalist dismisses larger rhetorical implications, which he suggests in the work.

³⁷¹ Maruyama, *Seitō to Itan*, 73.

³⁷² Ibid, 72.

³⁷³ Robert N. Bellah, *Imagining Japan: The Japanese Tradition and Its Modern Interpretation* (Oakland: University of California Press, 2003), 117.

orthodoxy as it did not facilitate but rather suppressed democratic interpretive practice in prewar Japan.

Maruyama's assertion, "*hajimeni itan ariki* (heresy precedes orthodoxy)"³⁷⁴ also illustrates democratic interpretive activities implied in his trope. It means that genuine orthodoxy is formed only through its contests with other heretical doctrines. Democratic interpretive activities operate within the political dialectics between orthodoxy and heresy. On the contrary, Japan, lacking genuine orthodoxy, has suffered from "*itan gonomi* (the preference of heresy)."³⁷⁵ The preference of heresy refers to the non-dialectical societal tendency, in which people with different opinions don't fight against a mainstream idea. On the one hand, the *itan gonomi* features the positive aspect of Japanese society being harmonious hybridity of various foreign cultures and thought such Buddhism and Confucianism. On the other hand, in such a cultural situation, the mainstream doctrine or genuine orthodoxy can rarely be founded. Japan's cultural disposition towards the preference of heresy is more likely to produce the pseudo-orthodoxy because their "orthodoxy" becomes linked to a particular group identity, rather than normative doctrines proper. This cultural disposition easily leads to political opportunism.³⁷⁶

In the end, Maruyama's trope suggests the necessity of genuine orthodoxy in constructing the legitimacy of the postwar constitution. The constitution, like a religious text, must keep the

³⁷⁴ Ibid, 10

³⁷⁵ Ibid, 55. Regarding "the liking of heresies," also see Morimoto Anri 森本 あんり, *Itan no Jidai* — *Seitō no Katati wo Motomete* 異端の時代—正統のかたちを求めて [The Age of Heresy — In Pursuit of Orthodoxy] (Tokyo: Iwanami Shinsho 岩波新書, 2018).

³⁷⁶ Ibid.

dialectical tension between secular political affairs and ethical/moral doctrines (genuine orthodoxy) through the contesting practice of democratic interpretation. In this sense, for Maruyama, the novel source of the legitimacy of the postwar constitution, *bunmei no seishin*, is radically different from the prewar pseudo-orthodoxy of *kokutai*.

5.5 The Postwar Conservatives on the Continuity of Tradition

5.5.1 Tsuda on *Seishinteki Ken-i*

Tsuda Sokichi (1873-1961)'s postwar article "*Kenkoku no Jijo to Banse Ikkei no Shiso* (The Circumstances of the Founding of the Land and the Thought of the Unbroken Imperial Lineage)" published in April 1946 caused great controversies due to his conservative and apologetic tone on the emperor. Such a tone is exemplified in the sentence, "loving him is the most consequential form democracy can assume. . . the grand manifestation of a humanitarian spirit that will automatically find worldwide recognition."³⁷⁷ Published half a year before the ratification of the postwar constitution, the article claims that the new constitutional democracy and the symbolic emperor system are compatible. The significance of Tsuda's argument lies in his trope of the emperor's *seishinteki ken-i* (spiritual authority) as the trans-historical common ethos of Japanese

³⁷⁷ Tsuda Sokichi 津田左右吉, "*Kenkoku no Jijo to Banse Ikkei no Shiso*" 建国の事情と万世一系の思想 [The Circumstances of the Founding of the Land and the Thought of the Unbroken Imperial Lineage], *Sekai* 世界 4 (1946), https://www.aozora.gr.jp/cards/001535/files/53726_47829.html.

culture, which has existed beyond the contingent realm of politics. I will argue that his trope of the emperor's *seishinteki ken-i* reflects his underlying theme of the unbroken continuity of the Japanese historical identity as the new legitimacy of the postwar constitution. *Seishinteki ken-i* is an ambiguous concept coined by Tsuda. Same as in Maruyama's *bunmei seishin*, *seishinteki* refers to a broad spirit or ethos. *Ken-i* is equivalence to authority. Combined together, *seishinteki ken-i* can be translated to spiritual authority.

His critical historiography of the two classical Japanese history books written in early 8th century bases Tsuda's argument. The two books, *Nihon Shoki* and *Kojiki* (respectively, *The Chronicles of Japan* and *Records of Ancient Matters* combined together, a.k.a *Kiki Shinwa*), articulate the mythical-divine origins of the emperor and became the "Bible" of *kokutai* under the Meiji government. In his earlier work in the prewar period, Tsuda produced a critical reading of *Kiki Shinwa*.³⁷⁸ Tsuda's critical reading method separates the story and thought of the then people from the historical facts. Accordingly, he argues that *Kiki Shinwa* represents the then elite people's invented mythical narratives to legitimize the cultural authority of the emperor.³⁷⁹

Although they are not historical facts, the mythical narratives of *Kiki Shinwa* are significant intellectual sources in their own right. For example, he claims, "the tale of Emperor Jimmu—who according to *Kiki Shinwa*, is the first emperor of Japan, a descendant of the sun goddess Amaterasu—is not an account of historical facts but it reflects quite well the emotions and thoughts cherished by the people of ancient times toward the state and the imperial house,

³⁷⁸ For instance, Tsuda Sokichi 津田左右吉, *Shindaishi no atarashii kenkyu* 神代史の新しい研究 [New Research in the History of the Divine Age] (Tokyo: Futamatsudo Shoten 二松堂書店, 1913).

³⁷⁹ Ibid, 3-37.

therefore, the significance of the tale is more profound than that of historical facts.”³⁸⁰ Thus, his rational reading³⁸¹ of *Kiki Shinwa* separates historical-material facts from people’s internal thought, rendering each different value, respectively.

Based on his critical historiography of *Kiki Shinwa*, the article “*Kenkoku no Jijo*” starts with the proposition that the natural origin of the imperial court and the political origin of the country of Japan should be separated. He opposes *Kiki Shiwa*’s historical narrative that the emperor’s divine ancestor founded the country of Japan. In other words, by denying *Kiki Shinwa*’s firm association of the political origin of the country of Japan with the natural birth of the imperial court, he attempts to rescue the imperial court from being attached to any secular political meaning. Thus, he argues that the imperial court gradually unified Japan quite peacefully as if it was the course of nature.

This historical reconfiguration of the imperial court is the key to understand his trope of the emperor as *seishinteki ken-i*. By excluding the imperial court from the realm of secular politics,

³⁸⁰ Cited in Joel Joos, “‘Love thy emperor’: Tsuda Sōkichi’s views on ‘Tennō’ and ‘Minzoku,’” *Japan Forum* 20, no. 3 (2008): 394, doi:10.1080/09555800802370125.

³⁸¹ Isomae calls this Tsuda’s critical method of *Kiki Shinwa* “Confucian rationalism.” Isomae Junichi 磯前 順一, “Tsuda Sokichi no Bunkengaku to Jugakuteki Gorishugi—Jinbungakuteki Hihyo ha ikanishite kano ni naruka—” 津田左右吉の文献学と儒学的合理主義—人文学的批評はいかにして可能になるか— [Tsuda Sokichi’s philology and Confucian Rationalism—what makes humanities critique possible?—], in *Jinbungaku no Saiken to Tekusuto no Yomikata* 人文学の再建とテキストの読み方—津田左右吉をめぐる— [Text Analysis and the Reconstruction of the Humanities — The Case of Tsuda Sōkichi —] (Tokyo: Waseda Daigaku Sogo Jinbunkagaku Kenkyu Senta, 2017), 332-341.

which is assigned only to the government, Tsuda assigns what I call the “trans-political” realm to the imperial court. It is “trans-political” because Tsuda’s emperor’s role of *seishinteki ken-i* does not simply exist within the culture of ordinary people but within politics or the government. Yet, it is not involved in actual political affairs. Rhetorically speaking, he articulates the emperor’s *seishinteki ken-i* as the historically continuous communal ethos in Japan, as opposed to the contingent secular political power of the government. His inquiry for the historical continuation of the emperor is rhetorically motivated by his clear political objective to demonstrate that the new constitution’s symbolic emperor system is *nothing new*. Eventually, his inquiry is to assign the legitimacy of the new constitutional democracy to the long tradition of the emperor system.

In “*Kenkoku no Jijo*,” he emphasizes that the emperor has primarily been *seishinteki ken-i* throughout Japanese history, which is neither a cultural-religious authority nor a political authority. It is not cultural-religious authority because he argues that historically there has been no religion-like worship but only “natural” respect towards the emperor in Japan. Also, it is not a straightforward political authority because while the emperor’s *seishinteki ken-i* exists within the realm of politics, the emperor does not get involved in actual political affairs. Thus, the authority of the emperor influences only the political actors but not the ordinary people. Within the complex nature of this trope, Norio Akasaka, a Japanese anthropologist, observes Tsuda’s dilemma: Tsuda attempts to reject the goodness of the emperor as well as to rescue him as a human.³⁸² Thus, the trope of *seishinteki ken-i* could be labeled trans-political authority in a sense that while rejecting both its transcendent divinity and direct political involvement, the emperor still becomes the object of *natural respect* among the political actors.

³⁸² Akasaka, *Shocho Tenno toiu Monogatari*, 22-33.

The audience affected by *seishinteki ken-i* needs further examination. Tsuda explains that the audience of *seishinteki ken-i* is only limited to the people involved in actual political affairs. However, toward the end of the article, in terms of the contemporary relationship between the emperor and the people, he calls for “loving *our* emperor” as the symbolic unity of the nation. How does the trope accounts for this seemingly sudden expansion of the audience in the postwar period?

According to Tsuda, the audiences of the emperor’s spiritual authority have varied throughout history. The stories of the age of God in *Kiki Shinwa*, which articulate the divine origin of the emperor, reflect the first influence of this authority among the very small group of intellectuals in politics. After the class of samurai emerged in the Medieval age and political power expanded outside of the noble class, the emperor’s spiritual authority started to influence the general samurai class. Yet, Tsuda insists that the emperor and the imperial court remained unfamiliar to ordinary Japanese people. Thus, while the audience of the emperor’s spiritual authority had always been limited to those who are involved in politics, the body of audiences has historically changed. However, the aberration of the emperor’s *seishinteki ken-i* occurred between the Meiji period and the end of World War II, when the emperor appeared on the stage of actual politics. Tsuda argues that the Meiji government, for the first time in history, pitted the emperor against the Japanese people to make them submit to the emperor’s power and authority. For Tsuda, the postwar constitution brought back the original *seishinteki ken-i* of the emperor grounded on people’s natural-born respect. Now, with popular sovereignty, its audience has expanded to all the Japanese people since all of them have equal political rights under democracy.

Tsuda’s such a historical perspective discovers Japanese *minzoku*’s (ethnic) historical common ethos within the continuous existence of the emperor. *Minzoku* is a relatively new term

coined in the late 19th century in order to differentiate the uniqueness of Japanese people from other Asian races.³⁸³ His argument is circular: Japan's historical continuity of the emperor's *seishinteki ken-i* has been possible due to the simple fact that the emperor system has historically continued. Additionally, Tsuda argues that the stories of the age of God in *Kiki Shinwa* are the expression of the then elite's desire and moral responsibility to make the emperor system last forever. By doing so, Tsuda associates the essence of the emperor system with its historical continuity, by employing the-then elites' desire, passion, and moral obligation for maintaining the system.

More importantly, this association can be maintained only through the inter-generational task of historical imagination. Thus, the historical fact of the continuity of the emperor system has to be constantly re-imagined based on the real existence of the emperor at each particular historical moment. In this sense, Tsuda succeeds this inter-generational intellectual task.

I argue, within this context, that his intellectual task is to demonstrate that “loving *our* emperor” is an essence to build postwar democracy. His historical view on the emperor and the trope of *seishinteki ken-i* eventually serve this political objective. The emperor's *seishinteki ken-i* has survived political contingencies and adopted to any historical change. Since *seishinteki ken-i* is supposed by its audience's natural respect, his call for “loving our emperor” is a renewed imperative for the Japanese *minzoku* to accommodate postwar democracy.

Last but not least, Tsuda's articulation of the historical continuity of the emperor's *seishinteki ken-i* also functions as a critique of the *kokutai* myth which mystified the emperor as a

³⁸³ Yuko Kawai, “Deracialised Race, Obscured Racism: Japaneseness, Western and Japanese Concepts of Race, and Modalities of Racism.” *Japanese Studies* 35, no.1 (2015): 23-47.

living god. Tsuda strongly refuses the idea that people had historically worshipped the emperor as a divine religious figure. It is because, even in the classical age, people understood the emperor's role in Shinto rituals as a human agency. Therefore, for Tsuda, the *kokutai* myth should be completely rejected. As a result, under the postwar constitution, he places the emperor's *original seishinteki ken-i* as a new legitimacy, instead of *kokutai*.

Overall, the emperor's capacity of trans-political accommodation expressed in the trope of *seishinteki ken-i* founds Tsuda's new legitimacy in the postwar constitution. In this sense, the symbolic emperor system in the constitution is nothing new, but the long Japanese tradition has always been practicing.

5.5.2 Watsuji on *Kokumin Zentaisei no Hyogensha*

A leading Kyoto school philosopher, Tetsuro Watsuji (1889-1960)'s thought on political-constitutional legitimacy is dispersed across four articles written within three years (1945-48) after the war, all of which were published in a book *Kokumin Togo no Shocho* [The Symbol of National Unity] in 1948. His rich thought on the relationships between the imperial court, the legitimacy of the new constitution, and Japan's historical-cultural identity became condensed into the title of one of these articles, "*kokumin zentaisei no hyogensha* (the emperor as the expresser of the whole nation)." I argue that this trope serves as a linchpin of his rhetorical invention of the new legitimacy of the postwar constitution, grounded on the totality of Japan's historical-cultural continuity and identity. Through the examination of this trope and other cultural idioms such as *kokumin* (the nation), I articulate Watsuji's rhetorical concern of the audience in terms of the relationship between *kokumin* and the emperor as well as his invention of traditional common ethos historically shared among *kokumin*,

The article “*Kokumin Zentaisei no Hyogensha*” in 1948 most clearly elaborates on his core idea that the imperial court and the emperor have “expressed” (*hyogen*) the whole consensus (*soui*) of *kokumin* (the nation).” The article was written in order to respond to some criticisms of his earlier article in which he argues.

*That the people (jinmin) have sovereignty does not mean that each individual is a sovereign. The agreed will of the people (jinmin), or the consensus of the nation (kokumin), has the supreme power of the country. In this case, what’s important is how to form and how to express such a consensus (soui) ... It is only through the emperor that the expression of ‘the consensus of the nation’ (kokumin no soui) becomes apparent. Thus, that the people have sovereignty (shuken) is the same as that the emperor is a sovereign. The unique feature of the history of our country is that this tradition, in which the emperor has expressed the consensus of the nation, has historically maintained itself in different forms at each cultural stage. The foundation of the worship towards the emperor lies in ... the fact that the emperor expresses the consensus of the nation.*³⁸⁴

In the article, Watsuji clearly distinguishes *kokumin* or the nation defined as the imaginary whole of a cultural community from *jinmin*, or the people defined as the political subjects within the framework of a modern state. By making the qualitative difference between the cultural

³⁸⁴ Translated by the author. Watsuji Teruro 和辻哲郎, *Watsuji Tetsuro Zenshu 14* 和辻哲郎全集

14 [Complete Works of Watsuji Tetsuro 14] (Tokyo: Kadokawa Shoten 角川書店, 1962), 329-31.

community of the nation and the political community of the people, he assigns historical continuity to the former and historical provisionality to the latter. Through this conceptual difference, Watsuji responds to the criticism which cast doubt on the existence of the nation in the past. He argues that the nation has continuously existed throughout history, but the people is a product of the postwar constitutional democracy. Therefore, Watsuji's idiom of *kokumin* (the nation) is the imagined historical-cultural totality (*zentaisei*) of the Japanese people.

His trope's emphasis on historicity and the particular audience depends on the historical fact that the emperor has expressed the *zentai ishi* (the whole will) of *kokumin* (the nation). In particular, the historicity of the whole will makes a contrast with the ahistorical product of a consensus. On the one hand, representative democracy is the political system of making a consensus. However, this consensus only represents only the temporary benefits of the elites. This non-correspondence between "what represents" and "what is represented" always exists in the system of representative democracy. On the other hand, the whole will is a historically accumulated product, which covers the whole nation's will. Instead of the collectives of individual wills, the whole will is a historical product of people's passions, imagination, and worship toward the emperor, which are cultivated through various cultural objects, rituals and literature.³⁸⁵ In the end, the emperor is the exclusive medium to make the whole will invisible.

Watsuji's trope immediately connects the emperor and his particular audience of the whole Japanese nation. Watsuji's earlier problematic assertion, "that the people have sovereignty is the same as that the emperor is a sovereign" holds a key to create such a connection. Watsuji does not

³⁸⁵ According to Watsuji, in ancient times, *zentai ishi* was *chokusetsu honnouteki zentai ishiki* (directly intuitive total consciousness). Ibid, 342.

use “sovereignty” in a modern political sense especially because the emperor is no longer political sovereign in postwar Japan. By referring to the phrase “the sovereign will of the people” in the postwar constitution, he suggests interpreting the word “sovereign” as a broad adjective, *saikōno* (supreme). In doing so, he suggests that the whole will, as the supreme will of the nation, becomes the emperor’s own will. Here, Watsuji gives two important caveats. First, Watsuji rejects any possibility of the emperor’s manipulation of the whole will because “the emperor never *commands* the nation.”³⁸⁶ Second, the emperor is not just the recipient of the whole will, but a *hyogensha* (the *expresser*) as an autonomous agency. As a result, his trope of *zentai ishi* (the whole will) describes the exact point of convergence between the emperor and the whole nation.

Watsuji’s trope also highlights the continuity of genuine Japanese tradition by removing the concept of *kokutai* from the postwar intellectual discourse. His famous correspondence with Sasaki Soichi, a liberal legal scholar, from 1946 to 1949 epitomizes this political move.³⁸⁷ In a nutshell, while Sasaki argued that *kokutai* changed due to the change of the nature of the constitution, Watsuji opposed his use of *kokutai* in order to understand the new political phenomenon of postwar Japan.³⁸⁸ In this scholarly exchange, Watsuji’s argument highlights his

³⁸⁶ The emphasis is mine. Ibid, 353.

³⁸⁷ Ibid, 355-389.

³⁸⁸ Sasaki uses *kokutai* as an equivalence to what is commonly referred to as “polity” (*seitai*). Additionally, he assigns a different meaning to *seitai*. Thus, in his definition, while *kokutai* means the place of sovereignty (e.g., a republic or monarchy), *seitai* means how sovereignty is exercised (e.g., democracy or autocracy). Watsuji asks Sasaki why it is necessary to use the concept of *kokutai* when it is not a common term. According to Watsuji, when a concept such as *kokutai* is not prevalent across cultures, it should not be used even if it had a clear meaning. Sasaki’s distinctive use of *kokutai* and polity is, however, not without

effort of re-inventing Japan's tradition as a new constitutional legitimacy while rejecting *kokutai*.

A key term here is *tochiken soran* (統治権総覧), literally translated to “the holding of sovereignty.” *Soran* means grasping or holding and does not originally include the meaning of execution. According to Sakaki, it was only the Meiji government that integrated the holding and exercise of sovereignty of the emperor in the Meiji constitution.³⁸⁹ Thus, Sasaki uses *kokutai* in order to express such a unique legal-cultural concept of *soran*.

In contrast, Watsuji defines *tochiken soran* as the emperor's expressive function of his will as the whole will of the nation. According to Watsuji, Sasaki's framework of *tochiken soran* only reflect the history of dual-political system, overlooking its cultural significance.³⁹⁰ Thus, Watsuji

reason. Based on his historical view in which the emperor being the possessor of ruling power has been the *unwritten* law of Japan, Sasaki argues that the distinction between possessor (*kokutai*) and executor (*seitai*) is necessary. It is because, in the major part of Japanese history, the emperor has delegated his power to other entities such as the military government (*bakufu*).

³⁸⁹ The English translation of the Article 4 of the Meiji constitution, which uses the term, *Tochiken Soran*, goes, “The Emperor is the head of the Empire, combining in Himself the rights of sovereignty, and exercises them, according to the provisions of the present Constitution.” In the original Japanese text, “combining in Himself the rights of sovereignty, and exercises them” is simply expressed as “*Tochiken wo Soran shi* (統治権を総覧し).”

³⁹⁰ Watsuji argues that historically the imperial court did not voluntarily delegate its power to *bakufu*. Rather, the latter used the authority of the emperor only to justify its political power. Therefore, Sasaki's historical description of *tochiken soran*, in which the emperor held sovereignty but did not exercise it, only reflects the ideology of *bakufu*. In the words, Sasaki's *tochiken soran* exactly reflects the way in which *bakufu* justified its monopoly of power under the emperor's authority.

elevates *tochiken soran* to a higher cultural category. *Tochiken soran* depends on the historical fact that the emperor has expressed *kokumin no zentaisei* (the whole of the nation) and has maintained Japan's cultural integrity even when Japan loses its political unification. Thus, Watsuji's grasp of *tochiken soran* emphasizes the emperor's performative nature of expressing the cultural whole, assuring the historical continuity of Japan.

In this context, Watsuji's trope, "the emperor as *kokumin zentaisei no hyogensha*," eliminates *kokutai* in order to ensure the historical continuity of Japanese tradition and identity. In another earlier article in 1945, "*Hoken Shiso to Shinto no Kyogi* (Feudal Thought and the Doctrine of Shinto),"³⁹¹ he criticizes the Meiji government's incorporation of federal thought and Shintoism into the imperial court, all of which became integrated into the *kokutai* myth. In particular, he condemns the analogical discourse used by the Meiji government, which explains the nation's relationship to the emperor by the analogical structure of feudal royalty. This analogy gave birth to the notion of the notorious *kazoku kokka* (the family state) backed up by the *kokutai* myth. For Watsuji, this adulterated concept of *kokutai* cannot represent the genuine historical relationship between the emperor and the nation. Thus, the restoration of Japan's continuous tradition is possible only by eliminating *kokutai*.

Eventually, his trope matches the language of the new postwar constitution, "the symbol of the State and of the unity of the people" because it also regards the emperor as apolitical and as a cultural symbol of the Japanese nation. Watsuji's political philosophy claims that finding a means to express *kokumin zentaisei* (the whole nation) is the natural essence of the state. At the end of "*Kokumin Zentaisei no Hyogensha*," he argues that after the war Japan had two options, either

³⁹¹ Ibid, 319-328.

protecting the cultural tradition of the emperor or newly establishing a president. Watsuji is careful enough to say that he firmly supports the former not because it simply has been in that way but because the historical continuity of the emperor being *kokumin zentaisei no hyogensha* (the expresser of the whole of the nation) has already acquired its trans-historical value. On this point, as Joel Joos argues, Watsuji might have outdone his conservative compatriot, Tsuda, in “his make-over of the monarchy, turning it from the exemplification of Japanese spirit... into the embodiment of a Rousseauian general will.”³⁹² In this sense, a new constitutional legitimacy derives from the embodied will of the Japanese nation, which the very existence of the emperor expresses.

5.6 (Dis-)Continuity of Tradition

By articulating either the continuity or discontinuity of Japanese tradition through the unique rhetorical tropes, the four prominent postwar intellectuals each invented a narrative of a new legitimacy for the postwar constitution to replace the *kokutai* myth. Regarding the primary discontinuity-continuity axis the two liberals, Miyazawa and Maruyama, emphasize postwar Japan’s radical discontinuity from its tradition. The two conservatives, Tsuda and Watsuji, by articulating prewar Japan’s deviation from its genuine tradition, re-found the unbroken continuity of Japan’s historical tradition of the emperor in the postwar period. The second axis, normativity-historicity shows that while the liberals attribute both the normativity and historicity of liberal values to the legitimacy of the postwar constitution, the conservatives only assign Japan’s

³⁹² Joos, “‘Love thy emperor’,” 393.

historicity to it. The third axis articulates their assumed audiences. While the conservatives aim at the domestic Japanese audience, the liberals target the audience beyond Japanese people.

Furthermore, within each political circle, there are some noticeable differences and subtleties. On the liberal side, while embracing the *normative* values of liberalism, their tropes appeal to the historicity of particular historical events for the construction of their legitimacy. While Maruyama refers to the historical event of *jjūniku* (incarnation) of Jesus, Miyazawa alludes to the legitimacy of *kakumei* (revolution) in the modern political sense. On the one hand, Miyazawa's trope of *kakumei* emphasizes the dynamics transformation of legitimacy. On the other hand, Maruyama's trope of *jjūniku* focuses on the stabilization of a new legitimacy. On top of this, their tropes significantly differ in their targeted audiences. While Maruyama's trope includes an universal audience that exceeds the Japanese people, Miyazawa's trope includes only the Japanese audience and explains its change from the loyal subjects of the emperor to the automatus modern subjects. The difference of the targeted audiences results in each distinctive orientation of constitutional legitimacy in their thought. While Maruyama's trope has a more outward-oriented legitimacy, Miyazawa's trope aims for a more internal-oriented legitimacy.

The two conservatives differ in the traditional status of the emperor and its degree of normativity. While Tsuda considers the emperor as trans-political *seishinteki ken-i* (spiritual authority), Watsuji regards him as a cultural authority. The difference results in the rhetorical difference of the audience between the two. On the one hand, Tsuda's emperor historically had had the limited audience of political actors until it expanded into all the Japanese people in the postwar period. On the other hand, Watsuji's emperor has always historically expressed *kokumin zentaisei* (the whole nation). Furthermore, while Watsuji finds the trans-historical *normative* value within the emperor as the expresser of the will of the whole nation, Tsuda's firm argument on the

historicity of the emperor's *seishinteki ken-i* does not allude to its normativity at all.

Now, looking at these four in different combinations reveals a complexity of the postwar constitutional legitimacies which is more than just a simple dichotomy between continuity and discontinuity. First, the pair of Miyazawa and Tsuda and that of Maruyama and Watsuji. Despite the sheer qualitative difference in their arguments, Miyazawa and Tsuda commonly highlight the role of active popular agencies in constructing postwar legitimacy. Thus, both Miyazawa's implication of re-founding of a foreign-made constitution and Tsuda's call for "love our emperor" aim to construct popular agencies, who actively *internalize* a new constitutional legitimacy. Moreover, imagination plays a central role for both. For Miyazawa, the transition from the Meiji to the postwar constitution creates an unimaginable legal-logical gap, which in turn requires the rhetorical imagination of *kakumei*. Tsuda's circular argument that associates the historical existence of the emperor with the *necessity* of maintaining the emperor system invigorates one's imaginative capacity to envision an inter-generational task of sustaining it.

The pair of Maruyama and Watsuji demonstrates a radical contrast with a shared aversion to the previous constitutional legitimacy of *kokutai*. The contrast highlights the different ways that each intellectual displaces *kokutai*. While Maruyama breaks away from every aspect of *kokutai* by overwriting with the completely new values, Watsuji restores the cultural tradition which *kokutai* temporarily adulterated. Their audiences also embrace a sharp contrast in quality. On the one hand, Maruyama's audience is political, including both of an internal one, *jinmin* (the people) as the modern political subjects, and an external one, the people outside of Japan, who share the value of civilization. On the other hand, Watsuji's audience is *cultural*, based on the imagined community of the nation or *kokumin* (the nation).

Second, the pair of Miyazawa and Watsuji and that of Tsuda and Maruyama. Despite the prominent difference in thought, what might be a potential intersection between Miyazawa and Watsuji is their rhetorical interest in the textual performativity of the nation's identity construction. Miyazawa's textual sources of *kakumei* is the Potsdam Declaration and The Humanity Declaration (Ningen Sengen) of the emperor. These two texts rhetorically performed *kakumei* in a significant way: they convert the social identity of Japanese people from "loyal subjects" to "democratic citizens."³⁹³ Also, Watsuji observes the primary role of the emperor in his rhetorical performativity in a sense that the nation constructs its own cultural identity mirrored in the narratives and literature on the emperor.

Lastly, Maruyama and Tsuda differ to the greatest extent in terms of every axis, among other combinations. Accordingly, while Tsuda's call for "loving our emperor" emphasizes the capacity of the emperor's historical existence to accommodate postwar democracy, Maruyama reverses Tsuda's order in establishing the new constitution as genuine orthodoxy by subjecting the emperor system to it.

5.7 Chapter Conclusion: Rupture & Divide

My analysis has articulated the different nuances of the legitimacy-divide between the liberals and the conservatives in the immediate postwar period. Within the entire structure of this dissertation, this postwar legitimacy-divide marks the historical phase of the *rupture & divide* of

³⁹³ Suzuki, *The Rhetoric of Emperor Hirohito*, 138.

constitutional legitimacy. As a concluding remark, I suggest that this historical phase has led to the lack both of an unified faith in legitimacy and of democratic interpretive activities of the constitution. Such lack still overshadows the contemporary debate on constitutional revision (see Introduction).

I claim that the legitimacy-divide in the immediate postwar period has generated the lack both of a unified faith in legitimacy and democratic interpretive activities of the constitution. Francis J. Mootz II, a scholar on law and rhetoric, develops the concept of faithful hermeneutics, or the relationship between faith and interpretation in legal texts. He asks, “is belief a prerequisite of interpretation? Can we interpret a document if we do not believe that it has something to say to us, if we do not anticipate that we can learn from the text?”³⁹⁴ His answer is that belief is the foundation for interpretive activities both in religion and law. Based on Hans-Georg Gadamer’s historical hermeneutics, Mootz argues that “one can understand the demands of justice or God’s message only through commitment and participation, which is to say that one understands only by first having faith.”³⁹⁵ But how do people avoid dogmatism while having faith in certain texts and engaging with interpretive activities? He seeks an answer in Gianterasio Vattimo’s “weak thought.” Vattimo’s weak thought argues that the system of reason is the system of persuasion within a historical horizon. Mootz argues, “law and religion are undecidable. Both require a leap of faith to sustain a practice that *will never come to an end*.”³⁹⁶ Therefore, faith as the condition of

³⁹⁴ Francis J. Mootz, “Belief and Interpretation: Meditations on Pelikan’s ‘Interpreting the Bible and the Constitution’,” *Journal of Law and Religion* 21, no. 02 (2006): 385.

³⁹⁵ Francis J. Mootz, “Faithful Hermeneutics,” *Michigan State Law Review*, (2009), 364.

³⁹⁶ Mootz, “Belief and Interpretation,” 397.

interpretation does not lead to dogmatism as long as one understands that the meaning of the text is not fixed and always changes within one's historical horizon. Interpretation is not possible without faith because faith creates a common discursive platform upon which democratic interpretive activities take place.

In the context of Japan's postwar constitution, the liberals and the conservatives had each different degrees of faith into the postwar constitution *per se*. On the one hand,

the liberals' legitimacy on the substantive liberal values is embodied in the constitution itself. Thus, for them, the "protection" of the postwar constitution holds significance as a brake to "regress to the backward past," which indicates the novelty of postwar Japan apart from its tradition. On the contrary, for the conservatives, the symbolic emperor system as the continuous Japanese tradition accommodates the postwar democratic constitution, and *not vice versa*. As a result, their absolute legitimacy rests on the historical existence of the emperor system rather than the postwar constitution itself. Accordingly, it was a matter of time that the conservative started to problematize the "imposed" nature of the postwar constitution. In the end, the idea of the "imposed" constitution is the conservative's rhetoric of delegitimizing the liberals' narrative of discontinuity.³⁹⁷

³⁹⁷ David Law articulates the rhetoricity of the concept of an imposed constitution in Japanese postwar context: "The function performed by the concept is not analytical or descriptive, but rhetorical. The "imposed constitution" label is a standard trope of delegitimizing narratives... the point of constitutional narrative—whether of the romanticizing or delegitimizing variety—is mythmaking and political persuasion, not descriptive accuracy." David Law, "Imposed Constitutions and Romantic Constitutions," Legal Studies Research Paper Series, 2018, 1-2.

I observe that the contemporary debate on constitutional revision reflects the failed construction of a unified faith in the legitimacy of the postwar constitution. This tends to stifle democratic interpretive activities of the constitution, as epitomized by “judicial passivism.”³⁹⁸ As Maruyama suggests, such interpretive activities renders the constitution the status of genuine orthodoxy. By creating an interpretative habit, the meaning of the constitution finally becomes adaptable to contingent socio-political situations.

Finally, this chapter suggests that the work of the four leading postwar intellectuals demonstrate the *rupture & divide* phase in the process of Japanese constitutional legitimacy. Japan’s defeat in the war forced the constitutional scholars to abandon the *kokutai* myth in the process of making the new constitution. *Kokutai*, as the old constitutional legitimacy, *ruptured* in the face of a new political reality. When the previous narrative of constitutional legitimacy was disrupted, the four intellectuals each invented new constitutional legitimacy. While they

³⁹⁸ As a concrete example of the lack of the practice of faithful hermeneutics in the constitution, I argued the case of the postwar judicial review system. The postwar judicial review system in Japan has been called “judicial passivism,” not having been engaged with active constitutional interpretation since the court and the government believe that interpretive activities *destabilize* the meaning of the constitution. For them, the constitutional text remains sacred because people don’t interpret. However, no one can control the meaning of the text, then, the suffocation of constitutional hermeneutics makes dissenters claim its complete invalidity. Thus, it leads to the real instability of the constitution. Tomonori Teraoka and Keren Wang, “Reflections on the Japanese post-WWII Constitutionalization Process (*Top Student Paper Award*)” (Paper presented at the National Communication Association 103rd Annual Convention: The Japan-U.S. Communication Association, Dallas, TX, November 16, 2017).

commonly shared the displacement of *kokutai* as one of their primary tasks, their discourses were divided in terms of the continuity or discontinuity of tradition.

In this context, my analysis supports Honig's assertion that, "for those whose origin stories feature a foreign-founder, the politics of re-founding often involve a contest to erase that figure from memory or to position him as either foreign to or founder of the nation."³⁹⁹ The foreignness of the law could be a threat causing anxiety among people, which prevents a complete re-founding. While the postwar conservatives have understood the postwar constitution as something foreign, the liberals have internalized it as the foundation of the new political regime. After the *rupture* of the previous legitimacy of *kokutai* in the immediate postwar years, the *divide* on a new legitimacy has still continued up until now.

Lastly, an important historical question arises. Is it possible to historicize the "failure" of establishing a solid legitimacy in the postwar constitution? Built on Ch II and III, I would say yes. At least, legitimacy-divides have been a particular characteristic throughout the history of modern Japanese political thought as the issue has been constantly re-emerging.

³⁹⁹ Honig, *Democracy and the Foreigner*, 32.

6.0 Conclusion

This dissertation examined the intellectual discourse of political/constitutional legitimacy by tracing a genealogy of the modern Japanese political thought regarding the topic. I argued that the issue of constitutional legitimacy had constantly re-emerged in the form of significant common topics in modern Japan intellectual discourse (1868-), to which leading scholars at each historical phase responded using rhetorical methods of legitimation. As the conclusion of this dissertation, I will summarize four important points as follows: 1) a genealogy of Japanese constitutional legitimacy, 2) rhetorical arts of legitimation, 3) East Asian modernity, and 4) future research.

6.1 A Genealogy of Japanese Constitutional Legitimacy

First, Chapter II presented the mid-late 19th century as the phase of the invention. In the face of hardships, both in the domestic economy and in the form of foreign threats, Japan was in a dire need of a radical self-transformation in its political system, from the dual governance of *bakufu* and the imperial house to a modern constitutional state. In this situation, the fundamental question for modern Japan was how much it needs either to domesticate foreign “universal” paradigms, including constitutional governance or to preserve its particular legitimacy of the emperor’s external reign or *kokutai*. Upon its adoption in 1889, the Meiji constitution exactly embraced this conflicting coexistence of constitutional governance and the emperor’s external reign. The scholarly debates the chapter examines answered this fundamental question of modern Japan’s political legitimacy by contested methods of inventing distinctive intellectual sources. Scholarly

responses were divided into two way. One way was to insist on the universal applicability and legitimacy of Western knowledge and institutions to modern Japan. The other was to insist on the particularity of Japan's political identity and legitimacy based on the emperor's eternal reign. This scholarly tension was driven by their full awareness of Japan's vulnerability in the international order. The claim on its distinctive particularity was to protect Japan from Western colonization, whilst the claim on its universality was to catch up with Western countries for survival.

Second, Chapter III identified the early 20th century as the phase of reconciliation. After the adoption of the Meiji constitution, leading scholars during this historical period attempted to solve the internal tension in the constitution between liberal constitutionalism in form and the political history of *kokutai* in substance. In the early 20th century, the combination of the liberal atmosphere, the rising nationalism due to its victory over the two wars against China and Russia, and the emerging problem of national integrity after the acquisition of Korea and Taiwan, led to the need for reconciling this tension. In this context, the discourse of *kokka* (the state) appeared as a significant topic in the form of metaphors. The metaphors of *kokka* were the justifying rhetoric of neutralizing internal tensions within the hybridity of the constitution.

Third, Chapter IV regards the mid 20th century (postwar Japan) as the phase of rupture & divide. The crucial question that postwar intellectuals faced was how to reconstruct a new political/constitutional legitimacy in the face of the rupture of the previous legitimacy. After the 1920s, the government's oppressive measures towards the freedom of thought and expression gradually became intensified. These measures appeared, for instance, in *Chian Iji Ho* (The Public Security Preservation Law) in 1925 and *Kokutai Meicho Seimei* (The Declaration of Clear Evidence of the National Polity) in 1935. As a result, any discursive deviation from the orthodoxical understanding of *kokutai* that equated the existence of Japan with that of the emperor

became prohibited. This government's suffocation of the freedom of thought and expression was one of the major reasons why Japan's reckless decision of participating in World War II could not be stopped. After the war, the new democratic postwar constitution replaced the Meiji constitution. Accordingly, the postwar constitution confronted the task of establishing a new legitimacy in place of the previous *kokutai* ideology. However, opinions between the liberals and the conservatives were divided. While the liberals appealed to the discontinuity of Japan's tradition as the core of the new constitution, the conservatives rescued its genuine tradition, which they argued was only temporarily disturbed during wartime. Therefore, there was a fundamental disagreement or divide over the legitimacy of the postwar constitution.

The proposed genealogy provides important historical context for the current debates on constitutional revision: 1) the immediate postwar legitimacy divide between the liberals and the conservatives lurks in the apparent divide in the current dispute between the *goken* liberals and the *kaiken* conservatives; 2) the issue of political/constitutional legitimacy has been constantly re-emerging in the history of modern Japanese political thought.

6.2 The Rhetorical Art of Legitimation

The dissertation articulated the methods by which scholars responded to historically contextualized themes and common topics regarding Japan's political/constitutional legitimacy. Such themes and common topics work as the tacit foundations of the written constitution in the scholarly discourses of legitimacy. Chapter I summarized approaches mostly in political theory that identify myth as the rhetorical method of legitimation. By framing rhetoric as the discursive

method of making possible legitimacy (or legitimation), it presented three rhetorical modalities of myth, including invention, reconciliation, and faith (*pistis*).

Modern Japan's political transformation onward – from the dual political system of *bakufu* and the emperor to the constitutional governance with the emperor as the head of the state – was constant attempts to build political/constitutional legitimacy. The primary task of the rebuilding was to assess how and how much to incorporate the *kokutai* myth that indicated the emperor's external reign of Japan, into a constitutional governance structure, and vice versa. While the three modalities were simultaneously operating in the process of legitimacy-building, each modality especially features each historical phase: invention (the mid-late 19th century), reconciliation (the early 20th century), and faith (the mid 20th century).

Chapter II showed the contested methods of invention among the four intellectual debates in the mid-late 19th century. Their inventive methods were to discover intellectual sources and topics in order to establish Japan's political/constitutional legitimacy based on either its "particularity" or foreign "universality." On the side of particularity, the authors used each intellectual source to articulate Japan's particular tradition in order to minimize the overwhelming influence of Western paradigms, including constitutional governance and liberal democracy. Inoue Tetsujiro's use of the public morality of Shinto, Inoue Kowashi's use of *shirasu*, Kaneko's use of Burke as a conservative Western political thinker, and Yoshida's critical use of Chinese Classics epitomized the specific methods of invention to preserve Japan's own legitimacy based on the emperor's external reign. On the side of "universality," the authors used each source relevant to "universal" paradigms, which give rigorous legitimacy to modern Japan as a newly emerging nation state. Uchimura's use of Christianity, Fukuzawa's use of civilization, Ueki's use of anti-Burke, and Yamagata's strict use of Chinese Classics highlighted this method of invention.

Chapter III demonstrated that the three dominant metaphors of *kokka* (the state) worked as the apparatus of governance to reconcile the tension between liberal constitutionalism in form and the political history of *kokutai* in substance. As a result, the *kokka* metaphors became the unwritten foundation of the written constitution. “*Kokka* or the emperor” (Hozumi Yakka & Uesugi Shinkichi) sought reconciliation from the emperor’s public characteristics and supreme morality. “*Kokka* as an organism” had two opposing kinds, the conservative kind (Kato Hiroaki) and the liberal kind (Kita Ikki). Kato’s “*kokka* as an organism” reconciled the tension by regarding the emperor’s sovereignty as the brain of *kokka*’s body. Kita’s liberal metaphor accommodated the emperor’s existence by reinterpreting the emperor’s role as a liberal hero of the Meiji revolution. As for the last metaphor, Minobe Tadakichi and Ariga Nagao used “*kokka* as a legal person.” Minobe’s metaphor harmoniously incorporated the emperor by identifies him as the supreme organ of *kokka*. Similarly, Ariga’s metaphor identified the emperor as the cooperative mediator of the other body organs of *kokka*.

Chapter IV showed that the tropes of the four leading intellectuals in the immediate postwar years aimed to establish collective faith in the new legitimacy of the postwar constitution. The trope of Miyazawa Toshiyoshi, *Hachigatsu Kakumei* (August Revolution), intended to build faith in the revolutionary moment of transforming the emperor’s sovereignty into the people’s sovereignty. Maruyama Masao’s *Bunmei Seishin no Jyūniku* (Incarnation of the Spirit of Civilization) aimed to create faith in the universal paradigm of civilization. Tsuda Sokichi’s *Tenno no Seishinteki Ken-i* (The Emperor’s Spiritual Authority) meant to restore faith in the emperor’s “trans-political” authority. It is “trans-political” because Tsuda’s trope suggests that the emperor is a political authority yet does not involve himself in actual politics at all. Watsuji’s *Kokumin*

Zentaisei no Hyogensha toshiten no Tenno (The Emperor as the Expression of the Whole Nation) aimed to restore faith in the emperor's long-term cultural authority.

6.3 East Asian Modernity As an Alternative

Within a large framework, this dissertation is a stepping-stone to considering East Asian modernity. Since their encounter and forced assimilation within the Western centered world order in the mid 19th century, East Asian countries (Japan, China, Korea, and Taiwan) had been haunted by the typical dichotomy between Western “universal” paradigms and Eastern (or Confucian) tradition. As I have demonstrated, the discourse of constitutional legitimacy embraced this binary tension in the most apparent form. Within the dichotomy, many legal and political ideas and practices oppose one another: the rule of law vs. rule by law, heavenly-bestowed human rights vs. the state-bestowed human rights, rule vs. order, and transcendent values vs. secular values.

Sakai Naoki argues that Western thought has always conditioned the existence of Japanese thought since the Meiji era.⁴⁰⁰ Scholars of Japanese thought have confused the West as anti-Japan (or the West as another particularity) with the West as non-Japan (or the West as universality). As a result, their writing typically embraces an assumed “Western” audience to whom the particularity

⁴⁰⁰ Sakai Naoki 酒井直樹, *Nihon Shisou to iu Mondai — Honyaku to Shutai* 日本思想という問題 — 翻訳と主体 [Translation and Subjectivity: On Japan and Cultural Nationalism] (Tokyo: Iwanami, 2012), 46-52.

of their own thought should be explained. This creates an ironic structure in which the claim on Japanese uniqueness further strengthens the “universality” of the West.

As Chapter II suggested, regretting that Japanese tradition had ruined the country, most liberal discourses in postwar Japan had followed the above dichotomy with a view to promoting Western “universality” over Japanese “tradition.” For instance, Maruyama Masao was one of the most prominent critics of the lack of “universal” or “modern” elements in Japanese society, particularly the lack of a systematic thought, the lack of modern subjectivity, and the lack of commitment to universal values. More importantly, this type of liberal intellectual attitudes has produced another dichotomy - between the postwar constitution as the successful embodiment of Western “universality” and the Meiji constitution as the failure of Japanese tradition.

Within this context, both “postwar” liberals and conservatives – from the end of World War II up to now – have not fully provided useful historical perspectives to the contemporary problem of constitutional legitimacy.⁴⁰¹ The postwar liberals tend to dismiss the legal-political thought of the Meiji constitution as if it were a taboo. They typically describe political opportunism and passive commitment to new liberal values as the characteristic of modern Japanese political

⁴⁰¹ Ironically, the intellectual demand for studying the history of modern Japanese political thought increased in the U.S. academia after World War II. Nonetheless, since the 2000s, the number of relevant works has plunged. Important scholars in the history of Japanese political thought, such as Harry Harootunian, Sakai Naoki, John S. Brownlee, Bob Wakabayashi, Robert Bellah, Julia Adeney Thomas, Frank O. Miller, and Victor Kushman, have already passed away, retired, or about to retire. In fact, as long as I’m concerned, Julia Adeney Thomas’s work on Kato Hiroyuki published in 2002 was the last work on the history of modern Japanese political thought *proper*.

thought. On the contrary, postwar conservatives tend to applaud the Meiji Constitution uncritically in order to reject “foreign” liberal ideas.

This dissertation takes neither of these two positions. Instead, it has stressed the intellectuals’ *active* involvement in making a new legal-political framework within a *limited* historical context. In other words, it takes the tension between the liberals and the conservatives as the characteristic of Japan’s constitutional legitimacy across the two constitutions. What characterizes Meiji constitution was the tension between the constitutional governance and the political history of the emperor’s unbroken reign. What features the postwar constitution has been the tension between liberal democracy and the symbolic emperor system in the postwar constitution.

Such internal tensions of the constitutions are not “features” exclusive to Japan but seem to appear in other East Asian countries. In South Korea, their prevalent practice of “rule by law” within the presidential system modeled after the U.S has historically caused a series of impeachments of presidents and political officials. In Taiwan, the current divide regarding constitutional discourse between the pro-unification groups (one China) and the pro-independent groups (Taiwan as an independent state) reflects a similar divide as postwar Japan. In China, there have been intense contests among multiple schools of constitutional thought: Western Democratic Constitutionalism, Socialist Constitutionalism (e.g., Jiang Shigong), and Confucian Constitutionalism (e.g., Jiang Qing).

If the tension between Asian “tradition” and Western paradigms is a common characteristic in East Asia, then it might be more productive to develop such tension into a novel framework of East Asian modernity, instead of regressing the tension into an unproductive dichotomy. What I mean by East Asian modernity here corresponds to how East Asia as a region specifically has

perceived and framed its socio-political transformation after its countries' significant encounters with the Western world since the 19th century.⁴⁰² It entails East Asian countries' efforts to

⁴⁰² In general, a number of scholars has articulated neo-Confucianism as the most noticeable aspect of East Asian modernity as an *alternative*. "Modernity is never ever simply transferred – that is, reproduced – without surprises. Is the issue that of an Asianized or an Asian modernity? If it is the latter, then perhaps there are alternative modernities to be found in Asia these days?" (220) The author even seems to consider East Asian modernity as a challenge to "Western modernity. He argues, "more former Third World societies now playing the old game of being anti-imperialist in new grab, in the form of an emerging discourse on "East Asian modernity." (211-2). C.J.W.-L. Wee, "The 'Clash' of Civilizations? Or an Emerging 'East Asian Modernity'?", *Sojourn: Journal of Social Issues in Southeast Asia* 11, no. 2 (1996): 211-230.

There is also a term "colonial modernity," which specifically refers to the mode of modernity in East Asia after World War II. For example, Hyunjung Lee & Younghan Cho argue, "Despite the region's relatively successful economic development and its postwar achievements, East Asian desires to emulate America or the West have consistently reproduced the prison of coloniality; this process becomes clear when we explore the formulations of various infrastructures within East Asian societies and the constitutions of East Asian subjectivities and sensibilities." (603) in Hyunjung Lee & Younghan Cho, "Introduction: Colonial Modernity and Beyond in East Asian Contexts," *Cultural Studies* 26, (2012): 601-616.

Also, James Flowers identifies Korean intellectuals' negotiation with Western medicine in the early 20th century as an example of East Asian modernity. James Flowers, "Reconfiguring East Asian Modernity: How the Unorthodox Healer Stone Gorge Yi Connected Supporting the Heart with Strengthening Korea as a Civilisation," *Asian Medicine* 11, no.1-2 (2016): 61-99.

Additionally, Kokubun Noriko shows East Asian intellectuals' unique uptake on western legal and political thought, particularly the natural rights, within their Confucian tradition as the characteristic of

incorporating so-called Western knowledge and institutions into their indigenous habits, customs and norms. In *Asia as Method*, Chen Kuan-Hsing describes that this historical-political situation of East Asia has created “multipl[ied] frames of reference in our subjectivity and worldview.”⁴⁰³ “Asia as Method,” originally coined by Takeuchi Yoshimi, recognize Western paradigms as East Asian’s necessary constitutive element, suggesting East Asian contribution to an alternative world view and order.⁴⁰⁴ For example, Confucianism, which includes ideas such as the centrality of family virtues to social solidarity and the compatibility of market economy with an authoritarian state, might have been a leading driver of East Asia’s industrial development, suggesting “an alternative vision of modernity.”⁴⁰⁵

6.4 Future Research

This dissertation has offered a limited genealogy of constitutional legitimacy in Japan. Most importantly, the analysis focused on the reading of select scholarly texts rather than ordinary

modern East Asian legal development. Kokubun Noriko 國分典子, *Kindai Higashi Ajia Sekai to Kenpo Shiso* 近代東アジア世界と憲法思想 [Modern East Asia and Constitutional Thought] (Tokyo: Keio University Press, 2012).

⁴⁰³ Chen Kuan-Hsing, *Asia as Method: Toward Deimperialization* (Durham: Duke University Press), 223.

⁴⁰⁴ 方法としてのアジア

⁴⁰⁵ Tu Wei-Ming, “Introduction”, in *Confucian Traditions in East Asian Modernity*, ed. Tu Wei-Ming (Cambridge: Harvard University Press, 1996), 7.

people's perceptions of the issue of legitimacy. My focus has been on the making of constitutional legitimacy by intellectuals rather than people's perceptions of legitimacy. Another possible limitation is that there might be a leap in the theoretical connection between my historical inquiry and the contemporary divide on constitutional revision. My analysis only proposed to contextualize the contemporary divide within a larger historical framework in order to understand it as an historically *re-emerging* problem.

At the same time, building on the second critique, a more detailed inquiry into the discourse from the immediate postwar period to the contemporary divide is worth undertaking. For example, the discourse around the 1980s holds significance for the contemporary divide. It is because, around that time, conservatives such as Eto Jun advanced the idea of the "imposed" constitution. Such future research will be a valuable attempt to make this dissertation's argument more convincing by bridging the gap between the immediate postwar period and the contemporary divide

Furthermore, going beyond Japan, the theme and method of this dissertation can be extended to other geographical and historical objects as a comparative history of global constitutional discourse. For instance, I suggest possible future research on contemporary constitutional discourses in Taiwan. This research will aim to articulate what legal sources each side of the pro-unification groups (one China) and the pro-independent groups (Taiwan as an independent state) utilizes in establishing constitutional legitimacy. The recent student movements, including the Sunflower movements against a trade agreement with Mainland China, have pressed for debates on constitutional revision between the two sides. Taiwan's constitution, officially called the Constitution of the Republic of China, was ratified in 1947 in Nanjing, China. Since its democratization since 1987, gradual revisions have been made. Yet, its foundation –the

constitution as the legal ground of the Republic of China, not Taiwan— has remained. In this context, the pro-independent groups have struggled to seek novel legal sources for a new constitutional identity from Japanese colonial legal legacies, Anglo-Saxon law, and the indigenous ethnic groups' legal systems. In contrast, the pro-unification groups firmly advocate the political history of the Republic of China, which is embedded in the current constitution. The significance of this research will lie in unfolding Taiwan's unique legal topology in which a mixture of Chinese, Japanese, Western and indigenous legal sources generates multi-layered possibilities as well as problems for the practice of modern constitutionalism.

I hope that this dissertation becomes a stepping-stone to a comparative *atlas* of global constitutional discourses with a focus on the issue of legitimacy that has historically recurred across the globe.

**Appendix A Gokajo no Goseimon (The Charter Oath), Promulgated by the Emperor in
April 6th, 1868**

By this oath, we set up as our aim the establishment of the national wealth on a broad basis and the framing of a constitution and laws.

Deliberative assemblies shall be widely established and all matters decided by open discussion.

All classes, high and low, shall be united in vigorously carrying out the administration of affairs of state.

The common people, no less than the civil and military officials, shall all be allowed to pursue their own calling so that there may be no discontent.

Evil customs of the past shall be broken off and everything based upon the just laws of Nature.

Knowledge shall be sought throughout the world so as to strengthen the foundation of imperial rule

**Appendix B Excerpts of The Constitution of the Empire of Japan (The Meiji Constitution),
Promulgated in February 11th, 1889**

Having, by virtue of the glories of Our Ancestors, ascended the throne of a lineal succession unbroken for ages eternal; desiring to promote the welfare of, and to give development to the moral and intellectual faculties of Our beloved subjects, the very same that have been favoured with the benevolent care and affectionate vigilance of Our Ancestors; and hoping to maintain the prosperity of the State, in concert with Our people and with their support, We hereby promulgate, in pursuance of Our Imperial Rescript of the 12th day of the 10th month of the 14th year of Meiji, a fundamental law of the State, to exhibit the principles, by which We are guided in Our conduct, and to point out to what Our descendants and Our subjects and their descendants are forever to conform.

The right of sovereignty of the State, We have inherited from Our Ancestors, and We shall bequeath them to Our descendants. Neither We nor they shall in future fail to wield them, in accordance with the provisions of the Constitution hereby granted.

We now declare to respect and protect the security of the rights and of the property of Our people, and to secure to them the complete enjoyment of the same, within the extent of the provisions of the present Constitution and of the law.

The Imperial Diet shall first be convoked for the 23rd year of Meiji, and the time of its opening shall be the date, when the present Constitution comes into force.

When in the future it may become necessary to amend any of the provisions of the present Constitution, We or Our successors shall assume the initiative right, and submit a project for the same to the Imperial Diet. The Imperial Diet shall pass its vote upon it, according to the conditions

imposed by the present Constitution, and in no otherwise shall Our descendants or Our subjects be permitted to attempt any alteration thereof.

Our Ministers of State, on Our behalf, shall be held responsible for the carrying out of the present Constitution, and Our present and future subjects shall forever assume the duty of allegiance to the present Constitution.

Chapter I. The Emperor

Article 1. The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal.

Article 2. The Imperial Throne shall be succeeded to by Imperial male descendants, according to the provisions of the Imperial House Law.

Article 3. The Emperor is sacred and inviolable.

Article 4. The Emperor is the head of the Empire, combining in Himself the rights of sovereignty, and exercises them, according to the provisions of the present Constitution.

Article 5. The Emperor exercises the legislative power with the consent of the Imperial Diet.

Article 6. The Emperor gives sanction to laws, and orders them to be promulgated and executed.

Article 7. The Emperor convokes the Imperial Diet, opens, closes and prorogues it, and dissolves the House of Representatives.

Article 8. The Emperor, in consequence of an urgent necessity to maintain public safety or to avert public calamities, issues, when the Imperial Diet is not sitting, Imperial Ordinances in the place of law.

(2) Such Imperial Ordinances are to be laid before the Imperial Diet at its next session, and when the Diet does not approve the said Ordinances, the Government shall declare them to be invalid for the future.

Article 9. The Emperor issues or causes to be issued, the Ordinances necessary for the carrying out of the laws, or for the maintenance of the public peace and order, and for the promotion of the welfare of the subjects. But no Ordinance shall in any way alter any of the existing laws.

Article 10. The Emperor determines the organization of the different branches of the administration, and salaries of all civil and military officers, and appoints and dismisses the same. Exceptions especially provided for in the present Constitution or in other laws, shall be in accordance with the respective provisions (bearing thereon).

Article 11. The Emperor has the supreme command of the Army and Navy.

Article 12. The Emperor determines the organization and peace standing of the Army and Navy.

Article 13. The Emperor declares war, makes peace, and concludes treaties.

Article 14. The Emperor proclaims the law of siege.
(2) The conditions and effects of the law of siege shall be determined by law.

Article 15. The Emperor confers titles of nobility, rank, orders and other marks of honor.

Article 16. The Emperor orders amnesty, pardon, commutation of punishments and rehabilitation.

Article 17. A Regency shall be instituted in conformity with the provisions of the Imperial House Law.

(2) The Regent shall exercise the powers appertaining to the Emperor in His name.

Chapter II. Rights and Duties of Subjects

Article 18. The conditions necessary for being a Japanese subject shall be determined by law.

Article 19. Japanese subjects may, according to qualifications determined in laws or ordinances, be appointed to civil or military offices equally, and many fill any other public offices.

Article 20. Japanese subjects are amenable to service in the Army or Navy, according to the provisions of law.

Article 21. Japanese subjects are amenable to the duty of paying taxes, according to the provisions of law.

Article 22. Japanese subjects shall have the liberty of abode and of changing the same within the limits of the law.

Article 23. No Japanese subject shall be arrested, detained, tried or punished, unless according to law.

Article 24. No Japanese subject shall be deprived of his right of being tried by the judges determined by law.

Article 25. Except in the cases provided for in the law, the house of no Japanese subject shall be entered or searched without his consent.

Article 26. Except in the cases mentioned in the law, the secrecy of the letters of every Japanese subject shall remain inviolate.

Article 27. The right of property of every Japanese subject shall remain inviolate.
(2) Measures necessary to be taken for the public benefit shall be any provided for by law.

Article 28. Japanese subjects shall, within limits not prejudicial to peace and order, and not antagonistic to their duties as subjects, enjoy freedom of religious belief.

Article 29. Japanese subjects shall, within the limits of law, enjoy the liberty of speech, writing, publication, public meetings and associations.

Article 30. Japanese subjects may present petitions, by observing the proper forms of respect, and by complying with the rules specially provided for the same.

Article 31. The provisions contained in the present Chapter shall not affect the exercise of the powers appertaining to the Emperor, in times of war or in cases of a national emergency.

Article 32. Each and every one of the provisions contained in the preceding Articles of the present Chapter, that are not in conflict with the laws or the rules and discipline of the Army and Navy, shall apply to the officers and men of the Army and of the Navy.

Chapter VII. Supplementary Rules

Article 73. When it has become necessary in future to amend the provisions of the present Constitution, a project to that effect shall be submitted to the Imperial Diet by Imperial Order.

(2) In the above case, neither House can open the debate, unless not less than two thirds of the whole number of Members are present, and no amendment can be passed, unless a majority of not less than two thirds of the Members present is obtained.

Article 74. No modification of the Imperial House Law shall be required to be submitted to the deliberation of the Imperial Diet.

(2) No provision of the present Constitution can be modified by the Imperial House Law.

Article 75. No modification can be introduced into the Constitution, or into the Imperial House Law, during the time of a Regency.

Article 76. Existing legal enactments, such as laws, regulations, Ordinances, or by whatever names they may be called, shall, so far as they do not conflict with the present Constitution, continue in force.

(2) All existing contracts or orders, that entail obligations upon the Government, and that are connected with expenditure, shall come within the scope of Article 67

**Appendix C Kyōiku ni Kansuru Chokugo (The Imperial Rescript on Education), Issued by
the Emperor in October 30th, 1890**

Know ye, Our subjects: Our Imperial Ancestors have founded Our Empire on a basis broad and everlasting and have deeply and firmly implanted virtue; Our subjects ever united in loyalty and filial piety have from generation to generation illustrated the beauty thereof. This is the glory of the fundamental character of Our Empire, and herein also lies the source of Our education. Ye, Our subjects, be filial to your parents, affectionate to your brothers and sisters; as husbands and wives be harmonious, as friends true; bear yourselves in modesty and moderation; extend your benevolence to all; pursue learning and cultivate arts, and thereby develop intellectual faculties and perfect moral powers; furthermore advance public good and promote common interests; always respect the Constitution and observe the laws; should emergency arise, offer yourselves courageously to the State; and thus guard and maintain the prosperity of Our Imperial Throne coeval with heaven and earth. So shall ye not only be Our good and faithful subjects, but render illustrious the best traditions of your forefathers. The Way here set forth is indeed the teaching bequeathed by Our Imperial Ancestors, to be observed alike by Their Descendants and the subjects, infallible for all ages and true in all places. It is Our wish to lay it to heart in all reverence, in common with you, Our subjects, that we may thus attain to the same virtue.

**Appendix D Excerpts of The Constitution of Japan (The Postwar Constitution),
Promulgated in November 3rd, 1946**

I rejoice that the foundation for the construction of a new Japan has been laid according to the will of the Japanese people, and hereby sanction and promulgate the amendments of the Imperial Japanese Constitution effected following the consultation with the Privy Council and the decision of the Imperial Diet made in accordance with Article 73 of the said Constitution.

Signed : HIROHITO, Seal of the Emperor

This third day of the eleventh month of the twenty-first year of Showa (November 3, 1946)

We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith. We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We

recognize that all peoples of the world have the right to live in peace, free from fear and want. We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations. We, the Japanese people, pledge our national honor to accomplish these high ideals and purposes with all our resources.

Chapter I. The Emperor

Article 1. The Emperor shall be the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power.

Article 2. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.

Article 3. The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

Article 4. The Emperor shall perform only such acts in matters of state as are provided for in this Constitution and he shall not have powers related to government.

(2) The Emperor may delegate the performance of his acts in matters of state as may be provided by law.

Chapter III. Rights and Duties of the People

Article 10. The conditions necessary for being a Japanese national shall be determined by law.

Article 11. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.

Article 12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

Article 13. All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

Chapter IV. The Diet

Article 41. The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State.

Chapter V. The Cabinet

Article 65. Executive power shall be vested in the Cabinet.

Chapter VI. Judiciary

Article 77. The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of judicial affairs.

(2) Public procurators shall be subject to the rule-making power of the Supreme Court.

(3) The Supreme Court may delegate the power to make rules for inferior courts to such courts.

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