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

by

Tomonori Teraoka

Bachelor of Law (LL.B.), Tohoku University, 2010
Master of International Affairs, The Pennsylvania State University, 2013

Submitted to the Graduate Faculty of the
Dietrich School of Arts and Sciences in partial fulfillment
of the requirements for the degree of
Doctor of Philosophy

University of Pittsburgh

2020
UNIVERSITY OF PITTSBURGH

DIETRICH SCHOOL OF ARTS AND SCIENCES

This dissertation was presented

by

Tomonori Teraoka

It was defended on

August 14, 2020

and approved by

David L. Marshall, Associate Professor, Department of Communication

Paul Elliott Johnson, Associate Professor, Department of Communication

Dissertation Directors: Olga Kuchinskaya, Associate Professor, Department of Communication and Ricky Law, Associate Professor, Department of History (Carnegie Mellon University)
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.
### Table of Contents

Preface ............................................................................................................................................ x

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

.......................................................................................................................................................... 1

1.1 Kokutai and Its Brief Historical Background ........................................................................... 7

1.2 Literature Review ....................................................................................................................... 12

1.3 Approach .................................................................................................................................... 17

1.4 Text and Analysis ....................................................................................................................... 24

1.5 A Preview of the Chapters ......................................................................................................... 25

2.0 The Rhetorical Art of Legitimation.......................................................................................... 28

2.1 Rhetoric as Political Legitimation ............................................................................................ 31

2.2 Myth as Invention ....................................................................................................................... 41

2.3 Myth as Faith (Pistis) ................................................................................................................. 47

2.4 Myth as Reconciliation ............................................................................................................. 54

2.5 Contextualizing the Rhetorical Art of Legitimation in Modern Japan ................................. 61

2.5.1 The Writing of History as the Method of Invention in Mitogaku in the Late Edo Era ................................................................. 66

2.5.2 The Image of the Body Politic as the Method of Reconciliation in Meiji Japan ........... 70

2.6 Chapter Conclusion ................................................................................................................. 72

3.0 Inventing Modern Japan’s Political/Constitutional Legitimacy: Between

Particularity and Universality in Mid to Late 19th Century Japan ........................................ 74
3.1 The Contested Reading Methods of Chinese Classics: The Yoshida – Yamagata Debate ............................................................ 77

3.2 The Different Methods of Legitimizing Kokutai: The Fukuzawa – Inoue Debate . 88

3.3 The Discovery of Edmund Burke in Japan: The Kaneko – Ueki Debate .......... 101

3.4 The Place of Religion in Japan’s Legitimacy: The Kaneko – Ueki Debate .......... 116

3.5 The Discovery of Japan’s Political/Constitutional Legitimacy .................. 127

3.6 Chapter Conclusion: Invention .............................................................. 129

4.0 Kokka as the Unwritten Constitution: The Body Metaphors of the State at the Beginning of the 20th Century of Japan ................................................................. 131

4.1 The Body Politic in Meiji Japan .................................................................. 139

4.2 Kokka or the Emperor (Tennō 天皇) ......................................................... 145

4.2.1 Hozumi Yakka ....................................................................................... 145

4.2.2 Uesugi Shinkichi .................................................................................. 154

4.3 Kokka as an Organism (Yūkitai 有機体) ................................................... 161

4.3.1 Kato Hiroyuki ......................................................................................... 161

4.3.1.1 “Nature” as the Absolute Law of the Evolution of Organisms ...... 163

4.3.1.2 The Analogical Metaphor of “Kokka as an Organism” ................. 166

4.3.2 Kita Ikki ................................................................................................. 172

4.4 Kokka as a Legal Person (Hojin 法人) ...................................................... 182

4.4.1 Minobe Tatsukichi ................................................................................ 182

4.4.2 Ariga Nagao .......................................................................................... 190

4.5 Kokka as the Unwritten Constitution ...................................................... 194

4.5.1 A Comparative Map ............................................................................. 194
4.5.2 Kokka as the Unwritten Constitution ................................................................. 197

4.6 Chapter Conclusion: Reconciliation ................................................................... 200

5.0 (Dis-) Continuity of Tradition: The Rhetorical Invention of Constitutional
Legitimacy in Postwar Japan ..................................................................................... 202

5.1 The Postwar Exigency of Rhetorical Invention: A Historical Context ............. 206

5.2 Literature on the Postwar Constitution ................................................................. 210

5.3 Rhetorical Analysis and Text Selection ................................................................ 213

5.4 The Postwar Liberals on the Discontinuity of Tradition ..................................... 218

5.4.1 Miyazawa on Hachigatsu Kakumei ................................................................. 218

5.4.2 Maruyama on Bunmei Seishin no Jyūniku ....................................................... 226

5.5 The Postwar Conservatives on the Continuity of Tradition .............................. 238

5.5.1 Tsuda on Seishinteki Ken-i .............................................................................. 238

5.5.2 Watsuji on Kokumin Zentaisei no Hyogensha ................................................ 244

5.6 (Dis-) Continuity of Tradition ............................................................................ 250

5.7 Chapter Conclusion: Rupture & Divide .............................................................. 253

6.0 Conclusion ............................................................................................................ 258

6.1 A Genealogy of Japanese Constitutional Legitimacy ....................................... 258

6.2 The Rhetorical Art of Legitimation ..................................................................... 260

6.3 East Asian Modernity As an Alternative .......................................................... 263

6.4 Future Research ................................................................................................. 267

Appendix A Gokajo no Goseimon (The Charter Oath), Promulgated by the Emperor
in April 6th, 1868 ........................................................................................................ 270
Appendix B Excerpts of The Constitution of the Empire of Japan (The Meiji Constitution), Promulgated in February 11th, 1889......................................................... 271

Appendix C Kyōiku ni Kansuru Chokugo (The Imperial Rescript on Education),
Issued by the Emperor in October 30th, 1890............................................................ 277

Appendix D Excerpts of The Constitution of Japan (The Postwar Constitution),
Promulgated in November 3rd, 1946 ........................................................................... 278

Bibliography ................................................................................................................. 281
List of Figures

Figure 1 The Drawing of Kaieda Nobuyoshi in his Note at von Stein’s Lecture .................. 72
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

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/cps/romanization/japanese.pdf). The English transitions 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.  

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. 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).

---


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). 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. 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.

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. The LDP’s

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


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 delegitimate 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

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.\(^\text{10}\) 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).\(^\text{11}\)

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.\(^\text{12}\): 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

\[^{10}\text{For example, Contemporary Rhetorical Theory: A Raeder Guilford Press, ed. Mark J. Porrovecchio and Celeste Michelle Condit (New York: The Guilford Press, 2016).}\]


\[^{12}\text{Melissa S. Williams, Joseph Chan, and Doh Chull Shin, “Political Legitimacy in East Asia: Bridging Normative and Empirical Analysis” in East Asian Perspectives on Political Legitimacy: Bridging the Empirical-Normative Divide (Cambridge: Cambridge University Press, 2016), 3-7.}\]
provides for the common interests of people. There is no general theory of when and what would cause a legitimation crisis of political authority because it depends on cultural-specific reasons.\textsuperscript{13} However, I claim that whether it is the government’s infringement of common normative values or formal legal procedures, such legitimation crises invariably signify the rhetorical \textit{failure} of establishing truth among contesting claims within a political community. In general, this dissertation views rhetoric as a method of \textit{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 \textit{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 \textit{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.

\textsuperscript{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.  

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. Yonehara Ken articulates two important principles of *kokutai* after the Meiji

---


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.
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. 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. 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. 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


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.” 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.” 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.”


21 Ibid.

After the establishment of the Meiji constitution, the number of discourses on kokutai increased quantitatively whenever the government felt its legitimacy was in crisis.\textsuperscript{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.\textsuperscript{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

\textsuperscript{23} Yonehara, Kokutairon ha Naze Umaretaka, 8.

\textsuperscript{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.”

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.

_________________________

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 argues that myth lies at the origin of the constitution. Simon Servein, a historical sociologist, has emphasized the legitimate


power of the mythicized origin of the postwar constitution. In contrast, a legal-political theorist, Shinoda Hideaki’s recent work criticizes such a post-war mythicized constitutional origin. 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. Another constitutional scholar, Okudaira Yasuhiro claims that the interaction of historical memories between different generations generates and maintains constitutional narratives. Given these arguments, Maki Misaki claims that it might be challenging to create an “attractive” narrative.

---


about the origins of the Japanese constitution given its historical roots. 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 disciple 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.

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, 33


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.  

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. Nevertheless, how is


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, Gianbattisata 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,” public attachment to the constitution requires the work of myths as the self-sustaining mechanism of the constitution.

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.


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

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”\(^\text{42}\) 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

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. 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

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 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, Gianbattisata 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 fours 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, 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 Blumemberg’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


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.” 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.

Towards the re-emerging problem of political legitimacy, Blumenberg suggests a 
rhetorical solution or human-made possibility based on modern secularism. His modern secularism 
innovates a novel answer to the re-emerging problem of legitimacy succeeded from the 
Christianity. 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, 

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 
what use he will make of the possibilities that are open to him.” Thus, he argues that the legitimacy of the modern age is grounded in human-made possibility rather than an unbroken historical identity. 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.” 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’ 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. 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. It is anti-rhetorical rhetoric because the theoretical closure of rhetoric or possibility (anti-rhetorical discourse) is very clearly a persuasive discourse. 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.


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. Blumemberg 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.

60 Hammill, “Blumenberg and Schmitt,” 87.
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 Schmit’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” 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.


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.” 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 ad 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


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


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 mathemata 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.”

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. 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.”

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/synecdoche 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.

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

78 Ibid, par. 376.


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 langue and parallel institutions.” Vico defines common sense as “judgment without reflection, shared by an entire class, an entire people, an entire nation, or the whole human race.” 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.”

For the creation of common sense, myth invents *topica* or discovers common topics. In this sense, Donald Verene articulates, “*sensus communis* is formed through the sensory topics.”

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.

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.  

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” 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.” 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.

and this means that to the figure, to that which is shown, the speech transfers \textit{metapherein} a signification.”\textsuperscript{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.”\textsuperscript{92} In this way, myth provide the fundamental platform for argument.

Accordingly, myth gives historical legitimacy to an accumulated cultural practice of political communities.\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{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

\textsuperscript{91} Grassi, \textit{Rhetoric as Philosophy}, 20.

\textsuperscript{92} Grassi, \textit{Rhetoric as Philosophy}, 92.

\textsuperscript{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, \textit{A Philosophy of Political Myth} (Cambridge, England: Cambridge University Press, 2007), 170.

\textsuperscript{94} Joseph Mali, \textit{The Rehabilitation of Myth}, 150-1.

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.
99 Verene, Vico’s Science of Imagination, 159.
100 Ibid.
2.3 Myth as Faith (*Pistis*)

As another method, myth creates and promotes 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.” 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.\(^{102}\)


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.”

The dilemma of the Bible, either as the mythical-historical narrative or the philosophical moral law, involves two distinctive kinds of reading. 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.

---


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

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:

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

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

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) The prophets’ mythical narratives cannot be separable 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. 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.” 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,


114 Spinoza, Theological-Political Treatise, 213.
no one is obligated by divine law, which he simply cannot know.” 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 legitimation 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 legitimation 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. 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.

man) as a legitimate reason to be linked with the signified (French imperiality). 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. 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 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

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.” 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” as a justifying means of law-making. Thus, in the law-making, myth neutralizes violence and presents the law as neutral.


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. 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

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 *hominis 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.\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{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.

\textbf{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

\begin{flushright}
\textsuperscript{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, \textit{State of Exception}, trans. Kevin Attell (Chicago: The University of Chicago, 2005), 28.

\textsuperscript{130} Ibid, 86.

\textsuperscript{131} The emphasis is mine. Ibid.

61
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.

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).
然 nature) emerged during the political turmoil of the sonno joi movement.\textsuperscript{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,\textsuperscript{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

\begin{flushright}
\textsuperscript{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 Kyou 札幌学院大学総合研究所紀要 2 (2015): 59-69.

\textsuperscript{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.

67
historiographical compilation of Japan, *Dai-nihon-shi* (A History of the Great Japan), which started as early as in 1657. 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

---

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.” 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 legitimation. 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

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.
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,

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

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 debate, the analysis of this chapter focuses on examining how each debate uses the contested methods of inventing intellectual

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
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 Classics. 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 conservativism 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
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.’”

Yoshida criticizes Confucius and Mencius’ “error” of leaving their own country in

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.” 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 Classis as the universal source of Japan’s political legitimacy, is based on his strict adherence to Classics. For instance, Yamagata firmly defends Mencius and Confucian’s behavior of leaving the country in which they were born, a behavior Yoshida severely criticizes. Yamagata claims that Way has both kei (經 reason) and ken (權 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 Confucian 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 Confucian, 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 (覇 dominance; hegemony).” According to Yamagata, ba is an ancient Chinese political idiom, which signifies the most dominant power capable of controlling other lords. In Yamaga’s mind, ba suggests the military dominance of one country over others which are always


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 scrutinious 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 (気 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

critical reading of Chinese Classics urges the change of Japan’s reliance on China as a source of political legitimacy.\(^\text{144}\)

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.”\(^\text{145}\) Thus, for Yamagata, Yoshida’ 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 stateman 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” (Kogen 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. 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 precedency 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

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*. According to him, *seitō* is that which is “the ultimate source of political authority recognized by the people.” 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.” 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 (多事爭論

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.” 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.” As a result, the imbalance of power has forever separated the ruler and the ruled. 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.”

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” 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.

______________________________

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).

Kojiki (Records of Ancient Matters) invented kokutai as the emperor’s unbroken reign within the ancient term shirasu (知らす 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 Makimu, 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
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.\textsuperscript{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 \textit{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

\textsuperscript{164} Ito, \textit{Commentaries on the Constitution}, 3-4.
enactment of the Meiji constitution on February 26th, 1889. 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.’

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 葦原中國) 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* (知らす 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 “梧陰存稿言霊” in 1895.

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 counties 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 precedency. *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 precedency for the idea of the public realm. As result, Inoue argues that *shirasu*’s historical precedency 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 precedency 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,” 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.

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


stateman and scholar, as an appropriate intellectual source to legitimize Japan’s own political legitimacy of *kokutai*. On the other hands, 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 statemen 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. Keneko’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 legitimatize Japan’s legal foundation based
on its “empirical” history. 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

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.

169
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. 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.

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.” 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 summery 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.

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.” 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.” Burke’s critique targets Pain’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.

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

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...

---


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 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


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、第二ニハ時世ノ変還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ニ進歩スル主義ヲ目的トスル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礙ナク”\(^{186}\)

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 discuses 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.” 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 stateman, 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 hold 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 to his identification of the unprecedent 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 “Boruku 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, 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.


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. 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 conservativism. 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

contract, Ueki argues that the initial contract to create a society or the state must also be beneficial to the people.\textsuperscript{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.\textsuperscript{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 (\textit{jiyu kosai} 自由交际) with others.\textsuperscript{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 (\textit{hisei} 被制 lit. being-made) the state authority but are the subjects (\textit{jisei} 自制 lit. self-making) of fabricating such authority.\textsuperscript{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


\textsuperscript{192} Ibid, 6.

\textsuperscript{193} Ibid, 16.

\textsuperscript{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.” Against this criticism, Ueki applauds the French people’s love for freedom and their wisdom. 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.” Thus, the French had “the emotion of liberty (jiyu no kanjyo 自由の感情).” 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 legitimates modern nation states, including Japan. Ueki argues that conservatism is not an independent theory. 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 Tetsujiro 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” (shūkyo 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.\footnote{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.} 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.”\footnote{The emphasis is mine.} 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.\footnote{Isomae, Kindai Nihon, 35.} 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
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.\textsuperscript{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 \textit{kokka} (the state).\textsuperscript{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.\textsuperscript{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.

\textsuperscript{204} Ibid., 33.
\textsuperscript{205} Ibid., 45-48.
\textsuperscript{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.\textsuperscript{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.\textsuperscript{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 9\textsuperscript{th}, 1891. Uchimura Kanzō, as a Christian teacher, attended the ceremony but did not do

\textsuperscript{207} Ibid., 48-49.

\textsuperscript{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 Tetsujiro. 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 resect 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. 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. 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.

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 Tetsujiro 井上哲次郎, Kyoku to Shūkyo no Shōtotsu 教育と宗教の衝突 [The Clash of Education and Religion], (Tokyo: Keigisha, 1893), 125.

213 Inoue, Kyōiku to Shūkyo, 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


²¹⁵ Inoue, *Kyōiku to Shūkyo*, 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. 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)” 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.

---


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.


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. 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. 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


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.” As patriotism is the essential part of one’s soul, no foreign culture can shake Uchimura’s Japanese identity. The compatibility of Christianity within Japan is expressed most clearly in the essay “Two J’s” (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


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/constititutional legitimacy. One 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 contestants methods of invention or discovering intellectual sources to answer the question of legitimacy, that is to say, how much


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 巻 [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 indicates 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 leadings 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.”

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.

The era also saw the emergence of women’s movements led by Hiratsuka Raicho. Moreover, the voting rights became expanded to all adult


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 Rosso-Japanese war in 1904, raised the significant question of national integration under the emperor, particularly in terms of ethnicity. Especially, it was a demanding intellectual task to integrate Japanese mainland and other colonial territories while keeping distinction between them. 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

---


233 Ibid.
legitimacy. This is what I call “kokka as the unwritten constitution.”\textsuperscript{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 legitimates 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”\textsuperscript{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).”\textsuperscript{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

\textsuperscript{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,” \textit{Modern China} 40, no. 2 (2014): 119-132.

\textsuperscript{235} Here, I use “or” to indicates 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 \textit{Ethics}.

\textsuperscript{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. 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);


2) For “kokka as an organism”:


—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”


—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. 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.


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

Specifically, my analysis examines 1) how the metaphors of \textit{kokka} reconcile the inherent tension and contradiction between the liberal form of the constitutional governance and the ideological substance of \textit{kokutai}; 2) how \textit{kokka}’s such reconciliatory rhetoric serves to legitimate 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 \textit{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 “\textit{kokka} or the emperor,” “\textit{kokka} as an organism,” and “\textit{kokka} as a legal person.” Afterwards, I offer a recapitulation of the analysis: a comparative

\textsuperscript{239} This approach is used, for example, in the work of Ryuich Nagao, a leading scholar on Japanese modern legal-political thought. In \textit{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, \textit{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 \textit{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 \textit{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 \textit{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. 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 bourgeoise. 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
from 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 bourgeoise in the German Empire. 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

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 bourgeoise 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.”


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 Polieraticus (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.


142
indicates that the state has the higher level of self-determining capacity. 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.” 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.” 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


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 kakushi* (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.\textsuperscript{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.\textsuperscript{253} Moreover, Hozumi’s articulation of two kinds of \textit{kokutai} further solidifies the nation’s conviction: monarchical (\textit{kunshu} \textit{kokutai}) and democratic (\textit{minshu} \textit{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.\textsuperscript{254} In this sense, Hozumi seeks the absolute and sole legitimacy of sovereignty within the common ethos of the nation.

\footnotesize
\begin{enumerate}
\item \textsuperscript{252} Ibid., 94.
\item \textsuperscript{253} Ibid., 72.
\item \textsuperscript{254} In doing so, he also makes clear distinction between \textit{kokutai} as the particular \textit{place} of sovereignty and \textit{kokka} as the general political entity with sovereignty. As a result, the two kinds of \textit{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 \textit{kokutai} to democratic \textit{kokutai}, in terms of integrity. According to him, ideally, the ancestor worship should construct \textit{kokutai}. However, democratic \textit{kokutai} lacks this primary element of the ancestor worship. Instead, in democratic \textit{kokutai}, the will of the people supplements the lack. The two kinds of \textit{kokutai} are mutually exclusive. It is impossible for one country to have a mixed \textit{kokutai} or change it arbitrarily. Because \textit{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. 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 era.

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：日本の民意の系譜学 [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. 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”. 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). 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. Hozumi articulates the foremost purpose of the Meiji Constitution, together with the Imperial Household Law in 1889, was the clarification of kokutai. 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 reform. 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.


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. 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”.

154
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. 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.

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. 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. 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. 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, his 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 (*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) 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). 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


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


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’ 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 Rousseanian counterpart. It appears in the divine will of the emperor, which Uesugii 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


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,

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

---


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 certainty 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 saibotai* (Einzolligon oder Protistou) *fukusu saibotai* (Vielzelligeu oder Histonen); *fukufuku saibotai* (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’s *xìng è lùn* (性惡論 the theory of evil human nature), Ogyū 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* (上下平均的道德 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* (上圧下屈的道德 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 (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 rigin. 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 (礼 li) 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 (天才人権 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.” 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

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)” 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


282 In 誠心下 - Jin Xin II, Mencuius 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.”

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 pe-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 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.

Accordingly, Kato’s analogical metaphor with the aims for the organic integrity of kokka
legitimates 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). 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. 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-

---


285 Ibid.
*ron oyobi Junsei Shakaishugi* (The Theory of Japan's National Polity and Pure Socialism) 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

---

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 The historical change of the legal character of kokka from bukkau 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 revolutionaryism”\(^{288}\) 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 & Ueusgi’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

\footnote{288 The main chapter of the book is the chapter IV, which is titled “Iwayuru Kokutai-ron no Fukkokakumeishugi (The Restorative Revolutionaryism of So-Called kokutai Theory)”}

\footnote{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).

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*. 

178
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.

More importantly, his re-interpretation of Japanese history invented a novel historical narrative, the Meiji emperor as the eiyu (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.

179
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 reinterpretative 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 identity 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

---


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” legitmatize 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.” 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.

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.

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

182
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 Summery 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” construct 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 facto* 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 facto* 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, a German legal scholar, Minobe develops a legal philosophy of “social psychologism”, which considers the law as the normalized social facts approved by people’s social consciousness. 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, Jellineck 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.” 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

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 conservativism 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.”

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.”

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.

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)


304 Minobe, “Kokka oyobi Seitairon,” 453.
political ideologies. Additionally, in this context, Minobe even appeals to Hozumi’s political conservativism. 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 conservativism. 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.” 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

---

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*.
(知らす lit. to be known), as opposed to *ushi*haku (領く). While *ushi*haku signifies someone’s private possession, *shira*su signifies a shared governance. Thus, the emperor’s reign as *shira*su was a public service for the people. Based on this, Ariga asserts that there was a clear distinction between the emperor and *kok*ka from the ancient time in the sense that the emperor did not personally possess *kok*ka.

Ariga’s restorative rhetoric find the equivalence of *shira*su 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 (*shia*ken). 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 (*shira*su). However, in the course of Japanese history, particularly in the second stage of “the same clan” *kok*ka, 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 *shira*su, an ancient Japanese term, with *tochiken* in the Meiji constitution.

Altogether, the above three elements in Ariga’s “*kok*ka 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 “*kok*ka

---


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 distinguished 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 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, Kata’s “kokka as an organism” neutralize 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. Insated, his “kokka as an organism” emphasis kokka’s whole evolutionary nature towards social equality simialrly 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 reinterpretative method, his “kokka as an organism” accommodate 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 embrace 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 conservativism.

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. 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, 顕教 lit. open teachings) and *mikkyo* (esoteric, 密教 lit. secret teachings) well describes this duel-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 seita (democratic polity based on social contract) there is no kokka without a constitution, in kunshu seita (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

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 censorhip 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.
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” 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* 神權天皇制 (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” 神權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. 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 Zentai-sei no Hyogensha toshiteno Tenno* (The Emperor as the Expression of the Whole Nation).

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 attentions 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 (continuity) 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. 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. 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

---


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.”

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 abolition 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. 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.

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


319 Ibid.
break out.”

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. 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

---


by rejecting only the Nazi past as a temporary deviation, “integrative German German.” 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) claimed the radical break from Japanese tradition. In contrast, the latter (integrative 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. With regards to the latter aspect, particularly,

322 Moses, German Intellectuals, 9-10.

323 For example, Higuchi Yoichi 樋口陽一, Kindai Kenpogaku nitotten Ronri to Kachi (Sengo Kenpogaku wo Kangaeru) 近代憲法学によっての論理と価値(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

---


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.\(^\text{327}\) 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.\(^\text{328}\) 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

---


\(^\text{328}\) 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. 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


213
ethos 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” 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.


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. 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. It is because the study of political theory is to trace the persuasive contributions of made by figures of speech. Particularly, tropes indicate “the turn that we trace in apprehending the world.” 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:


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 Seito to Itan (Orthodoxy/Legitimacy and Heresy).

While the two liberals were active promotors 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. 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. 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. It is only possible to articulate the lingering

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 Zentai sei no Hyogensha toshite no 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 legitimate 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 to no 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
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. 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.” 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.”

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. 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 Touchiken 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 an 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. 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

Historian Martin Malia argues in *History's Locomotives: Revolutions and the Making of the Modern World* that revolution “reorder[s] the coordinates of legitimacy in the *res publica* [or common wealth]: they seal the end of old regimes and inaugurate new orders; and they mark the turn from one era to another.” 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.” 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. 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.

---


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. 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. For example, he argues that “Japan is liberated from God, or Japan expelled God from its politics.” 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 Miyazwa'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.” Derrida’s point is to argue that the pouvoir constituent (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-

legal texts. 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.” 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.

---


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). 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*. 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. 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*

---


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). 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. 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


Maruyama’s underexamined thought on constitutional and political legitimacy. 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.  

---

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* 異端論斷章 [A Fragment of the Theory of Heresy] (Tokyo: Misuzu Shobou みすず書房, 1997); Ishida, *Maruyama Masao tono Taiwa*.

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. 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

---

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. For Maruyama, kokutai, which exclusively concerned the matter of legitimacy grounded on the emperors’ divinity, functions only as the pseudo-“substitution” of genuine orthodoxy.

Based on the above comparative models, Maruyama’s overarching goal is to discover and develop genuine orthodoxy in the history of Japanese political thought.

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 友輝, Meiji no Hyosho Kukan 明治の表象空間 [The Representative Space of Meiji] (Tokyo: Shinchosha, 2014), 32.

362 Ibid, 33

genuine orthodoxy includes not only in pre-modern Japan but also in modern Japan. 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. 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 transition 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. 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” 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.” In Christianity, Jesus is both fully God and fully a human, or the union


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-

\(^{371}\) Maruyama, *Seitō to Itan*, 73.

\(^{372}\) Ibid, 72.

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


\(^{376}\) 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.”

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

---

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*. 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.

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,

__________________________


379 Ibid, 3-37.
therefore, the significance of the tale is more profound than that of historical facts.” 380 Thus, his rational reading 381 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,


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 motived 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. 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

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 Zentai sei no Hyogensha” in 1948 most clearly elaborates on his core idea that the imperial court and the emperor have “expressed” (hyogen) the whole consensus (souï) 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 (souï)… 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

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 particularly, 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.” 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. 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. In this scholarly exchange, Watsuji’s argument highlights his

386 The emphasis is mine. Ibid, 353.
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 Watsuhi, Sasaki’s framework of tochiken soran only reflect the history of dual-political system, overlooking its cultural significance.\(^{390}\) Thus, Watsuji

\(^{389}\) 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 “Touchiken 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 zentai sei 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.
The 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 *jyūniku* (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 *jyūniku* 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 automatous 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.” 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

---

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?” 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.” But how do people avoid dogmatism while having faith in certain texts and engaging with interpretive activities? He seeks an answer in Gianteresio 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.” Therefore, faith as the condition of

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.\textsuperscript{397}

\textsuperscript{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 delegitimating narratives… the point of constitutional narrative—whether of the romanticizing or delegitimating 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.” 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 ways. 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 I 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 Tastukichi and Ariga Nagao used “kokka as a legal person.” Minobe’s metaphor harmoniously incorporated the emperor by identifying 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 toshiteno 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.\textsuperscript{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

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.\footnote{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’?,” \textit{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,” \textit{Cultural Studies} 26, (2012): 601-616.


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.”

“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. 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.”

### 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

---


404 方法としてのアジア

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.
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.
Bibliography


Hobbs, Catherine L. “Vico, Rhetorical Topics and Historical Thought.” Historical Reflections/ Réflexions Historiques 22, no. 3 (Fall 1996): 559-85.


Kawano, Yuji 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), 176-188.


Kokubun, Noriko 国分典子. “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 Evolutional


Maki, Misaki 巻 美矢 紀. “Nihonkokukenpo 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.


288


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).


Shirai, Satoru. Eizoku Haisenron — Sengonihon no Kakushin 永終敗戦論 — 戦後日本...


