

2 Montesquieu vs. Bagehot

Two visions of parliamentarism in Japan

Yuri Kono (translated by Egas Moniz Bandeira)

Introduction: Heisei democracy and the 1955 System

The political structure of contemporary Japan is that of a representative democracy. But what kind of representative democracy is it? It is different from the presidential system of the United States. That is to say, a strict separation of powers is not really enshrined in the Constitution of Japan, which determines the superiority of the House of Representatives (*Shūgiin* 衆議院). Although the Constitution provides for the Supreme Court's power of judicial review as a court of last resort, the Court is known to nearly always respect the positions of the government when "highly political questions" are involved.¹ Furthermore, Japan's political system is also different from a "consensus" democracy, although this point is a bit more controversial. Contemporary Japan differs from the type of representative democracy as is often to be seen in European countries, with an electoral system centered around proportional representation and in which important political decisions tend to be taken in consensus between the major political parties.²

But what is contemporary Japan's democracy then? Certainly, the central position of the National Diet within the political system reminds of the status of the English parliament, of which, since the eighteenth century, it has been commented that it "can do everything except for turning men into women and women into men."³ Contemporary Japan comes close to a majoritarian democracy or the model which is called the "Westminster Model." The electoral system is in principle that of single-member districts. The political party which detains the majority in the parliament elects the prime minister, and the prime minister concomitantly serves as the head of the executive organs. In this system, in which legislative organs and executive organs are "merged," the powers of the Japanese prime minister tend to be rather strong.⁴

Certainly, some caveats are necessary. First, there is a divergence between model and reality. The Westminster Model assumes that at every election, the composition of the parliament largely changes, and that government is frequently handed over. However, in contemporary Japan, since 1955, political power has only been handed over twice, and the one-party hegemony of the Liberal Democratic Party (*Jiyū Minshutō* 自由民主党) continues. Lacking the formation of a strong opposition party, the system of two large parties originally expected by

the Westminster Model has not been realized. Is the Westminster Model appropriate as a form for representative democracy? Questions such as why strong opposition parties do not arise in Japan even though the Westminster Model is used are very interesting topics, but are not discussed in this chapter.

As a second caveat, another element is to be considered which has been spared out of the considerations above: the existence of a monarch. In Japan, there is a hereditary monarch who is different from the prime minister. In the case that the monarch has different political preferences from the prime minister, the powers of the prime minister could be seen to be restricted. However, as in the United Kingdom, there is the principle that the monarch “reigns but does not rule.” His (or her) powers are limited to a ceremonial role, and, as a matter of principle, he (or she) does not possess substantial deciding powers. Being a part of governance without practical effects, the monarch fully plays the “dignified part.” This point becomes more important in practice in the Senate (*Sangiin* 参議院) and in local government. Although, as has been described, the Constitution accords a position of superiority to the House of Representatives, there are accordingly high obstacles for draft bills to pass the Senate. In the sense that managing the government becomes rather difficult when the Senate and the House of Representatives are occupied by different factions, the Japanese Senate (the second house) is an important exception when considering the “Westminsterization” of Japan. Furthermore, local government is also an important exception. Japan does not apply a federal system. However, the Constitution promulgated in 1946 professes the ideal of “local autonomy” and confers upon local governments extensive discretionary powers. If the local governments are resolutely determined not to comply with the decisions of the central government, the measures that the central government can take are rather limited.

Third, there have been historical changes. The transformation of the Japanese political system into the Westminster Model was a rather recent phenomenon. Certainly, there is scope for interpreting provisions of the 1946 Constitution such as those determining the superiority of the House of Representatives (First House) as fundamentally foreseeing a parliamentary system. However, before the Liberal Democratic Party was temporarily sent into the opposition in 1993, circumstances were different in Japan even though the text of the Constitution as such did not change at all. In conclusion, it was the epoch-making reform of the electoral system and consolidation of the legal system concerning the Cabinet in 1993 which advanced the Westminsterization of Japanese politics.⁵ The parliamentarism after 1993, which conforms to the Westminster Model, has taken on the era name “Heisei Democracy,”⁶ whereas parliamentarism before that is sometimes called the “1955 System.”

For this chapter, this third point is important, i.e., the question of the “1955 System” being another type of parliamentarism in Japan alongside the Westminster Model. In 1955, the Liberal Party (*Jiyūtō* 自由党) and the Democratic Party (*Minshutō* 民主党) – two conservative parties – merged, and the Socialist Party accomplished its unification. The Communist Party relinquished armed revolution and adopted the policy to act as a parliamentary party. Later, the situation

that conservative parties continuously secured the majority of the House of Representatives (First House), but on the other hand could never win the two-thirds majority of the seats necessary for constitutional amendments, in fact persisted until 1993. The system whereby constitutional amendments by the conservative wing – for which two-thirds of the seats are necessary – and a takeover of government control by the left wing – requiring a simple majority of the seats – were concomitantly precluded is sometimes called “One-and-a-half major party system” (*ichi to ni-bun-no-ichi daiseitōsei* 一と二分の一大政党制).⁷

While the conservative parties did not hide their nostalgia for the pre-1945 system by publicly professing policies such as amending the Constitution and remilitarization, the left-wing parties did not hide their sympathy for the “Eastern Bloc” by showing enmity toward capitalism. The differences in the ideological standpoints of the two sides were all too clear, and in fact, on the surface, the two camps seemed to be fiercely opposed. However, that could also be said to have been nothing more than a “quarrel.” What took place against the background of such a superficial relationship of hostility was in reality a politics of consensus (*dakyō* 妥協). In this sense, this “1955 System” was not so dissimilar to the consociational democracies of Europe. The electoral system of multimember districts (in one district, several candidates were elected) promoted the diversification of parties. Furthermore, this generated parties within parties, called “factions” (*habatsu* 派閥), within the strongest party, the Liberal Democratic Party. In other words, the Liberal Democratic Party was a coalition government of multiple factions. The prime ministers’ powers were comparatively weak, and their terms of office were not very long. Politics was fundamentally a coordination between such factions, and the parliament, in its turn, was a place for coordination with opposition parties (*yatō* 野党). The structure of the parliament, which had short sessions and needed to digest complicated agendas, made the veto rights held by such opposition parties more important than the actual number of seats. Contrary to the superficial ideological differences, in practice, politics was made with strong consideration for the opposition parties. “The winner takes it all” did not work.

What is also interesting is that such a structure of the separation of powers in the political system was represented and understood as a political system characterized by a US-style “separation of the three powers,” even though in practice it was not. In Japan, there is no president, and the executive branch is not really independent from the legislative branch. Moreover, the judgments of the judicial branch basically do not depart from those of the government. This notwithstanding, in standard Japanese textbooks of compulsory education, explanations as “Japan adopts the separation of three powers” are frequently to be seen.⁸ The confusion of terminology here is an interesting example of how the people who live in a certain political system name its division of powers, but, as this chapter will show, this “misuse” itself reflects the reception history of parliamentarism in Japan.

This chapter tentatively names the understanding of parliamentarism with a division of powers as represented by the “1955 System” as the “Montesquieu Model.” Further, it will tentatively name the understanding of integrated and combined “Westminsterian” parliamentarism as represented by the “Heisei

democracy” as the “Bagehot Model,” showing that a tense relationship between the two models was visible in the beginnings of the reception of parliamentarism in modern Japan. Of course, it is ineluctable that the discussion, after undergoing several abstractions, will be rough-hewn, but I think that this is an effective method in order not to consider the need for parliamentarism in modern Japan as merely a story of “success” and “limitations.”

Prior to this, I would like to first give a rough overview of the political system in the Japanese archipelago before it took over a “parliament.” In reality, this is because the political structure created at that time prescribed the pattern of how parliamentarism was taken over in modern Japan.

Historical premises

Contacts with Western countries were an important trigger for the introduction of a political structure centered on a parliament in the Japanese archipelago. Since the formal demand for trade relations made by the President of the United States in 1853, Western people came to visit these islands in unprecedented frequency. Japan had been much praised for its natural abundance, but although the customs different from the West stimulated a fascination for the exotic, it was neither the “Eldorado” nor the “unexplored land” that they had sometimes imagined.⁹

The population was 30–35 million. This was incomparably small in relation to, e.g., the population of the neighboring dynastic states of the Chinese mainland, yet it was not inferior in scale to the so-called Western countries of the time. The population of the United States, which were demanding the “opening up” of Japan, did not even match that of these isles.¹⁰

The awareness of “Japan”

Furthermore, these more than 30 million inhabitants were devising their unification as a single political community. Of course, certainly, the property over the Ryūkyūs and Yezo, as well as over the small islands of Tsushima and the Ogasawara Archipelago, remained ambiguous. However, if the property over such islands had become a problem, from that time there would have been no dispute about who would become the eventual negotiating party. In other words, a central government existed. What’s more, it was also clear from the handling of the people who were unwittingly drifting across the “national border” that this government aimed at a rather strict control of entry into and exit from the country, compared to other regions at the same time. And it was not only the politicians. There is ample evidence that common people, too, broadly shared a collective awareness of a “Japan” (*Nihon* 日本; *Nihonkoku* 日本国) which went beyond the scope of their own direct observations.¹¹ On an immediate plan, this was a reaction to the early globalism imported from Spain and Portugal in the sixteenth century (a self-awareness as a country free of Christianity), and on a more long-term plan, it was nurtured in the midst of

the relationships with the very large polities that had been established on the Chinese mainland and in the Indian subcontinent (the fact that the objects of comparison had long been very large polities on the continent engendered an awareness on these islands of being a “small country” [*shōkoku* 小国] with a population size that could not match them). Then, the second encounter with the countries of the West also must have brought about an intensification in the consciousness of “Japan” as a unit.

Gunken and hōken

Of course, as is well known, we can ascertain that an intermediate group called “household” (*ie* 家) was extremely present, which turned one’s specific work abilities into one’s trade or business and was closer to a company or a legal person than to a group of blood relationships. It is certainly true that most people’s scope of consciousness in their daily lives did not exceed that of such “boxes” which each one belonged to, and rarely extended to a unity called “Japan.”¹² In particular, the corporation to which a hereditary ruling class professing to be “warriors” (*bushi* 武士) belonged (called “domain” [*han* 藩]), had, so to speak, a separate existence as local governments independent from the central government. It also happened that the relationship which should exist between central government and local governments was debated in Confucian terms, which conformed to the standard upbringing of the intellectuals of the time. The so-called dispute between *hōken* 封建 and *gunken* 郡県 was that between a decentralized system in which hereditary lords governed the regions (*hōken*), and a centralized one in which bureaucrats sent by the Emperor governed the regions (*gunken*).¹³ As a matter of fact, for the most part of the well-nigh 300 years that the Tokugawa government ruled Japan, there are no traces of the intellectual debates having exerted an influence on actual governance. The central government recognized the autonomy of the local governments, and the local governments tacitly recognized the separate authority of the central government. In this regard, the impotence of the intellectuals might be evidence that the fundamental structure of such a political system was not the object of the debates, but a premise for them. However, contact with Western countries changed this situation. Several powerful local governments became aware of the benefits of autonomy, and, contrary to the intentions of the central government, aimed at dealing with Western countries on their own, sometimes being even prepared to go to war. Intellectual debates about *hōken* and *gunken*, which had theretofore been empty armchair discussions, became extremely real disputes in that time.¹⁴ Under the premise of “Japan” as a unity, it was unclear at that point of time whether it would become a federal or a centralized state.

Kantō and Kinri

Furthermore, it was a question of whether this central government was really a central government. In the process of building contacts with the Western

countries, the situation arose wherein it was doubtful whether the self-proclaimed central government of the “Great Leader” (*Taikun* 大君) could decide matters without looking up to instructions from the Emperor resident in the “forbidden inner premises” (*Kinri* 禁裏; used metonymously for the Emperor himself) of his palace in Kyoto. In fact, this was a new situation on this archipelago. The government of the *Taikun* with its capital at Edo (present-day Tokyo) had established its power in 1600 after a large-scale military victory. Located in the Eastern Japanese Kantō 関東 region, it initially did not consider the Imperial palace in Kyoto in political decisions at all, its ceremonial authority notwithstanding. Although the Kyoto *Kinri* had once been the actual sovereign of the archipelago, it had long ago – beginning from ca. 1300 – been stripped of most of its authority from the so-called warrior (*bushi* 武士) caste. The descendants of the previous dynasty were accorded a merely nominal continuation of their existence, and they and their entire entourage remained confined to this role for a long time.

A change in this situation was brought about by Confucian scholars from China who discussed political theories. Although they exerted virtually no practical influence in the debates about *hōken* and *gunken*, they left important traces in this question. That is to say, Confucian doctrine, which teaches to “follow the right ruler,” raised the complicated question of “but then, who is the right ruler?” Of course, for most *bushi*, this was the lord of the domain to which they belonged themselves, or the *Taikun* resident in Edo. Yet, the *Kinri* in Kyoto with his supposedly nominal and ceremonial role was, to the extent that he was present as an abstraction, a convenient projection screen for the image of an “ideal monarch.” Here, room for using the *Kinri* as a symbol for gathering the hidden dissatisfactions with the government arose. The ceremonial power held by the *Kinri* was dangerous, and it was alluring. From the eighteenth century to the turn of the nineteenth century, against the background of this rise in authority, the government of the *Taikun* was concerned with the clout of the *Kinri* as well as with the Confucian theory that stood behind his rise in authority. They tried to legitimize their own rule according to the legal reasoning that “this archipelago’s original sovereign has been the *Kinri* all along, but the effective right to govern inherent to this sovereignty is being entrusted to the *bushi*.”¹⁵ However, the attempt of trying to secure the authority of the central government as the effective part of governance by attaching the position as the dignified part of governance to the *Kinri* eventually had the opposite effect. As soon as the authority of the central government became perceptible in the process of establishing contacts with the Western countries, political activists came to appear all over the archipelago who, using their condition as subjects of the *Kinri*, subordinated themselves neither to the various local governments nor to the central government. The machinations of these anti-system activists eventually attained their objective, becoming successful in overthrowing the central government, but the new government established after it continued to struggle with the positioning of the symbolic element within the political system.

Gōgi and *kōgi*

As is already clear, the political system of this polity had been one of extreme authoritarianism. Even in high estimations, the ruling class of the *bushi* amounted to no more than one-tenth of the population. As the local governments of the “domains” (*han* 藩) did not exceed 300, their lords amounted to no more than 0.00001 percent of the population. Moreover, the *Shōgun* 將軍, who held authority and ruled isolatedly over them, was, of course, a single person. This ruling élite was essentially all male, and their positions were hereditary.

They hardly cared about whether their governance was based on “popular will” (*min'i* 民意).¹⁶ On the contrary, one could not even positively say that they pretended to be governing “for the people.” Therefore, there was little need for intellectuals within the system to rhetorically reinforce the legitimation of the government. In this respect, the situation differed from the dynasties in the Asian mainland and in the Korean peninsula, which, while being equally authoritarian systems, employed Confucian political theory in institutions and educations, and which, while linking it to the recruitment system of talents via Imperial examinations, were fully structured around the concept of “benevolent government” (*jinsei* 仁政).¹⁷ In the Japanese archipelago, where such a way for intellectuals to become an élite within the system by passing public ability tests such as the Imperial examinations did not exist, the standing army, without modifications, was the bureaucracy. They were essentially a hereditary military regime, and their rule was, in short, a military government.

On the other hand, these specificities of this political system, characterized by official ideology and the nonexistence of Imperial examinations, were also advantageous for the introduction of a political architecture centered around a parliament. This was because the Japanese archipelago avoided the demise of the hereditary élite and the concentration of powers around the Emperor brought about in China and Korea by the Confucian notion of “benevolent government” and the Imperial examination system. A division of powers as has been described above persisted, which ensured the need for “consultations” (*gōgi* 合議) in the decision-making process. As a matter of fact, the decision-making of the central government took place in a powerful bureaucratic consultative body called the “Council of Elders” (*Rōjū* 老中). Concerning the critical questions of the contacts with the countries of the West, it has been said that the central government’s will to decide them in “consultations” with the various local governments and the *Kinri* was, on the one hand, the first step to the collapse of this system, but that, even more so, it expressed the original character of this system.¹⁸

Furthermore, Confucianism not being an official ideology, it brought about an active intellectual life. Although they could not combine money and fame, a host of intellectual schools appeared in the various regions and engendered a common intellectual and artistic circle in which they referred to and criticized each other. From the beginning of the nineteenth century, following the institutionalization of Confucianism, the *bushi* began to study Confucianism as part of their standard education, became acquainted with its vocabulary, and also accumulated

experience in debating through language. From these circumstances, in the last stage of this system, the opinion that decision-making should proceed from “public deliberation and opinion” (*kōgi yoron* 公議世論) was supposed to be shared even by actors holding differing interests.

The Montesquieu moment

It was not the “Meiji” revolutionary government trying to seize the *Kinri*’s powers which first seriously investigated the introduction of a parliamentary system, but rather the Edo “ancien régime.” In a situation in which the new and old forces were competing with each other and a temporary cease-fire in the form of a “restoration of royal government” (*ōsei fukko* 王政復古) was reached, the aim was to control the momentum of the new powers by proposing a new political system. It was Nishi Amane 西周 (1829–1897), who had studied in the Netherlands with Simon Vissering (1818–1888), who shouldered a concrete draft for an institutional system.¹⁹ As has been described, the Edo government, being a hereditary military government, did not necessarily value intellectuals highly. However, on account of the acute political crisis at the end of this government, the Edo government began to slowly recognize the importance of intellectuals and knowledge. Nishi Amane is a good example thereof.

When looking at the details of the new system proposed by Nishi in his *Draft of Discussion Topics* (*Gidai sōan* 議題草案), let us first contemplate the understanding of the current situation which is at the basis of Nishi’s proposal for the introduction of a parliamentary system. First, he can no longer ignore the importance of “public deliberation” (*kōgi* 公議). Some kind of “parliamentary idea” (*kaigi no shui* 會議の趣意) had to be incorporated into the political structure:

What is called “public deliberation” (*kōgi* 公議) is universally praised by the population. Because, indeed, it is unavoidable to deal with public opinion, I wish for the notion of a parliament to be established, summarizing as much as possible the above discussion.²⁰

Second, as a *gunken* system was temporarily impossible, he foresaw the continuation of *hōken* (i.e., in this case, a federal system or a confederation) for the time being:

But concerning the meaning of the above-mentioned “restoration of royal government,” in the present *hōken* government, our lords, pertaining to the same lineages of vassals, have been residing in half of the territory and holding the power in the Empire for more than a thousand years, and have been attached to families which can cause “the heavenly revenue to come to a perpetual end.” Even a three-year-old child would know that not once in a million times would it be possible to wish for the sudden revival of the *gunken* system and the reestablishment of the “personal fields” and “salary fields.”²¹

Based on these two premises, Nishi proposed to introduce a parliamentary system based on a “differentiation of three powers” (*sanken no betsu* 三権之別). Concretely, in his scheme, the Tokugawa *Shōgun*’s government, being the “government of the Generalissimo” (*Kubōsama seifu* 公方様政府), should continue to hold the executive branch, while an assembly called “Office for Deliberating Politics” (*Gisei-in* 議政院), composed of representatives of every domain, should be established and be put in charge of the legislative branch. In other words, its main idea was premised on a federal system and foresaw a division of powers between the federal assembly as executive branch and the national government as executive branch. This was, as Nishi Amane expressed it in his *Brief explanation of the administrative systems of the West* (*Taisei kansei ryakusetsu* 泰西官制略説), a reception of the Western “administrative system” (*kansei* 官制) “discovered” (*hatsumei* 發明) by the “great French scholar Montesquieu” (*Bukkoku no daiju Montesukiu* 仏国之大儒モンテスキウ), and more precisely an attempt to copy the federal political system of the United States.²²

Of course, there were also large differences to the US model. First, the Tokugawa *Shōgun* was clearly different from the President of the United States. At the same time, as the Tokugawa was the “head of state” representing the “government of the generalissimo,” he was also a landlord controlling a vast stretch of land on his own right. Within his territory, he could autonomously exert his rule. Furthermore, it was not clear from the text of the draft whether his territory should become a member of the federal assembly or not. This aspect also resembled the relationship between the monarch and the parliament in a European sense, and was the reason why Nishi Amane did not say “American model,” but carefully used the expression “the West” (*Taisei* 泰西).

Second, the structure of the Lower House was different. The assembly was divided into two chambers, i.e., an Upper and a Lower House, with the Upper House being composed by the lord (*daimyō* 大名) of every domain. In principle, one domain was represented by one person, and the right to speak of every domain was equal, without regard to their size. This basically is the same idea as that of the Upper House (Senate) of the United States. However, the problem was the Lower House. Concerning the structure of the Lower House, in the annex to his *Draft of discussion topics* (*Besshi gidai sōan* 別紙議題草案), Nishi writes the following:

In the Western system, representatives are deployed according to the size of the population. Although this exists as an example, such is impossible in our current *hōken* system. And while such will hardly be possible as long as both the rural and urban common people are still illiterate, at that time it will behove us to abolish the representation of one person per domain!²³

The structure of the Lower House was the same “one person per domain” (*ichi-han ichi-me* 一藩一名) as the Upper House. This is not to say that Nishi did not see value in the Lower House. To the opposite, considering Tsuda Mamichi’s 津田真道 (1829–1903) argument, which will be dealt with later, it seems that

Nishi hardly looked forward to an Upper House filled up with *daimyōs*. It must have been an honest suggestion when he wrote in his *Draft of Discussion Topics*: “Because the parliament is unable to decide through the Upper House alone, I think that one should treat the Lower House likewise.”²⁴ Nishi also acknowledges that, in case one would bestow real decision rights to the Lower House, the “number of representatives or the weight of their voice” should actually change according to “the province’s size.” This notwithstanding, because of the “current *hōken* government,” he deemed that this was impossible in practice. Similarly, Tsuda Mamichi, who had also studied in the Netherlands with Vissering, indeed foresaw an Upper and a Lower House in his *General Institutions of Japan* (*Nihokoku sōseido* 日本国総制度), the reform plan which he proposed at about the same time as Nishi. Yet, concerning the Lower House, it contrasted with Nishi’s scheme in that it clearly stipulated a proportional representation of the population: “For every 100,000 citizens, one person should be elected.”²⁵ Here, along with Tsuda’s fidelity to his standard model, the “Western system” (*yōsei* 洋制), one can discern an element of his tendency toward centralization of power. As will be discussed later, Tsuda’s outlook was eventually correct. However, the one who thought “realistically” at the moment was probably Nishi. Tsuda assumed Japan’s contemporary political system not to be a *hōken* one, but to have “the shape of what the Westerners call ‘federation’” (*yōjin no iwayuru gappō no sugata* 洋人之所謂合邦之姿).²⁶ Tsuda understood this term, “federation” (*gappō* 合邦), as a *federal state presupposing unification*, while Nishi can be said to have understood *hōken* as a “confederation which does not presuppose unification.”

As a third point, connected to this, there was an absence of debates about the judicial branch. Nishi’s *Draft of Discussion Topics* emphasized the “separation of the three powers,” but the discussion of the judicial branch in it was limited to the sentence “the judicial power can for the time being not be set up as within the authority of the laws in force in all countries” (*shuhō no ken wa imashibaraku no tokoro, kakkoku gyōhō no kennai ni kane sōrō koto* 守法之権は今暫之所、各国行法の権内に兼候事). Yet, its implications were clear: The establishment of a supreme judicature on the model of the United States with jurisdiction for the whole federation was out of consideration, and it was planned to leave it at the jurisdiction of the justice within the various “domains” (*han* 藩) and “provinces” (*kuni* 国). In this aspect, too, it is possible to say that the new political system of Japan envisaged by Nishi was a more strongly decentralized confederation than the federal system of the United States.

Whether one assumed a *hōken* system or a federation (*gappō* 合邦), attempts to subsume the decentralized shape of Japan’s contemporary political system under the extremely peculiar models of Montesquieu and “division of powers” were indeed not restricted to Nishi Amane and Tsuda Mamichi. Rather than the Tokugawa government, with which Nishi and Tsuda cooperated, it was Fukuoka Takachika 福岡孝弟 (1835–1919) who cooperated with the creation of the new institutional structure at the side of the new Meiji government and who wrote about the *Constitutional Document* (*Seitaisho* 政体書), which he had drafted himself: “The administrative system laid out in the *Constitutional Document* takes

as its basis a separation of three powers akin to the United States of America.”²⁷ The Montesquieuan Model was widely accepted by both the Tokugawa and Meiji sides. The temporal range of this acception was also long. Even after the abolition of the domains and the establishment of the prefectures had been concluded, and the Meiji state had clearly begun to walk on the path of centralization of powers, the influence of the Montesquieu Model was tenacious. When Maurice Block (1816–1901) asked Kido Takayoshi 木戸孝允 (1833–1877), who had gone to Paris as a member of the Iwakura mission (1871–1873): “Why do all the Japanese with whom I have been in touch hold fast to the theory of separation of powers? Methinks this is strange,” he was stunned:

If we had been careless about the three branches of politics being a standpoint of US American democracy, while we thought that it is a common notion in the (whole) West, we would have missed the national essence of Imperial restoration right at the beginning.²⁸

In the autumn of the fifth year of Meiji (1872), Nishimura Shigeki 西村茂樹 (1828–1902) explained the “principle of the three powers” (*sanken no ri* 三権之理) in the preface to his *Brief history of all countries* (*Bankoku shiryaku* 万国史略) by noting: “There are three powers in a state: the legislative, the executive, and the judiciary. When the three powers are balanced, then the state will be stable and prosperous.” With the words “The English law is the most perfect one, but the American system even surpasses it,” he valued the system of the United States highly. Nishimura’s preface was continued to be included in both the print edition of 1875 and in the second edition of 1879.

The Bagehot moment

As has been seen, the presence of Montesquieu’s model of division of power (actually, the US federal model via *The Federalist*) was strong from the late Edo period (*bakumatsu*) to the mid-second decade of the Meiji era (the early 1880s). One of the reasons for this was that the structure of the contemporary Japanese archipelago as a *hōken* state (called “federation” by Tsuda) was deemed to conform to Montesquieu’s theory, which it had inherited. However, this situation was already unstable by the late Edo period. For example, as Katō Hiroyuki’s 加藤弘之 (1836–1916) *Grass in the vicinity* (*Tonarigusa* 隣草) already perceived correctly, there were in fact two options in the circumstances of the late Edo times: (1) either that of establishing a federative parliament in order to safeguard integration while maintaining the *hōken* system, or (2) that of constructing a centralized *gunken* system by destroying the decentralized *hōken* system. Of these two, as has been seen in the previous sections, Nishi and Tsuda groped for the first one, but what was thereafter carried out in political practice was in fact the second option, i.e., the way of “gunkenization.” Of course, what was groped for from 1862 up to 1868 was the “Taikun monarchy” (*Taikun no monaruki* 大君之モナルキ; Fukuzawa Yukichi 福澤諭吉, 1835–1901)²⁹ centered around the Tokugawa, and

then, after 1868, the *gunken* system centered around the Emperor. But the crucial point is that the 1868 “restoration of royal government” did not immediately mean a *gunken* structure. The following discussion points brought forward by Mori Arinori 森有礼 (1847–1889) in 1869 at the newly convened assembly were characteristic of this (this assembly itself was a federal system which assembled representatives of all domains):

1. At present, the form of our state resembles one divided into half *hōken* and half *gunken*. Hence, what will the national affairs really be like in the future?
2. If one should reform this, conforming to one of them, should one adapt to a *hōken* system or else to a *gunken* system? What are, after all, their respective advantages and disadvantages?
3. If one were to fully conform to *hōken*, what measures should one take such that it conforms to human nature and the tendencies of the time?
4. If one were to fully conform to *gunken*, what measures should one take such that it conforms to human nature and the tendencies of the time?

(Four articles on questions concerning matters of the national polity [Okokutai no gi ni tsuki mondai shijō 御国体之儀に付問題四条])³⁰

Mori’s understanding that Japan was “at present” (i.e., in the year of 1869, after the restoration of a royal government) a mixed constitution “divided half-half” into *hōken* and *gunken* was extremely precise. Exactly because of this, the “abolition of the domains and establishment of prefectures” (*haihan-chiken* 廃藩置県 – actually the materialization of *gunken*), which happened only two years thereafter, was a sudden event for which the name of revolution or *coup d’état* would be appropriate, rather than a foreseeable event within the expected course of things.

Considering the above context, the importance of the “Memorial on the Adoption of Popular Elections and a Parliament” (*Minsen giin setsuritsu kenpakusho* 民選議院設立建白書), submitted in 1874, also becomes clear. This “Memorial” has been often highly evaluated for its function as the spark that caused the “Freedom and People’s Rights Movement” (*Jiyū minken undō* 自由民権運動), which has been deemed to have been a “bourgeois democratic revolutionary movement.”³¹ What has been emphasized is the picture of a “popular” (*minshū* 民衆) resistance against the power-holding élites, and the “Memorial on the Adoption of Popular Elections and a Parliament” fits into such a picture. However, as has been pointed out since that time, most of the signatories of the memorial were figures who had been active within the government right up to that date, and in reality it was a fight for power within the élites, a “discord among friends” (*nakamaware* 仲間割れ). Furthermore, as has been shown in this chapter, the idea of establishing a parliament by itself was not new at all. If there was any novelty in the “Memorial on the Adoption of Popular Elections and a Parliament,” it was simply that it was the first full-dress plan to open a parliament after the *gunken* revolution. It was the first time that the groping for a “*gunken* parliament” began in full scale.

What is interesting is that the groping for such a “*gunken* parliament” could not immediately find an appropriate term for it. Even after the realization of *gunken*,

many commentators who supported the Freedom and People's Rights Movement continued to devise the parliament according to a Montesquieuan (Federalistian) three-power model, notwithstanding that its premise, the *hōken* system or the mixed *hōken* and *gunken* system, had already disappeared. An evidence for this is the fact that new editions of Nishimura Shigeki's *Brief history of all countries* – with its preface advocating high esteem for the “separation of three powers” – continued to appear after the abolition of the domain system, when the Freedom and People's Rights Movement was in full bloom. One of the reasons why this was possible is the vagueness of the contemporary terminology for “separation of powers.” It was the common understanding at that time that a parliamentary system was the materialization of the “separation of powers” (*bunken* 分権). However, for example, in the case of the “separation of powers” between the monarch and the parliament, it was not self-evident whether that would be a vertical division of powers or a horizontal division of powers. In other words, it was frequently (and possibly intentionally) kept in the vague between what actors this “separation” (division) of powers would be worked out: whether it would be a vertical “separation of powers” between élites and the common people (called, e.g., “separation between above and below” – *jōka bunken* 上下分権), or whether it would be a horizontal “separation of powers” between each domain and the government institutions (called, e.g., “regional separation of powers” – *chihō bunken* 地方分権).

Fukuzawa Yukichi's epoch-making significance in the history of how a parliamentary system was adopted in Meiji times is in fact related to this aspect: (1) Fukuzawa tried to correctly understand the conceptual confusion in the word “separation of powers” and to redefine this term as a horizontal division of powers, i.e., to give it the specialized meaning of “regional separation of powers” (*chihō bunken* 地方分権); (2) based on this, he envisioned and proposed a Bagehotian Westminster Model in which two major parties would carry out a “civilized competition” for political form in the form of a *gunken* parliament.³²

Fukuzawa redefined “separation of powers” in his 1877 work *On separation of powers* (*Bunken-ron* 分権論). Here, invoking Alexis de Tocqueville (1805–1859), Fukuzawa distinguished between “government” (*seiken* 政権) and “administration” (*chiken* 治権), assigning the former to the central governments and the latter to the regional governments. The idea he defended hereby was that of a horizontal division of powers between the central and the local governments. He aimed at preventing an excessive implementation of *gunken*, i.e., the Meiji government's tendency to excessively centralize powers. However, concomitantly, a point that also needed attention was the denial of the *hōken* system. As has been shown above, ten years before *On the separation of powers* was written, an even more federalized division of powers had been institutionally guaranteed in the form of *hōken*. Of course, Fukuzawa did not really hope for the realization of such a decentralizing separation of powers in the form of a federal state. His plan staunchly presupposed the *gunken* system in place after the abolition of the domains. His real aim was not to adapt the horizontal division of powers between the central and the local governments in the form of a federal system within a

hōken polity but precisely to subsume it under a framework of local autonomy appropriate for a *gunken* system.

In this way, after he had revised the definition of “separation of powers” (*bunken* 分権) as a question of local autonomy in a *gunken* polity, what Fukuzawa presented in his works *On the National Diet* (*Kokkai-ron* 国会論, 1879) and *Transformation of the People’s Spirit* (*Minjō isshin* 民情一新, 1879) was a Westminster-like system with a parliament and a cabinet. Concerning the “government” (*seiken* 政権) as delimited from “administration” (*jiken* 治権) in *On the separation of powers* (1877), Fukuzawa did not regard it as a fight between “above” (élites) and “below” (the common people) but imagined it as a horizontal competition between the two political forces of “conservatism” (*hoshu* 保守) and “reformism” (*kaishin* 改進). “Competition” (*kyōsō* 競争) was a keyword much beloved by Fukuzawa at that time, implying a fair competition by two partners on the same level.³³ “That is, contemporary society is a single big stage for competition.”³⁴ As Fukuzawa said, the English method to materialize this fair competition was superior to the US one:

The parliamentary theorists of this generation lock government officials out of parliaments, taking them out from elections for members of parliament. Thus, the government is made up of officials, the National Diet is made up of the people, and the confrontation of government and diet is like a device to set the boundaries which delimit a government for the court and the people. Our side also once believed that a National Diet had to be opened based on this consideration. ... Nonetheless, as we examined the question of how a National Diet should be opened back then, our side had a moment of great enlightenment. Now, as we are about to open a National Diet in our country, and since we wish to draw our models from the various countries of the West, methinks that it will be most convenient to copy the English law in what regards the matter of parliamentary elections. A comparison between the parliaments of England and the USA yields that, even if they are akin to each other in set-up and strength, the United States prohibit officials from being elected as members of parliament, while England is different to this: There, hardly any dignified government officials do not become members of parliament. According to this law, English officials become administrative officials when they are in government, and they become parliamentary officials when they are in parliament. Because it is as if they combine in themselves the two powers of administration and deliberation (i.e., the executive and the legislative powers – note of the author), the English government frequently undertakes to cajole the majority of the members of parliament, always achieving a satisfactory result.³⁵

What is here called “officials” (*kanri* 官吏) is not the same as the so-called bureaucrats (*kanryō* 官僚) present in later times, after a specialized bureaucratic system had been established. The gist of Fukuzawa’s discussion can be summarized into two points. First, there was an overlap between the image

of the parliamentary system nurtured by those who at that time supported the Freedom and People's Rights Movement (the "parliamentary theorists of this generation") – a model of vertical political struggle between the government as the court and the parliament as the people – with the US model of the separation of powers, which makes a sharp distinction between the executive and the legislative branches. Second, in contrast to the above confrontational model, he seeks from "English law," i.e., from the Westminster system, a model of competitive democracy which combines "the two powers of administration and deliberation."

Federalism and unicameralism

In other words, it is certainly possible to evaluate the intellectual activities led by Fukuzawa in the early 1880s as an attempt to analyze according to new *terms* the question of how to balance the concentration and separation of powers within the political system, which had theretofore approached with the *terms* *hōken* and *gunken*. The separation of powers theretofore attached to the word *hōken* was reframed as a regional autonomy (more stable than the federal system), and the centralization of powers manifested in the word *gunken* was reconceptualized as a parliamentary cabinet system providing for the combination of "the two powers of administration and deliberation."

However, the problem was of course not really solved with this. For example, the *hōken* problem continued to linger thereafter. The fact the Fukuzawa himself was actually not sure about whether federalism and regional autonomy can be clearly distinguished from each other is already reflected in his *On the abolition of domains* (*Haiken-ron* 廢県論, 1872). Fukuzawa, who had warned of an excessive implementation of *gunken* and advocated a revival of the *hōken* element in his *On the separation of powers*, here, so to speak, praises the thoroughness of the implementation of *gunken*. Such a theoretical "swaying" is of difficult explanation without taking Fukuzawa's vigilance against the Freedom and People's Rights Movement into consideration. For example, Ueki Emori's 植木枝盛 (1857–1892) private *Draft of a Constitution for the Oriental State of Japan* (*Tōyō Dainihonkoku kokken an* 東洋大日本国国憲按), which was the theoretical underpinning of the Freedom and People's Rights Movement, clearly stipulated a federal system along with a centralized unicameral parliamentary structure. This shows that, at the camp of the Freedom and People's Rights Movement, attempts to analyze the *hōken* problem not as "regional autonomy" but as "federalism" were not rare at all.³⁶

Furthermore, Fukuzawa's theory did not get adopted by the political authorities. The "discord among friends" within the government known as the Meiji 14 Coup of 1881 (continuing the one of 1874) – in concrete, the dismissal of Ōkuma Shigenobu 大隈重信 (1838–1922) and the formation of the Constitutional Reform Party (*Rikken kaishintō* 立憲改進黨) – signified the preliminary collapse of Fukuzawa's ideas. Instead of refusing to accept the Westminster Model according to Ōkuma and Fukuzawa, the government promised to convene a parliament

after ten years. Yet, it was left completely blank as to what kind of parliament this would be.

Thereafter, what kind of twists did the parliament convened in 1890 take? As there is already plentiful research on this question, the author does not have any new insight to add to it. However, broadly speaking, the form of the parliament in these more than 100 years can be positioned in between what in this chapter has been preliminarily called the Montesquieu Model and the Bagehot Model. Paper width does not allow to prove this in this chapter. What this chapter has done is to clarify the moment when these two models appeared.

Notes

- 1 The Sunagawa Case Decision (*Sunagawa jiken hanketsu* 砂川事件判決; Supreme Court, March 30, 1964). “The legal determination of whether or not a highly political treaty, such as the Security Treaty, which has a serious bearing on the basis of our existence as a sovereign nation, is unconstitutional, is of a nature that does not fit in principle with the examination of the judicial courts, whose mission is to perform a purely judicial function, unless it is found to be quite obviously unconstitutional and invalid at first glance. It is reasonable to conclude that this is outside the scope of the Court’s power of judicial review.” In this high-profile case involving the constitutionality of the U.S.-Japan security treaty, the Supreme Court avoided deciding the constitutionality of the treaty, and thenceforth it was established as precedent that the judicial branch, an undemocratic body, would avoid deciding on issues of “highly political nature.” https://www.courts.go.jp/app/hanrei_jp/detail2?id=55816 (accessed on October 11, 2020).
- 2 Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, 2nd ed. (New Haven, CT: Yale University Press, 2012); Bruce Ackerman, “The New Separation of Powers,” *Harvard Law Review* CXIII, no. 3 (2000): 633–729.
- 3 “Le parlement peut tout, excepté faire une femme d’un homme, & vice versa.” Jean Louis de Lolme, *Constitution de l’Angleterre*. Nouvelle édition entièrement revue & corrigée sur la quatrième édition, 2 vols. (Geneva: Barde, Manget & Cie, 1793), 1:126. Originally written in French in 1771, Lolme’s book was translated into English in 1775 and widely read. It became famous for the saying “Parliament can do everything, except making a Woman a Man, or a Man a Woman,” which characterizes the legislative primacy within the British state system. However, the original context is rather complicated: The sentence refers to a fiction of law by which exceptions to matrilineal inheritance could be made by “considering a daughter as a son” in Roman law. It was Alexis de Tocqueville or A. V. Dicey who began to use it as a legal proverb separate from the context. Indeed, by approving the *Act on Special Cases Handling Gender Status for Persons with Gender Identity Disorder* (*sei dōitsusei shōgaisha no seibetsu no toriatsukai no tokurei ni kansuru hōritsu* 性同一性障害者の性別の取扱いの特例に関する法律) in 2003, the National Diet has possibly “advanced” this point even further than the England of yore (see https://elaws.e-gov.go.jp/search/elawsSearch/elaws_search/lsg0500/detail?lawId=415AC1000000111, accessed on October 11, 2020).
- 4 Iio Jun 飯尾潤, *Nihon no tōchi kōzō: Kanryō naikakusei kara giin naikakusei e* 日本の統治構造: 官僚内閣制から議院内閣制へ [Japan’s system of government: From bureaucratic cabinet to parliamentary cabinet] (Tokyo: Chūō Kōronsha, 2007); Takenaka Harukata 首相支配: 日本政治の変貌 [The Prime Minister’s rule: Transfigurations of Japanese politics] (Tokyo: Chūō Kōronsha, 2006).
- 5 Iio, *Nihon no tōchi kōzō*; Takenaka, *Shushō shihai*.

- 6 Shimizu Masato 清水真人, *Heisei demokurashī* 平成デモクラシー史 (Tokyo: Chikuma shobō, 2018).
- 7 Oka Yoshisato 岡義達, “Seitō to seitō seiji” 政党と政党政治 [Parties and party politics], in *Gendai nihon no seiji katei* 現代日本の政治過程 [The political process in contemporary Japan], ed. Oka Yoshitake 岡義武 (Tokyo: Iwanami shoten, 1958); Robert A. Scalapino and Masumi Junnosuke 升味準之輔, *Gendai Nihon no seitō to seiji* 現代日本の政党と政治 [Parties and politics in contemporary Japan] (Tokyo: Iwanami shoten, 1962).
- 8 For example, the website of the House of Representatives also writes: “The Constitution of Japan provides for the principle of the separation of powers. Three independent organs—the Diet, the Cabinet, and the Judiciary—are established, and each limits the power of the others through a system of checks and balances. This prevents the abuse of power and guarantees the rights and freedom of the people.” http://www.shugiin.go.jp/internet/itdb_english.nsf/html/statics/guide/separation.htm; for the English translation see http://www.shugiin.go.jp/internet/itdb_annaai.nsf/html/statics/kokkai/kokkai_sankenbunritsu.htm.
- 9 “Et si vous dy que il ont tant d’or que c’est sans nombre, car il le treuvent en leur isle. Et si vous [dy] que nul n’en oseroit oster n’emporter or de l’isle, pour ce que pou de marchans de terre ferme si vont la pour ce que elle est si loing; si que pour ce ont il tant d’or a desmesure que il n’en scevent que faire.” (And I tell you that they have so much gold that it cannot be counted, for they find it on their island. And I [tell] you that nobody would dare to remove or to carry away gold from the island, for few merchants from the continent go there because it is so far away. Also therefore they have so excessively much gold that they don’t know what to do with it.—Translation by Egas Moniz Bandeira.) Marco Polo, *La Description du monde*, ed. Pierre-Yves Badel (Paris: Livre de Poche, 1998), 378. However, this exceptional adventurer never actually visited Japan. See Katayama Mikio 片山幹夫, “Maruko Pōro *Sekai no kijutsu ni okeru ‘Jipangu’*” マルコ・ポーロ『世界の記述』における「ジパング」 [«Sy-pangu» dans *La description du monde* de Marco Polo = “Sy-pangu” in Marco Polo’s *Description of the World*], *Azur* 6 (2005): 19–33.
- 10 According to the census, the population of the United States in 1860 was about 30 million. But of course, the meaning of “population” in the United States, with its problems of territorial annexation, immigration, and “emancipated” slaves, was quite different from that of Japan, which was a relatively closed nation. For population estimates for eighteenth century Japan, see Kito Hiroshi 鬼頭宏, *Jinkō kara yomu Nihon no rekishi* 人口から読む日本の歴史 [History of Japan from the perspective of population] (Tokyo: Kodansha, 2000).
- 11 Watanabe Hiroshi 渡辺浩, *Nihon seiji shisōshi 1600–1901* 日本政治思想史 1600–1901 [A history of Japanese political thought, 1600–1901] (Tokyo: Tōkyō Daigaku shuppankai, 2010). Watanabe Hiroshi 渡辺浩, *A History of Japanese Political Thought, 1600–1901*, trans. David Noble (Tokyo: International House of Japan, 2012), cap. 15, 302–303. Watanabe Hiroshi 渡辺浩, “Itsu kara ‘kokumin’ wa iru no ka—Nihon no baai” いつから「国民」はいるのか——「日本」の場合 [Since when do ‘nationals’ exist? The case of Japan], *UP* 39 (2010), no. 2, 1–6. People imagined the Japanese archipelago as a region inhabited by a giant “dragon.” Kuroda Hideo 黒田日出雄, *Ryū no sumu Nihon* 龍の棲む日本 [The Japan where a dragon dwells] (Tokyo: Iwanamishoten, 2003).
- 12 Bitō Masahide 尾藤正英, *Edo jidai to wa nani ka? Nihonshi jō no kinsei to kindai* 江戸時代とは何か: 日本史上の近世と近代 [What was the Edo period? Early modernity and modernity in Japanese history] (Tokyo: Iwanami shoten, 2006).
- 13 The term *hōken* is conventionally, though highly misleadingly, translated as “feudal,” while there is no handy equivalent for its opposite, *gunken*. See David Mervart, “Meiji Japan’s China Solution to Tokugawa Japan’s China Problem,” *Japan Forum* 27, no. 4 (2015): 548–552.

- 14 Zhang Xiang 張翔 and Sonoda Hidehiro 園田英弘, “Hōken,” “gunken” saikō: *Higashi Ajia shakai taisei ron no shinsō* 「封建」・「郡県」再考: 東アジア社会体制論の深層 [A new study of *hōken* and *gunken*: The deep structure of East Asian discourses on societal systems] (Kyoto: Shibunkaku, 2006). David Mervart, “A Forgotten Landscape of the Forms of Government: A Case for the Counterfactual History of Political Theory,” in *The Dynamics of Transculturality: Concepts and Institutions in Motion*, eds. Antje Flüchter and Jivanta Schöttli (Dordrecht: Springer, 2014).
- 15 This legal theory is called “theory of entrustment of ruling power” (*taisei in'in ron* 大政委任論). See Fujita Satoru 藤田覚, *Kinsei seiji shi to Tennō* 近世政治史と天皇 [Modern political history and the Emperor] (Tokyo: Yoshikawa kōbunkan, 1999), cap. 3, 109–132; Watanabe, *Nihon seiji shisōshi 1600–1901*; Watanabe, *A History of Japanese Political Thought, 1600–1901*.
- 16 While the Confucian façade was always “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” (Mencius, *Jinshin* 尽心 II), according to Tokutomi Sohō, the “people” were essentially nothing more than a “logistics unit” (*shichōbu* 輜重部) for the Tokugawa government: “In fact, all peasants, artisans, and merchants at that time were logistics units which existed for the sake of the supply and service of these warriors and the high-ranking warriors.” Tokutomi Sohō 徳富蘇峰, *Shōrai no Nihon* 将来の日本 [Future Japan] (Tokyo: Keizai zasshi sha, 1886), 155. The quote from Mencius is translated according to James Legge, ed. *The Chinese Classics: A Translation, Critical and Exegetical Notes, Prolegomena, and Copious Indexes*, 7 vols. (Hong Kong: at the author’s; London: Trübner & Co., 1861–1872), 2:359. See further Bruce Grover’s contribution in this volume.
- 17 Watanabe Hiroshi 渡辺浩, *Kinsei Nihon shakai to Sōgaku* 近世日本社会と宋学 [The modern Japanese society and Song studies], 2nd ed. (Tokyo: Tōkyō Daigaku shuppankai, 2010), cap. 1, 6–32; cap. 2, 66–76; Watanabe Hiroshi 渡辺浩, *Higashi Ajia no ōken to shisō* 東アジアの王権と思想 [Royal authority and ideology in East Asia] (Tokyo: Tōkyō Daigaku shuppankai, 2016), cap. 1, 16–61.
- 18 Mitani Taichirō 三谷太一郎, *Nihon no Kindai to wa nan deatta no ka: Mondaishiteki kōsatsu* 日本の近代とは何であったか: 問題史的考察 [What was modernity in Japan? An investigation according to the history of the issue] (Tokyo: Iwanami shoten, 2017), cap. 1, 42–50. This mechanism emerged more strongly with the weakening of the Tokugawa government’s military power. See Mitani Hiroshi, *Escape from Impasse: The Decision to Open Japan*, trans. David Noble, revised and expanded edition (Tokyo: International House of Japan Press, 2008), cap. 4, 69–73.
- 19 Okubo Takeharu, *The Quest for Civilization: Encounters with Dutch Jurisprudence, Political Economy, and Statistics at the Dawn of Modern Japan*, trans. David Noble (Leiden: Brill, 2014).
- 20 Nishi Amane 西周, *Gidai sōan* 議題草案 [Draft of discussion topics], in *Nishi Amane zenshū* 西周全集 [Complete works of Nishi Amane], ed. Ōkubo Toshiaki 大久保利謙, 3 vols. (Tokyo: Munetaka shobō, 1962), 2:170.
- 21 *Ibid.*, 2:169. The locution “the heavenly revenue to come to a perpetual end” is an allusion to the *Analects of Confucius* (*Rongo* 論語) XX, 1: “Yao said, ‘Oh! you, Shun, the Heaven-determined order of succession now rests in your person. Sincerely hold fast the due Mean. If there shall be distress and want within the four seas, your Heavenly revenue will come to a perpetual end.’” The translation of the passage is adapted from Legge, ed. *The Chinese Classics*, 1:214. The terms “personal fields” and “salary fields” and “personal fields” refer to types of tax land established in the seventh century. See Astrid Brochlos, *Grundherrschaft in Japan: Entstehung und Struktur des Minase no Shō* (Wiesbaden: Harrassowitz, 2001), 108–114, 234, 277.
- 22 Nishi Amane 西周, *Taisei kansei ryakusetsu* 泰西官制略説 [Brief explanation of the administrative systems of the West], in *Nishi Amane zenshū*, ed. Ōkubo, 2:184.
- 23 Nishi, *Gidai sōan*, 2:181.

- 24 Ibid., 2:181.
- 25 Tsuda Mamichi 津田真道, *Nihon sōseido* 日本総制度 [General Institutions of Japan], in *Tsuda Mamichi zenshū* 津田真道全集 [Collected works of Tsuda Mamichi], eds. Ōkubo Toshiaki 大久保利謙, Kuwahara Nobusuke 桑原伸介, and Kawasaki Masaru 川崎勝, 2 vols. (Tokyo: Misuzu shobō, 2001), 1:265.
- 26 Ibid., 1:264.
- 27 Fukuoka Takachika 福岡孝弟, “Gokojō goseimon to Seitai-sho no yūrai ni tsuite” 五箇条御誓文と政体書の由来に就いて [On the origins of the *Charter Oath* and of the *Constitutional Document*], in *Meiji kensei keisai shi ron* 明治憲政経済史論: 国家学会創立満三十年記念 [Debates on the history of Meiji constitutional government and economy: Remembering the 30th anniversary of the establishment of the Association of Political and Social Sciences], eds. Kokka gakkai 国家学会 (Tokyo: Yūhikaku, 1919), 44. On the *Seitai* see also Kōno Yūri 河野有理, “Seitai” 政体 [The *Constitutional Document*], in *Seiji gainen no rekishiteki tenkai* 政治概念の歴史的展開 [The historical development of political concepts], ed. Yonehara Ken 米原謙, 10 vols. (Tokyo: Kōyō shobō, 2016), 9:158–181.
- 28 Kume Kunitake 久米邦武, *Kume hakushi kyūjūnen kaikoroku* 久米博士九十年回顧録 [Dr. Kume’s nonagenarian memoirs], 2 vols. (Tokyo: Waseda Daigaku shuppanbu, 1934), 2:439–440.
- 29 “Fukuzawa Einosuke ate, Keiō 2-nen 11-getsu 7-nichi” 福澤英之助宛、慶応二年十一月七日 / 1866年12月13日) [Letter to Fukuzawa Einosuke, 7th day of the 11th month of Keiō 2/December 13, 1866], in *Fukuzawa Yukichi shokanshō* 福澤論吉書簡集 [Collected letters of Fukuzawa Yukichi], ed. Keiō gijuku 慶應義塾, 9 vols. (Tokyo: Iwanami shoten, 2001–2003), 1:65.
- 30 Mori Arinori 森有禮, *Shinshū Mori Arinori zenshū* 新修森有礼全集 [Collected works of Mori Arinori, revised edition], eds. Ōkubo Toshiaki 大久保利謙, Kaminuma Hachirō 上沼八郎, and Inuzuka Takaaki 犬塚孝明, 9 vols. (Tokyo: Bunsendō shoten, 1997), 1:9.
- 31 “Jiyū minken undō” 自由民権運動 [The Freedom and People’s Rights Movement], in *Nihon daihyakka zensho* 日本大百科全書 [Encyclopedia Nipponica], ed. Shōgakusan Inc. 小学館, JapanKnowledge, 1994, <https://japanknowledge.com> (accessed on August 24, 2020).
- 32 “Civilized competition” is not Fukuzawa’s original wording, but a paraphrase by the author. Fukuzawa actually calls the change of government by the two major parties a “contention between noble men” (*jōbu no arasoi* 丈夫の争). Fukuzawa Yukichi 福澤諭吉, *Kokkai-ron* 国会論 [On a National Diet], in *Fukuzawa Yukichi zenshū* 福沢諭吉全集 [Collected works of Fukuzawa Yukichi], ed. Keiō gijuku 慶應義塾, 22 vols. (Tokyo: Iwanami shoten, 1958–1972), 5:91. Fukuzawa’s expression is an allusion to the *Analects of Confucius* III, 7: “The student of virtue has no contentions.” See Legge, ed. *The Chinese Classics*, 1:21.
- 33 Banno Junji 坂野潤治, “Nihon kindaiishi no naka no Kōjunsha shigi kenpōan” 日本近代史の中の交詢社私擬憲法案 [The *Kōjunsha* private constitutional draft in modern Japanese history] *Kindai Nihon kenkyū* 近代日本研究 22 (2005): 1–19.
- 34 Fukuzawa, *Kokkai-ron*, 5:85.
- 35 Ibid., 5:85–86.
- 36 At that time, within the Freedom and People’s Rights Movement, there was a conflict in strategy about whether one should dissolve *hōken* in the form of a federal system or whether one should deal with it in the form of regional representation in an upper house of a bicameral parliament.

Bibliography

Ackerman, Bruce. “The New Separation of Powers.” *Harvard Law Review* CXIII, no. 3 (2000): 633–729.

- Banno Junji 坂野潤治. “Nihon kindaishi no naka no Kōjunsha shigi kenpōan” 日本近代史の中の交詢社私擬憲法案 [The *Kōjunsha* private constitutional draft in modern Japanese history]. *Kindai Nihon kenkyū* 近代日本研究 22 (2005): 1–19.
- Bitō Masahide 尾藤正英. *Edo jidai to wa nani ka? Nihonshi jō no kinsei to kindai* 江戸時代とは何か: 日本史上の近世と近代 [What was the Edo period? Early modernity and modernity in Japanese history]. Tokyo: Iwanami shoten, 2006.
- Brochlos, Astrid. *Grundherrschaft in Japan: Entstehung und Struktur des Minase no Shō* [Manorialism in Japan: The *Minase no Shō*'s origins and structure]. Wiesbaden: Harrassowitz, 2001.
- Fukuoka Takachika 福岡孝弟. “Gokojō goseimon to Seitai-sho no yūrai ni tsuite” 五箇条御誓文と政体書の由来に就いて [On the origins of the *Charter Oath* and of the *Constitutional Document*]. In *Meiji kensei keisai shi ron* 明治憲政経済史論: 国家学会創立満三十年記念 [Debates on the history of Meiji constitutional government and economy: Remembering the 30th anniversary of the establishment of the Association of Political and Social Sciences], edited by Kokka gakkai 国家学会, 1–45. Tokyo: Yūhikaku, 1919.
- Fukuzawa Yukichi 福澤諭吉. *Kokkai-ron* 国会論 [On a National Diet]. In *Fukuzawa Yukichi zenshū* 福沢諭吉全集 [Collected works of Fukuzawa Yukichi], edited by Keiō gijuku 慶應義塾, 22 vols. Tokyo: Iwanami shoten, 1958–1972.
- . *Fukuzawa Yukichi shokanshō* 福澤諭吉書簡集 [Collected letters of Fukuzawa Yukichi]. Edited by Keiō gijuku 慶應義塾. 9 vols. Tokyo: Iwanami shoten, 2001–2003.
- Fujita Satoru 藤田寛. *Kinsei seijishi to Tennō* 近世政治史と天皇 [Modern political history and the Emperor]. Tokyo: Yoshikawa kōbunkan, 1999.
- Iio Jun 飯尾潤. *Nihon no tōchi kōzō: Kanryō naikakusei kara giin naikakusei e* 日本の統治構造: 官僚内閣制から議院内閣制へ [Japan's system of government: From bureaucratic cabinet to parliamentary cabinet]. Tokyo: Chūō Kōronsha, 2007.
- “Jiyū minken undō” 自由民権運動 [The Freedom and People's Rights Movement], in *Nihon daihyakka zensho* 日本大百科全書 [Encyclopedia Nipponica], ed. Shōgakusan Inc. 小学館, JapanKnowledge, 1994, <https://japanknowledge.com>.
- Katayama Mikio 片山幹夫. “Maruko Pōro *Sekai no kijutsu ni okeru* ‘Jipangu’” マルコ・ポーロ『世界の記述』における「ジパング」[«Sypangu» dans *La description du monde* de Marco Polo = “Sypangu” in Marco Polo's *Description of the World*]. *Azur* 6 (2005): 19–33.
- Kito Hiroshi 鬼頭宏. *Jinkō kara yomu Nihon no rekishi* 人口から読む日本の歴史 [History of Japan from the perspective of population]. Tokyo: Kodansha, 2000.
- Kōno Yūri 河野有理. “Seitai” 政体 [The *Constitutional Document*]. In *Seiji gainen no rekishiteki tenkai* 政治概念の歴史的展開 [The historical development of political concepts], edited by Yonehara Ken 米原謙, 9:158–181. 10 vols. Tokyo: Kōyō shobo, 2016.
- Kume Kunitake 久米邦武. *Kume hakushi kyūjūnen kaikoroku* 久米博士九十年回顧録 [Dr. Kume's nonagenarian memoirs]. 2 vols. Tokyo: Waseda Daigaku shuppanbu, 1934.
- Kuroda Hideo 黒田日出雄. *Ryū no sumu Nihon* 龍の棲む日本 [The Japan where a dragon dwells]. Tokyo: Iwanamishoten, 2003.
- Legge, James, ed. *The Chinese Classics: A Translation, Critical and Exegetical Notes, Prolegomena, and Copious Indexes*, 7 vols. Hongkong: At the author's; London: Trübner & Co., 1861–1872.
- Lijphart, Arend. *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*. 2nd ed. New Haven: Yale University Press, 2012.

- Lolme, Jean Louis de. *Constitution de l'Angleterre*. Nouvelle édition entièrement revue & corrigée sur la quatrième édition. 2 vols. Geneva: Barde, Manget & Cie, 1793.
- Mervart, David. "A Forgotten Landscape of the Forms of Government: A Case for the Counterfactual History of Political Theory." In *The Dynamics of Transculturality: Concepts and Institutions in Motion*, edited by Antje Flüchter and Jivanta Schöttli: 99–111. Dordrecht: Springer, 2014.
- . "Meiji Japan's China Solution to Tokugawa Japan's China Problem." *Japan Forum* 27, no. 4 (2015): 544–558. doi: 10.1080/09555803.2015.1077881.
- Mitani Hiroshi. *Escape from Impasse: The Decision to Open Japan*. Translated by David Noble. Revised and expanded edition. Tokyo: International House of Japan Press, 2008.
- Mitani Taichirō 三谷太一郎. *Nihon no kindai to wa nan deatta no ka: Mondaishitekki kōsatsu* 日本の近代とは何であったか: 問題史的考察 [What was modernity in Japan? An investigation according to the history of the issue]. Tokyo: Iwanami shoten, 2017.
- Mori Arinori 森有禮. *Shinshū Mori Arinori zenshū* 新修森有礼全集 [Collected works of Mori Arinori, revised edition], edited by Ōkubo Toshiaki 大久保利謙, Kaminuma Hachirō 上沼八郎, and Inuzuka Takaaki 犬塚孝明. 9 vols. Tokyo: Bunsendō shoten, 1997.
- Nishi Amane 西周. *Gidai sōan* 議題草案 [Draft of discussion topics]. In *Nishi Amane zenshū* 西周全集 [Complete works of Nishi Amane], edited by Ōkubo Toshiaki 大久保利謙, 2:167–183. 3 vols. Tokyo: Munetaka shobō, 1962.
- . *Taisei kansei ryakusetsu* 泰西官制略説 [Brief explanation of the administrative systems of the West]. In *Nishi Amane zenshū* 西周全集 [Complete works of Nishi Amane], edited by Ōkubo Toshiaki 大久保利謙, 2:184–196. 3 vols. Tokyo: Munetaka shobō, 1962.
- Oka Yoshisato 岡義達. "Seitō to seitō seiji" 政党と政党政治 [Parties and party politics]. In *Gendai nihon no seiji katei* 現代日本の政治過程 [The political process in contemporary Japan], edited by Oka Yoshitake 岡義武: 53–68. Tokyo: Iwanami shoten, 1958.
- Ōkubo Takeharu. *The Quest for Civilization: Encounters with Dutch Jurisprudence, Political Economy, and Statistics at the Dawn of Modern Japan*, translated by David Noble. Leiden: Brill, 2014.
- Polo, Marco. *La Description du monde*. Edited by Pierre-Yves Badel. Paris: Le Livre de Poche, 1998.
- Scalapino, Robert A., and Masumi Junnosuke 升味準之輔. *Gendai Nihon no seitō to seiji* 現代日本の政党と政治 [Parties and politics in contemporary Japan]. Tokyo: Iwanami shoten, 1962.
- Shimizu Masato 清水真人. *Heisei demokurashī* 平成デモクラシー史 [The Heisei democracy]. Tokyo: Chikuma shobō, 2018.
- Takenaka Harukata 竹中治堅. *Shushō shihai: Nihon seiji no henbō* 首相支配: 日本政治の変貌 [The Prime Minister's rule: Transfigurations of Japanese politics]. Tokyo: Chūō Kōronsha, 2006.
- Tokutomi Sohō 徳富蘇峰. *Shōrai no Nihon* 将来の日本 [Future Japan]. Tokyo: Keizai zasshi sha, 1886.
- Tsuda Mamichi 津田真道. *Nihon sōseido—Kantō-ryō seido* 日本総制度・関東領制度 [General Institutions of Japan; Institutions of the Kantō area]. In *Tsuda Mamichi zenshū* 津田真道全集 [Collected works of Tsuda Mamichi], edited by Ōkubo Toshiaki 大久保利謙, Kuwahara Nobusuke 桑原伸介, and Kawasaki Masaru 川崎勝, 1:263–266. 2 vols. Tokyo: Misuzu shobō, 2001.

- Watanabe Hiroshi 渡辺浩. *Kinsei Nihon shakai to Sōgaku* 近世日本社会と宋学 [The modern Japanese society and Song studies]. 2nd ed. Tokyo: Tōkyō Daigaku shuppankai, 2010.
- . *Nihon seiji shisōshi 1600–1901* 日本政治思想史 1600–1901 [A History of Japanese political thought, 1600–1901]. Tokyo: Tōkyō Daigaku shuppankai, 2010.
- . “Itsu kara ‘kokumin’ wa iru no ka—Nihon no baai” いつから「国民」はいるのか—「日本」の場合 [Since when do ‘nationals’ exist? The case of Japan]. UP 39 (2010), no. 2: 1–6.
- . *A History of Japanese Political Thought, 1600–1901*, translated by David Noble. Tokyo: International House of Japan, 2012.
- . *Higashi Ajia no ōken to shisō* 東アジアの王権と思想 [Royal authority and ideology in East Asia]. Tokyo: Tōkyō Daigaku shuppankai, 2016.
- Zhang Xiang 張翔, and Sonoda Hidehiro 園田英弘. “*Hōken*,” “*gunken*” *saikō: Higashi Ajia shakai taisei ron no shinsō* 「封建」・「郡県」再考: 東アジア社会体制論の深層 [A new study of *hōken* and *gunken*: The deep structure of East Asian discourses on societal systems]. Kyoto: Shibunkaku, 2006.