

**VOTING RIGHTS OF THE “MARGINAL”:  
THE JAPANESE CONCEPTION OF POLITICAL MEMBERSHIP IN  
COMPARATIVE PERSPECTIVE**

by

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## **ABSTRACT**

The right to vote ultimately expresses political membership in democratic states. The logic behind franchise rules in a particular state tells us much about how that state conceives its polity. This becomes clear if we study voting rights of marginal groups, since these people often define boundaries of the polity in question. From this perspective, the present study investigates the logic of Japanese political membership by scrutinizing voting rights of overseas Japanese and non-citizen ethnic minorities inside Japan. Utilizing Elaine R. Thomas' analytical framework, the study identifies competing conceptions of political belonging expressed in Japanese debates about voting rights of the two marginal groups. My finding is that the Japanese conception of political membership is more complex than one would expect from the strong ethnic homogeneity of the Japanese community. This study also clarifies where Japan stands in relation to other states.

### **Keywords:**

Belonging, Japan, political community, political membership, voting rights

*To my parents*

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## **CHAPTER 1. INTRODUCTION**

When a government extends voting privileges to certain groups of people, it is in practice determining who can become members of its political community or who belongs to a given polity. To put it differently, enfranchisement is a mechanism of defining a political community. The right to vote, that is, the right to select those who decide policy or law, which is in practice an act of shaping the future of a political community, appears to be an ultimate expression of political membership. From this perspective, my thesis examines the voting rights of the “marginal” in the Japanese nation: those of overseas Japanese and non-citizen minorities in Japan. By doing so, I attempt to infer the logic that the Japanese government and other key players apply in defining membership in their political community. To conduct a disciplined and structured empirical investigation, I utilize an analytical framework developed by Elaine R. Thomas (2002), so that my findings can be compared meaningfully with the cases of other countries.

The joint case of overseas Japanese citizens and foreign ethnic minorities in Japan is a critical one, as these are the groups of people that are located on the periphery of Japan’s polity, and consequently, these are the groups that define the boundaries of this polity. They are (or they used to be) disenfranchised, which implies political marginality. In other words, the joint case under study is a fertile ground for analysis because it is an excellent window to examine the larger question of political membership in Japan. True, there could be other approaches to this matter, such as an analysis of citizenship policy.

However, in this work, I focus on the voting rights of the “marginal” as they are understudied in the current academic literature. Moreover, my study places the case of Japan explicitly in comparative contexts. In sum, my project addresses a hitherto understudied yet critical topic with a robust methodology, so that I can make a key contribution to the study of Japanese politics in particular, and the study of political community more generally.

## **1.1 The Existing Literature**

So far, the English-language literature of Japanese politics has not systematically addressed the issue of overseas/minority voting in the context of political community. For example, Fukumoto (2004), Kondo (2001a), and Takao (2003) have addressed the broader question of foreigners’ rights, including voting rights, in Japan, while Roth (2003) has written on the significance of overseas voting rights for elderly Japanese migrants to Brazil. Hicks (1997) has very briefly touched upon the issue of voting rights for ethnic Koreans. To the same extent, Chung (2003a, 2003b) and Ahn (2000) have addressed this issue in the context of identity politics. The subject of voting rights is beyond the scope of the recent works on Japanese nationalism, such as McVeight (2004) and Wilson (2002). Nakafuji (1995) writes about overseas voting but only in the context of overseas Japanese nationals’ voting rights movements. None of these studies fully addresses the connection between voting rights and the conception of political community. In the Japanese context, furthermore, the question of membership in political community has been chiefly examined through the lens of immigration policy (see, for example, Takenaka 1997; Kashiwazaki 1998a, 1998b, 2000, and 2002a).

On the other hand, the general comparative literature on overseas/minority voting does not explicitly deal with the case of Japan. Earnest (2004, 2005), for instance, writes extensively on voting rights for foreign residents, but he does not specifically address the case of Japan.<sup>1</sup> As for overseas voting, in fact, the bibliographical research that I have conducted has yielded only a very few published analytical works, and none of them explicitly analyzes the Japanese case. For example, Blais *et al.* (2001) present an aggregate data analysis that includes Japan. Other studies, mostly available on the Internet, are largely descriptive, covering a series of electoral systems including Japan. In sum, the topic of my project has not been systematically addressed in the existing literature so that my project fills a critical void in the study of Japanese politics.

## **1.2 The Methodology**

In the literature of political community, Elaine R. Thomas (2002) has proposed a new typology of political membership – *and in my view, this is the most systematic conceptualization available in the recent scholarship*. Essentially, she identifies five distinct ways in which political membership can be imagined: (1) “descent from common biological ancestors” (Descent model); (2) “cultural attachment” (Cultural model); (3) “identification with particular political principles” (Belief model); (4) “an exchange of rights for duties” (Contract model); and (5) “a benefit granted to those contributing materially to [the given] community” (Monetized Contract model).

Thomas attempts to utilize her typology in the discussion of global citizenship. In my thesis, I apply this theoretical framework for the purpose of isolating the

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<sup>1</sup> Other works that, to various degrees, have tackled the issue of voting rights for foreign residents include Aleinikoff and Klausmeyer (2002), Katz (2000), Kondo (2001b), and Rath (1990).

philosophical foundation of the Japanese conception of political membership. After identifying the nature of the ongoing debates, I examine which of Thomas' models fits best with various positions found in the Japanese debates mentioned earlier. The two debates scrutinized here are, first, the debate regarding voting rights for overseas Japanese citizens that has with varying intensity been present from the mid-1980s, peaking in the mid-1990s; and second, the nearly three decade-long debate surrounding voting rights for non-citizen minorities residing in Japan. This is a textual/qualitative analysis, not a content/quantitative analysis – I cannot obtain a sufficient amount of Japanese-language materials in Canada that would be necessary for the latter type of analysis. In it, I utilize publicly available English-language documents and reports, newspaper articles and editorials (especially from English versions of Japanese newspapers), surveys and public poll data, some academic books and articles, as well as government documents and reports.

My methodology involves essentially three steps. Initially, I outline the nature of the two aforementioned debates and identify their key participants. The second step involves distilling the core arguments advanced by these participants during the public deliberations so I can reveal the logic underlying Japanese laws and isolate ultimately the philosophical foundations of the Japanese conception of political belonging. For this purpose, I propose seven types of hypotheses, each hypothesis corresponding with one of the models or sub-models advanced by Thomas. Each of the hypotheses forms a speculation as to what conjectural arguments would be heard in the public debates if they were to speak from a specific theoretical perspective. Then, I determine whether there have actually been arguments advanced in the debates that visibly emulate the posed

hypothesis. I will conduct this hypothesis testing in each of the two Japanese debates under study. In my final step, I examine which theoretical models advanced by Thomas fit best with the diverse positions identified in the debates mentioned above. Given that public debates over the extension of the franchise to those on the peripheries reveal contestation within the state over membership in its political community, it is quite reasonable to assume that the conceptual roots of the Japan's policies for the constitution of its polity have to some degree surfaced during the ongoing polemics.

### **1.3 Key Findings**

This research reports findings that are counterintuitive to the conventional wisdom. Given the quite strong ethnic homogeneity of the Japanese community, one would expect to find that the Descent model is clearly the only model that fits well with Japan. My findings do not support this inference, however. In fact, the very existence of debates by definition means that the “orthodox” view of Japan is being challenged. But my findings go further than that. My careful scrutiny of these debates confirms that the Japanese conception of political membership, as seen through the window of voting rights, is quite complex indeed. More specifically, as far as overseas voting is concerned, although I cannot go as far as to reject the Descent view entirely, most arguments found in the debates support the Culture conception of political membership. As for non-citizen minority voting, my findings further cast a serious doubt on the view that the Japanese are prisoners of the Descent model. Although the fixity of political membership has been so far successfully preserved by state authority, which points to the Descent view, this model has been nevertheless vigorously challenged in the debates with clear references to as many as four other models of political membership (i.e., the Culture, Belief, society-

centered Contract, and state-centered Monetized Contract models). It is important, however, to bear in mind that these are still preliminary findings, given especially that my textual/qualitative analysis does not utilize the original Japanese language materials, and that further work needs to be done.

## **1.4 Organization**

This Introduction is followed by the chapter that clarifies my analytical framework by introducing Thomas' typology of political communities. The subsequent chapter will outline cross-national differences in the approach to the question of overseas voting rights and political franchise for non-citizen minorities. It establishes a comparative context. Then, in the next two chapters, I will outline and analyze, first, Japan's debates surrounding the issue of voting rights for overseas Japanese, and second, the ongoing debates surrounding suffrage for non-citizen ethnic minorities residing in Japan. The concluding chapter will summarize my findings and place the Japanese case in a comparative context. Moreover, it will clarify the implications of my findings for our appreciation of the literature on political community and provide directions for further research.

## **CHAPTER 2. ANALYTICAL FRAMEWORK**

In the existing scholarship on the idea of political membership and the nature of belonging, Elaine R. Thomas (2002) offers what I consider to be the most systematic conceptualization of this subject available. This chapter elaborates the theoretical framework proposed by Thomas.

### **2.1 Thomas' Typology of Competing Conceptions of Political Membership**

In her “Who Belongs? Competing Conceptions of Political Membership,” Elaine R. Thomas embarks on deliberations regarding contending ideas of membership in political communities by asserting that among various typologies of nationalism proposed hitherto, only very few concern the nature of political membership. The most influential among these approaches, she suggests, is undoubtedly a dichotomous classification put forward by Hans Kohn in his prominent *Idea of Nationalism*, where, in the context of World War II, he distinguished two types of nationalism: “Eastern” and “Western.” Essentially, Kohn argued that the backbone of the Eastern type – which was in effect racist, ethnic and generally harmful – was a backward notion of a biologically based community formed through a “mystical integration around the irrational, precivilized folk concept” (quoted in Thomas 2002: 326). In contrast, the Western type of nationalism, perceived as universal, rational and clearly positive, was centered on the idea of a nation as a group of people bound by a political ideal (Thomas 2002: 326).

Although developed in specific historical and political circumstances, Thomas maintains, Kohn's approach made a sudden comeback in the context of a post-Cold War political turmoil in various parts of the world, fostering a rise of analogous dichotomous treatments of nationalism. Since then, the idea of nationalism, with respect to the nature of political membership, has been most commonly presented as either "civic" or "ethnic."<sup>2</sup> In this view, the political community's boundaries and its membership are set either by ideological or ethnic qualities. As a result, contentions concerning competing ideas of political membership have usually been perceived as products of conflict between the two contrasting conceptions (Thomas 2002: 323). However, Thomas argues that this common view is somewhat simplistic and limited. She also sees this dichotomous framework as being a source of some theoretical confusions and inconsistencies (see Thomas 2002: 327-328). Consequently, Thomas proposes a new typology of political membership. She identifies five distinct ways in which political membership can be imagined: (1) "descent from common biological ancestors" (Descent model); (2) "cultural attachment" (Culture model); (3) "identification with particular political principles" (Belief model); (4) "an exchange of rights for duties" (Contract model); and (5) "a benefit granted to those contributing materially to the [given] community" (Monetized Contract model).

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<sup>2</sup> This notion, according to Thomas, has been most notably articulated in works such as Greenfeld (1992), Ignatieff (1993), and Jowitt (1992: 319-326). In addition, Thomas notes that this dichotomous distinction has also been expressed in other pairs of terms, which can be simply seen as a variation of the same theme. To illustrate this, she explains that Smith (1983) makes a distinction between "ethnic" and "territorial" nationalist movements, whereas Brubaker (1992), building upon the examples of Germany and France, differentiates between the "organic" or "ethnocultural, differentialist" and the "political" or "state-centered, assimilationist" perspectives. Similarly, Lind (1994, 1995) and Tamir (1993) have attempted to distinguish "liberal nationalism" from "illiberal nationalism," "zealous nationalism," or "nativism" (Thomas 2002: 327).



### *The Descent conception*

According to the Descent view, “membership in a given nation appears as an innate characteristic that cannot be acquired. That is, it is seen as a common genetic or biological inheritance rather than a properly ‘ethnic’ one with a significant cultural component”<sup>3</sup> (Thomas 2002: 328-329). As models of societies organized on the basis of the Descent principle, Thomas gives historical examples of ancient Rome where vast clans were united by supposedly common ancestry, and ancient Greece where citizenship was granted only to descendents of legitimate citizens. As for a more current illustration, she brings in the case of the recently abandoned immigration and citizenship policy in Germany, according to which, beginning from 1945, “ethnic Germans” (*Aussiedler*) automatically qualified for access to German citizenship.<sup>4</sup> On the other hand, starting with the Citizenship Law of 1913 (*Reichs- und Staatsangehörigkeitsgesetz*), this right was heavily restricted for those of non-German ancestry. Hence up until January 2000 when a new naturalization law in Germany was enacted,<sup>5</sup> non-German children born and raised in Germany, as well as their descendents, could obtain German citizenship only

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<sup>3</sup> Although Thomas recognizes that this perspective might appear as intrinsically “racial,” in fact, she argues that its character should be perceived as falling into one of the two sub-categories: race or ancestry. This in turn depends on whether it is phenotype that is stressed or the fact of kinship (Thomas 2002: 329).

<sup>4</sup> As Green (2000) notes, however, a legislation introduced in 1993 restricted ‘ethnic German’ status to those born before 30 June 1993, putting in effect a formal limitation on this form of immigration (Thomas 2002: 345n).

<sup>5</sup> The new naturalization law in Germany stipulates that it is not only German ancestry but also birth on German soil to foreign parents, at least one of whom is a German permanent resident, that entitle to German citizenship. In case of dual citizenship, however, a final choice of one citizenship has to be made between the ages of 18 and 23; otherwise German citizenship will be permanently lost (see Green 2000, Hogwood 2000: 125-135; Thomas 2002: 329; Wüst 2000: 560).

through naturalization, complexity of which can be seen as expressed in the lowest naturalization rates among the EU countries<sup>6</sup> (Thomas 2002: 328-329).

### ***The Culture conception***

Similar to the Descent model, the Culture perspective depicts the nation as a family. According to the Culture conception, however, “the national family is understood primarily as a vehicle for socialization, not biological transmission of inherited characteristics” (Thomas 2002: 330). Unlike the Descent model, therefore, the Culture perspective sees that “polities are permeable,” in which political membership may be gained or lost by means other than birth or death, as a process of socialization prevails over birth into the genetically defined polity. Thomas recognizes that according to this view, “nationality is still generally not seen as acquired by choice; rather, it results from socialization” (2002: 330); nonetheless, “adoption” into the nation is attainable, she argues.<sup>7</sup> In other words, in contrast to the Descent view, which imagines membership in a given polity as “natural and innate,” the Culture conception recognizes political membership as being “cultural and potentially changeable,” as, for instance, “[o]ne cannot change one’s genetic profile, but one may learn a new language or history” (Thomas 2002: 330). History for this reason appears to be of a crucial importance to this perspective, as adopting a particular national history may foster a feeling of belonging to a particular collectivity. As Thomas states, “generations of French children, from Paris to Guadeloupe, long read of ‘*Our* ancestors the Gauls’” (2002: 330). Colonial states with

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<sup>6</sup> See Wüst (2000) for a brief comparison between German naturalization rates (1985-1997) of ethnic resettlers (*Aussiedler*) and non-resettlers (foreign population). See also Münz (2002) for demographic developments in Germany after 1945. For a comparison of naturalization rates in OECD countries, see OECD (2001).

<sup>7</sup> Thomas draws an analogy between this perspective and the view of a family in which the role of parents in raising children outweighs procreation per se (2002: 330).

their overseas possessions, where colonial subjects have been socialized to a particular national history and taught a new language, are historical examples of polities organized around the Culture conception of political belonging.<sup>8</sup>

### ***The Belief conception***

In contrast to the above two models, the Belief conception of political membership, which by virtue of implicating the sense of identification and commitment bears some resemblance to the Cultural model, contains an important element of choice. In this view, membership in a political community “is supposed to be a form of membership that one asserts one’s autonomy and individuality in accepting” (Thomas 2002: 332). To be more precise, the Belief model concerns a political belief. Accordingly, Thomas insists, this way of thinking about political membership is common among many American liberal theorists who, with regard to liberal democracies, put emphasis on a belief in certain, supposedly, universal and basic liberal political principles as the foundations of citizenship and national identity. In the American context in particular, she writes, this idea has been articulated among others by Jacobsohn (1996), Huntington (1981), Walzer (1992), as well as Levinson (1988), who has talked about “constitutional patriotism” as being the essence of American national identity. Besides, the nature of political membership has been defined in this manner by Mouffe (1992) and Habermas (1994).

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<sup>8</sup> Thomas asserts that this perspective is manifested, though not exclusively, in the writings of contemporary communitarian theorists such as Sandal (1984) because it takes as its focal point a belief that membership in a particular group involves a deep-seated attachment to things that are commonly associated with or subjected to primary socialization. Hence although breaking of cultural attachments that cement a sense of belonging is possible, this may threaten one’s sense of identity, Sandal maintains. Similarly, Thomas continues, in the case of a modern nation-state, Gellner (1983) argues that “men will be politically united with all those, and only those, who share their culture”, thus what is unique about national communities is that “the individual belongs to them directly, in virtue of his cultural style.” Also, Žižek (1992) believes that “the unique way a community organizes its enjoyment” and “the social practices” involved are among the necessary conditions for the existence of the nation (Thomas 2002: 330-331).

To illustrate, Thomas summarizes Habermas' claim that the cultural integration of groups should not be confused with the "political integration of citizens," as the latter needs to be identified as being rooted in commonly shared principles. Hence, she argues, it is for this reason that Habermas believes that a supranational European citizenship is achievable on the strength of this model of political membership<sup>9</sup> (Thomas 2002: 331-332).

### *The Contract conception*

The fourth way of conceptualizing political community is the Contract model. In this view, political membership is theorized as a "contract" between citizens and the state which entails the exchange of duties toward the state or community for the rights that the members of this political collectivity enjoy instead (hence it is a "rights for duties" contract).<sup>10</sup> But because when framed in that way this idea may suggest some resemblance to the basic dynamics of interdependence that have historically been present in a traditional feudal relationship, in this conception, Thomas clarifies, "citizenship generally appears not simply as a matter of rights and duties, but of equal rights and equal duties" (2002: 333-334). Furthermore, this model is characterized by two versions: state-centered and society-centered. The duties most commonly identified with the state-centered variant of the Contract model, besides the duty of obeying the law, are military service and voting.<sup>11</sup> As for the society-centered variant of the Contract model, political membership is acquired by performing, for instance, voluntary community service and

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<sup>9</sup> Note that Thomas is also aware that authors such as Levinson (1988) and Mead (1975) have showed, by pointing to Christian antecedents, that functional examples of political communities organized on the basis of the Belief model of political membership had also existed in the absence of constitutions (2002: 332).

<sup>10</sup> As Thomas points out, this way of thinking is reflected in the writings of contemporary British liberal theorists such as Weale (1991) and Hall and Held (1989) (2002: 333).

<sup>11</sup> Although Thomas admits that the place of voting here is somewhat confusing, as it is sometimes regarded as a duty of citizens whereas at other times it is identified as their right (2002: 334).

charity work, that is, “the worthy ‘citizen’ may fight fires, keep up the parks, work with the homeless, and care for aging neighbors” (Thomas 2002: 334). Essentially, however, the society-centered contractual view of political membership entails an exchange of duties between the individual and the community. In other words, those who serve the community are entitled to citizenship<sup>12</sup> (Thomas 2002: 332-335).

### *The Monetized Contract conception*

Finally, Thomas distinguishes the fifth way of imagining political community. This is a monetized version of the Contract model. In the Monetized Contract view, therefore, “full membership in the polity is earned by paying one’s dues to the state financially or contributing economically to the national community, that is, through tax-paying, employment, or financial investment” (Thomas 2002: 335). Consequently, the rights of the contributor are identified in terms of material benefits as well, including, for instance, entitlements to welfare, public housing and education, or other social rights and benefits.<sup>13</sup> This perspective, just like the Contract model, is also expressed in state-centered and society-centered versions. In the state-centered variant, the entitlement

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<sup>12</sup> In a reaction against the welfare state during the late 1980s, Thomas writes, some British Conservative advocates put forward an idea of “active citizenship” that was essentially in accordance with the society-centered version of the Contract model. Although endorsed by some, others assessed the idea as being “essentially apolitical.” Note also that Thomas recognizes that a contribution to the community, and especially its local character, may be made as a result of one’s deep feeling of a sense of belonging or attachment, which shades the “rights for duties” contract into the Culture model (2002: 334-335).

<sup>13</sup> Interestingly, however, in reality, many social rights and benefits in the United States and Western Europe are not conditioned by a virtue of the citizenship status. In other words, they are accessible to non-citizens. Recognizing this, Thomas suggests that what is crucial in this theoretical conception is not the actual legal relationship between citizenship and social rights, but the prevalence of the belief that full membership in a political community, which entitles subsequent rights and benefits, is earned by contributing economically to this community. As she puts it, “[t]his is a belief about moral entitlement and how citizenship or membership in the political community should be understood, not just about what the current rules regulating access to entitlements actually are. As in the case of the Descent model, historical and legal reality are largely at odds with the idealized version by which they are supposed to be described, but this conception of citizenship has a life of its own and contributes to shaping public discussion” (Thomas 2002: 336).

to various social benefits comes as a result of one's contribution in the form of taxes. That is, a taxpayer is entitled to become a full and legitimate member of the polity. As for the society-centered variant, membership in a political collectivity can be claimed only by those who contribute to the community's economy through engagement in productive employment. In that sense, Thomas points out, this view challenges the American understanding of political membership understood as the Belief model, as some, such as Shklar (1991), argue that the connection between citizenship and productive employment have historically played a role in the American perception of equal belonging in the community. More importantly, however, Thomas recognizes that claims for rights rooted in a society-centered variant of the Monetized Contract can give rise to a series of political and conceptual problems, most notably, the question of what contributing to the economy actually means, the question of workers hired outside the national territory, or the issue of engaging in work for a foreign company within national boundaries, to mention just few, although all of them are incredibly relevant in the context of an increasingly integrated global economy (2002: 335-338). Thus although Thomas admits that it may often be "too difficult to determine just which political community is the ultimate beneficiary of any given worker's labor," she argues that it is rather common to come across in political discussions implicit references to this conception of political membership (2002: 338).

In her quest for a new set of conceptual tools that would contribute to a greater understanding of the nature of membership in political communities, Thomas assumes that citizenship and nationality are the chief indicators of one's belonging. In fact, in her typology, she does not differentiate between the two concepts, but argues that both of

them are simply two sides of the same coin. Thomas acknowledges that the relationship between and the usage of the two words varies from one country to another, and that subsequently some scholars, such as McCrone and Kiely (2000),<sup>14</sup> are inclined to see these two notions as carrying two different meanings. She nevertheless asserts that “citizenship and nationality today cannot be as neatly distinguished as one might wish” (2002: 326). In sum, while she recognizes that McCrone and Kiely may be to some extent right, she emphasizes that “concepts are forged by long histories of usage” and that “nations and states have in many cases historically redefined one another” (Thomas 2002: 326). All in all, therefore, it may seem reasonable that Thomas’ typology of national political membership, which she attempts to utilize in the discussion of global citizenship, covers conceptions of both citizenship and nationality.

## **2.2 The Application of Thomas’ Framework**

In my thesis, I apply this theoretical framework for the purpose of isolating the philosophical foundation of the dominant Japanese conception of political belonging. Moreover, I focus on the political franchise as a mechanism for defining a political community. In other words, it is assumed here that the right to vote, which is in practice an act of shaping the future of political community, can be in fact seen as an ultimate expression of political membership. I perceive this approach as becoming increasingly important and more accurate measurement of political membership in the era of globalization, which, for one, is characterized by a considerable increase in global migration.

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<sup>14</sup> McCrone and Kiely (2000) argue, for instance, that “nationality” needs to be understood as “a cultural concept which binds people on the basis of shared identity,” whereas “citizenship” is more of a “political concept deriving from people’s relationship to the state” (quoted in Thomas 2002: 325).

It is now often assumed that citizenship and political rights, such as voting rights, are part and parcel of the same package and cannot be disaggregated. Still, such an assumption does not always hold in the current and past practices found in many states. For example, the French Constitution of 1793 bestowed voting rights upon foreign citizens living in France. In short, the *citoyens*, the members of the polity who were not necessarily French citizens, were granted full political rights, including the right to vote<sup>15</sup> (Hammar 1986: 736). Furthermore, under the Fourth French Republic (from 1946 to 1958), residents of the French *Territoires d'Outre-Mer* and *Territoires sous Tutelle*, who were not recognized as citizens, elected representatives to the French parliament (Katz 2000: 174). To give another example, in 1798, the centralized Dutch state constructed the polity on the basis of the right to vote, as the newly adopted constitution defined a “Dutch citizen” as anyone entitled to vote in one of the seven provinces. By doing so, Earnest argues, “the institution of the franchise predated, and was the foundation for, the institution of national citizenship” (2004: 9). Besides, the United States has historically not required citizenship as a condition for political participation. The country has a long tradition of enfranchising non-citizens that dates from 1776, the founding of the republic, to 1926. During that time, non-citizens were permitted to vote in local, state, and federal elections, and participated in fact in every presidential election up until the mid-1920s (Aylsworth 1931; Raskin 1993; Harper-Ho 2000; Hayduk and Wucker 2004). In this way, Shklar notes, the “ballot has always been a certificate of full membership in society,

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<sup>15</sup> As Hammar emphasizes, despite certain similarity and the same root, the French word “citoyen” is not equivalent to the English “citizen.” In effect, for the most part of the 19<sup>th</sup> century not all citizens of European states were categorized as “citoyens”, that is, as persons entitled to vote or stand for elections. It was only in 1919 that general suffrage was widely adopted across Europe, which, Hammar points out, was at the time when the “nationalistic principle of one nation one state” was officially declared as the basis for the new world order (1986: 736).



and its value depends primarily on its capacity to confer a minimum of social dignity” (1991: 2).

More recently, numerous democratic countries have extended the franchise to non-citizens. For example, the Netherlands, Sweden, South Korea, Denmark, Hungary, Ireland and Venezuela are among a number of countries that have granted local, and, in some cases, regional voting rights to non-citizens, whereas countries like New Zealand, Chile, Uruguay, and Malawi have all enfranchised their foreign residents at the national level (Blais *et al.* 2001: 52-54; Chung 2006; Earnest 2004: 17-45; Tung 1985). In addition, countries like the United Kingdom and Portugal, for instance, have granted suffrage to non-citizen residents coming from their former colonies (Blais *et al.* 2001: 52-54; *Expatica*, Internet: May 2002). In any case, this only signifies recognition of one’s belonging to the political community. As for voting rights for overseas nationals, there is no worldwide uniformity in the manner states approach this subject either. The approach to this issue varies rather from state to state. Many countries have disenfranchised their nationals residing abroad, rescinding in that way their political membership. This demonstrates that even in democratic states citizenship does not automatically entitle to participation in the political life of a given community. In that sense, voting rights for overseas citizens and non-citizen foreign minorities redefine the boundaries of political communities, as democratic states extend these rights in ways that reflect shared understandings of membership in their polities. In view of that, my study places the case of Japan explicitly in comparative contexts.

It is important to note that, according to Thomas, it would be erroneous to attempt to pigeonhole countries into her categories by scrutinizing their laws because the “[l]aws

normally reflect several models, as well as considerations of administrative expediency, and one cannot directly infer theoretical conceptions of nationality or citizenship from legal requirements” (2002: 324). She suggests, therefore, that the proposed set of categories could rather be employed as an analytical tool in examining conceptual roots of current political discussions about the nature of belonging to a given polity (Thomas 2002: 323). Recognizing this argument, in order to infer the philosophical foundation of the Japanese conception of political membership, I do not utilize Thomas’ typology to examine the existing laws regarding voting rights in Japan, or elsewhere. Instead, I employ it for the purpose of analyzing the ongoing debates surrounding the right to vote for Japanese overseas nationals and non-citizen inside minorities. The public debates over these voting rights in Japan, and elsewhere, reveal contestation within the state over membership in the political community and may well point to the conceptual foundations of the state’s policies for the constitution of its polity. Summing up, Thomas’s typology can be summarized to the following table, which indicates the key concepts for which I will seek linguistic evidence when scrutinizing debates.

**Table 1 Overview of Thomas' Theoretical Framework of Political Membership**

<i>Theoretical Models</i>		<i>Key Concepts</i>
Descent		ancestry; race
Culture		socialization; shared culture (e.g., language); attachment to the polity
Belief		political principles
Contract	state-centered	military service
	society-centered	service/contribution to the community
Monetized Contract	state-centered	tax
	society-centered	productive employment

Before I turn to exploring those debates, however, let me first build a context for the Japanese case by outlining a global overview of the overseas voting rights and political franchise for non-citizen minorities, highlighting selected cases and situating them within Thomas' conceptual framework. In some instances, the arguments employed in the debates can turn out to be more explicit than in others. I will therefore only suggest where the particular state may possibly locate as far as Thomas' typology is concerned without embarking on a meticulous analysis for each case, as this is beyond the scope of this thesis.

## **CHAPTER 3.**

# **GLOBAL OVERVIEW OF THE OVERSEAS VOTING RIGHTS AND POLITICAL FRANCHISE FOR NON-CITIZEN/FOREIGN MINORITIES**

### **3.1 Overseas Voting**

The right to vote is typically regarded as the principle attribute of citizenship, and consequently, the ability to exercise it is often perceived as necessary for every democracy. In 1986, for instance, the Committee of Ministers of the Council of Europe recommended its member states permit their expatriates to cast a vote from abroad (Aguiar and Guirado 1999). Yet, there is no uniformity, at the European level or in the global context, in the manner states regard the issue of voting rights for their expatriates. As Maley (2000: 193) maintains, countries are not obliged to enfranchise their nationals who are residing overseas, and the decision on whether or not this should be done is generally a domestic political one. Hence the approach to voting from outside the country varies from state to state, ranging from a total loss of the right to vote for overseas citizens, to a time-limited loss, and to no loss at all. Furthermore, in some instances voting rights of overseas citizens are limited to specific types of elections or to particular categories of electors.<sup>16</sup>

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<sup>16</sup> In addition, overseas voting can happen at elections held in the immediate aftermath of conflict or social breakdown. In these circumstances, enfranchisement may be recognized as an important element of the political reconciliation for people who have left their countries as refugees or forced migrants, examples being the 1996 elections for Bosnia-Herzegovina and the 1997 Liberian elections (Maley 2000: 193). It is also interesting to note that overseas voting is practiced in various ways, including voting at embassies, consulates, special polling stations, as well as by proxy or by mail. See Election Process Information Collection and Blais *et al.* (2001) for a detailed comparative analysis of overseas voting rights and practices.

### *No overseas voting rights*

It has been argued that some countries' reluctance to enfranchise their citizens residing abroad is a reflection of their adherence to the logic and principles advocated by the 17<sup>th</sup> century English philosopher John Locke, who insisted that the right to vote and the duty of paying taxes were closely related (Aguilar and Guirado 1999). As it will be shown, however, conceptual considerations regarding whether or not to extend suffrage to overseas citizens appear to be more complex. In any case, countries like Albania, Bahamas, Bangladesh,<sup>17</sup> Belize, Burkina Faso, Cambodia, Chile, Costa Rica, Cyprus, Dominica, Egypt, El Salvador, Gambia, Guatemala, Hungary, Israel,<sup>18</sup> Jamaica, Jordan, Lebanon, Macedonia, Madagascar, Malawi, Mongolia, Nepal, Niger, Niue, Pakistan, Palestine, Panama, Paraguay, Saint Lucia,<sup>19</sup> Saint Vincent and the Grenadines, Samoa, Seychelles, Slovakia, South Korea, Sri Lanka, Sudan, Togo, Tonga, Trinidad and Tobago, Uganda, Uruguay, Zambia, and Zanzibar, for example, all disenfranchise their citizens residing abroad (Blais *et al.* 2001; Election Process Information Collection).

South Korea is an interesting although highly complex case. In light of its geographic proximity to Japan and its comparable level of ethnic homogeneity, the South Korean case is worth closer examination for the purpose of this study. At the present time, Korean law does not provide for absentee ballots for overseas citizens. The issue of granting, or in fact reinstating, overseas voting rights, however, has been a subject of a

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<sup>17</sup> Both Bangladesh and Madagascar make exceptions for their diplomatic staff.

<sup>18</sup> The only exceptions are Israeli citizens serving on Israeli ships and in Israeli embassies and consulates abroad (Israel Ministry of Foreign Affairs).

<sup>19</sup> In the case of Saint Lucia, similarly to Slovakia, citizens residing abroad have an only symbolic right to vote, since they must return to the country in order to cast a ballot on election day (Blais *et al.* 2001: 57).

vigorous debate in Korea for many years.<sup>20</sup> The overseas voting system existed in Korea during the presidential and parliamentary elections in 1967 and 1971. In those elections, the right to vote from outside the country was vested to some 41,000 South Korean troops in Vietnam, along with 4,000 diplomats serving for overseas posts, as the soldiers were allegedly the main supporters of the Park Chung-hee's authoritarian government. In 1972, however, a year after Korea pulled back its troops from Vietnam, the government excluded them from the voting register (*Korea Times* Feb. 8, 2002 and Feb. 2, 2005. Internet). In 1997, the National Congress for New Politics (predecessor of the Millennium Democratic Party) pressed on the issue of voting rights for overseas Koreans, but this attempt was resisted by the then-ruling New Korea Party (predecessor of the Grand National Party) on the grounds of the cost involved in the proposed change and the

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<sup>20</sup> An intense debate surrounded the 1998 Justice Ministry's announcement of a legislative plan to give extensive legal rights to the estimated 5.2 million ethnic Koreans residing overseas, regardless of their citizenship status. According to the "special law bill [sic] on legal status of overseas compatriots," these rights would be almost equal as those of local Korean nationals. In short, once issued an overseas registration card, these ethnic Koreans would be allowed to come to and stay in the country almost indefinitely and freely engage in almost all kinds of economic activities. They would also enjoy property rights, the right to subscribe to medical insurance, the right to assume official posts in Korea (except in the diplomatic, defense, intelligence, criminal and judicial fields), as well as the right to vote (*Korea Times* Aug. 25, 1998; *Korea Herald* Aug. 26, 1998). Initially, the bill was addressed to all people of Korean ancestry, but after China and the Commonwealth of Independent States (CIS) countries expressed concerns about the bill's possible impact on their assimilative policy on minorities, the revised plan was limited to "those who were once Korean nationals or are the lineal descendents of those who obtained foreign nationality" (quoted in *Korea Herald* Dec. 18, 1998), which would exclude Korean-Chinese and ethnic Koreans from the CIS countries, most of whom had left Korea before the inauguration of the Korean government in 1948. As for voting rights, the revised version of the bill provided for the right to vote for qualified ethnic Koreans in "various Korean elections" on the condition that they stayed in the country for 90 days and more (*Korea Herald* Dec. 18, 1998). As the *Korea Herald* states, the basic idea expressed in the bill was "blood precedes nationality" and therefore people of Korean descent ought to have some privileges in their activities in their motherland (Oct 1, 1998). Furthermore, the *Korea Herald* writes that according to the Ministry of Justice, the logic fuelling this measure was to give overseas Koreans a "stronger sense of belonging as members of the Korean racial community and provide them with more opportunities to contribute to the economic development of their motherland" (Aug. 26, 1998). Eventually, the bill was approved by the National Assembly in 1999, but several controversial plans, including the right to serve in public posts and the right to vote, were dropped due to criticism from both inside and outside of Korea (*Korea Herald* Aug. 20, 1999). In 2001, following a constitutional appeal filed by a family of a Korean-Chinese, the Constitutional Court ruled that the limited definition of ethnic overseas Koreans in the existing law was unconstitutional and ordered the law to be revised by the end of 2003, which was eventually carried out by the National Assembly at the beginning of 2004 (*Korea Times* Nov. 30, 2001 and Feb. 11, 2004).

possibility of dividing overseas Koreans.<sup>21</sup> Later, in 1999, the efforts to extend suffrage were further interrupted by the Constitutional Court, which ruled in response to an appeal filled by five Koreans living in Japan that it was not illegal to prohibit their participation in national elections. The court dismissed the claim of apparent discrimination against Koreans residing abroad on account of the required expenses and time involved in the process. More importantly, however, the court argued that it was difficult to support the right to vote for Koreans overseas who did not carry out the duties of paying taxes or performing military service (*Korea Herald* Apr. 6, 2000 and Nov. 17, 2004).

Nevertheless, some politicians and civic group leaders continued to call for extension of the suffrage to overseas ethnic Koreans. In 2002, for instance, Rep. Jong Bum-goo of the Millennium Democratic Party (MDP) acknowledged that many people felt that overseas Koreans should continue to be restricted from voting since they were exempted from paying taxes and military service. Nonetheless, he argued, the revision of the existing law would enhance the national pride of ethnic Koreans all over the world (*Korea Herald* Feb. 8, 2002). Similarly, in 2003, Kwon Byong-hyon, chairman of the Overseas Koreans Foundation, called for the recognition of the potential asset of overseas ethnic Koreans and for overseas voting rights. He argued that the traditional concept of national boundaries was shifting toward economic and cultural bodies dispersed around the world but bounded by a common national identity (*Korea Herald* Jan. 15, 2003).

Yet, in September 2003, the Seoul District Court ruled in favor of the state, in a civil case filled by five Koreans living in Japan, by saying that it was not illegal to outlaw Koreans

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<sup>21</sup> It has been argued that the idea of giving overseas Koreans the right to vote has always been sponsored by the opposition. The Grand National Party (GNP), which has been lately promoting the idea while being the main opposition party, is a successor of the New Korean Party (NKP), which as the ruling party opposed the reform in the late 1990s. Consequently, the now-ruling Uri Party appears to be indifferent to, or even questions, the call for a reform (*Korea Herald* Nov. 17, 2004; see also *Korea Times* Mar. 22, 2005).

residing abroad from voting in Korean elections due to the existing laws. And as in the case of the Constitutional Court's ruling of 1999, the Seoul court also argued that it was difficult to endorse voting rights for overseas Koreans who did not fulfill the duties of paying taxes or serving for the military.<sup>22</sup> Additionally, it pointed to questions that would inevitably be raised with regard to North Koreans or North Korea followers should voting rights be admitted to Koreans overseas (*Korea Herald* Sep. 14, 2003).

At the beginning of 2005, the National Election Commission (NEC) submitted to the National Assembly a revision of the Election Law aimed at giving the right to vote in both presidential and parliamentary elections to overseas Koreans staying abroad for a short period of time, such as diplomats, students, correspondents and company workers (*Korea Times*. Internet: Feb. 2, 2005 and Mar. 22, 2005). Although in the end the bill failed to pass the Assembly, the Federation of Korean Associations, assembling some 180 ethnic Korean associations in America, opposed the effort made by the authorities. The federation argued that Korean nationals are simply Koreans, regardless of the period of

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<sup>22</sup> The importance of the duty of performing military service can also be seen as expressed in the recently revised Korean Nationality Act, which prevents people with dual nationality from avoiding their military duty by giving up their Korean citizenship. More specifically, under the revised law, a male with two or more citizenships is not allowed to renounce his Korean citizenship unless he first completes the compulsory military service (*Korea Times* May 25, 2005). Moreover, in a controversial follow-up measure to punish draft dodgers who have already done so, the opposition Grand national Party (GNP) submitted a bill designed at amending the Overseas Compatriots Act. The revision aimed at depriving overseas Koreans of their special legal status and stripping them of various economic and medical benefits, which would in fact equal to regarding them as "foreigners," in case where it was proven that they had renounced their South Korean citizenship to avoid their military obligation. Initially, despite some popular support for the proposal, most lawmakers of the ruling Uri Party voted down the bill by pointing to its technical problems and the already existing government guidelines with regard to this matter (*Korea Times* July 1, 2005 and July 4, 2005. Internet). The GNP resubmitted to the National Assembly a revision of the Overseas Compatriots Act, were it was in the end successfully passed into law in December 2005 (*Korea Times*. Internet: Dec. 8, 2005). Shortly after that, concluding four years of inner discussions, the National Human Rights Commission expressed an opinion that an individual has a right to refuse compulsory military service and officially recommended the government to recognize conscientious objector status. This view, which contrasts sharply with a Constitutional Court decision pronounced in August 2004 that affirmed the existing conscription law as constitutional, based on the principle that religious beliefs cannot come before national security, re-ignited the Korean nationwide debate over military service (*Korea Times*. Internet: Dec. 27, 2005). All this, however, only underscores the magnitude of this issue.



time spent abroad, and that therefore all of them, and not just some, should be vested with voting rights (*Korea Herald* July 14, 2005). In the mean time, Kim Jae-soo, a legal advisor to the federation, rejected the argument that enfranchisement of overseas Koreans would create an immense fiscal burden for the government (estimated 49 million dollars) by pointing to the financial contribution of overseas Koreans to the development of the home country's economy, which, according to Kim, amounted to a total of 5.7 billion dollars in 2003 in the form of the money sent back home (*Korea Times* Mar. 31, 2005). Elsewhere, with respect to this issue, Kim Young-man, president of the federation, accused the Korean government of forgetting the "give and take" principle. He admitted that some rights were obtained in exchange for performing certain duties, and said that overseas Koreans were therefore ready to discuss paying taxes to the government but only after being "recognized as real Koreans by having the right to vote" (*Korea Times* July 15, 2005). Nonetheless, as of now, an estimated 7 million overseas Koreans remain disenfranchised.

It appears, then, that some references to the common Korean descent and the value of the overseas Koreans' economic contribution to the national community have been made over the course of the debates by the advocates of enfranchisement of overseas Koreans. They reflect the Descent view and the society-centered version of the Monetized Contract model. On the other hand, the explicit arguments by the courts referring to the duties of paying taxes or serving for the military in exchange for the right to vote suggest that the state-centered variants of both the Monetized Contract view and the Contract model are the two prevailing conceptual perspectives that, at least for now,

inform the official thinking about the nature of political membership in South Korea, as far as overseas voting is concerned.

### ***Overseas voting rights limited to a specific period***

In many other countries, citizens residing abroad retain their right to vote for a clearly stipulated period. For example, in New Zealand citizens lose voting rights 3 years after leaving the country, and permanent residents only 1 after being outside the country.<sup>23</sup> In Germany, the right to vote is retained indefinitely by German citizens residing in a member state of the Council of Europe, but those residing in any other country become ineligible to vote in German elections after 10 years (Blais *et al.* 2001: 56-57). Canada allows overseas voting for all its citizens abroad who are on official duty as well as citizens residing overseas less than 5 years. Additionally, in order not to be disenfranchised, those residing abroad are required, upon application for registration, to declare their intention of homecoming (Blais *et al.* 2001: 45, 57; Nakafuji 1995: 39). A similar declaration is also required from Australian citizens who are about to cease residing in Australia or who have left the country to live overseas.<sup>24</sup> They lose the right to vote after 6 years abroad, albeit, upon application, 1-year extensions are possible<sup>25</sup> (Blais *et al.* 2001: 44, 57; Southern Cross Group). Furthermore, in the United Kingdom, under a law introduced in 1985, overseas citizens were given a right to vote with 5 years'

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<sup>23</sup> In New Zealand, the right to vote in national elections is extended to permanent residents. However, in order to be eligible to vote, they, just like citizens, must have lived continuously in New Zealand for 1 year and one month in the electorate in which they intend to cast a ballot (Spoonley 2001: 171-172).

<sup>24</sup> However, it is only possible to apply to the Australian Electoral Commission (AEC) for eligible overseas electoral status within 3 years of leaving Australia (Southern Cross Group).

<sup>25</sup> It is also worth mentioning that, unlike voting inside the country, voting from overseas is not compulsory for Australian citizens, but not voting may have disenfranchisement consequences for the remaining period of residence abroad. Equally important, it appears that an inclusion on or exclusion from the Electoral Roll is "almost never" a pivotal factor in determining residency status for taxation purposes (South Cross Group).

grace. That was raised in 1989, entitling British expatriates to cast a ballot for up to 20 years after leaving the UK (*Economist* Jan. 29, 2000). This limit, however, has recently been reduced to 15 years<sup>26</sup> (Pantlin 2001).

The Philippines enfranchised its overseas nationals in 2003. In order to be approved for a voting registration, expatriates must sign an affidavit declaring that they intend to “resume actual physical permanent residence” in the home country not later than 3 years from approval of their registration as absentee voters. Additionally, they are also required to declare that they have not applied for citizenship in another country. Thus, failure to return to the Philippines within 3 years after a successful registration as absentee voters constitutes a sufficient reason for their permanent disqualification as voters in absentia (Republic of the Philippines, Commission on Elections). The decision to enfranchise some 8 million Filipinos residing abroad, however, was only reached after a 16-year long highly emotional national debate involving overseas Filipinos, Philippine NGOs, the media, politicians, and the Catholic Church. Although the 1987 Philippine Constitution obliged Congress to pass a law extending suffrage to overseas nationals, it took 5 Congresses, 4 Presidents, and 64 filed absentee voting bills before the legislation was finally enacted by Congress (Rodis 2003).

In this prolonged debate, overseas Filipinos were assured that their assertion of the right to vote was not only driven by the argument pointing to the value of their financial contribution to the home country’s economy, but also by their strong desire to be recognized as full-fledged Filipino citizens (Solidarity Philippines Australia Network 2001). And yet, in the nationwide debate, the subject of the annual contribution to the

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<sup>26</sup> It has been reported that some government ministers advocated a 5-year period (Pantlin 2001).

Philippine economy of an estimated 7 to 8 billion dollars in remittances<sup>27</sup> surfaced as the chief argument of the advocates of voting rights for overseas Filipinos. Moreover, it was argued that labor migration was in fact generating thousands of jobs and industries in the country in both the public and private sectors. Ironically, by staying abroad, overseas Filipinos have been able to generate jobs for their nationals back home, ranging from the issuance of birth certificates and passports, airline tickets, bank, courier and telecommunication services, to duty-free shops, recruitment agencies, and caregiver training schools, etc (Akabayon! Citizens Action Party). Accordingly, it was pointed out that even President Arroyo herself “publicly credited overseas Filipinos for their stabilizing influence on the economy, and [recommended] that Congress should provide a system for overseas voting before the 2004 elections to pay a national ‘debt’ to the country’s ‘modern-day heroes’” (EMPOWER Coalition 2001). On the whole, therefore, in a position paper presented to both houses of Congress, the group Global Coalition for the Political Empowerment of Overseas Filipinos (EMPOWER) stated as follows: “Our role as economic saviors or, according to the government, as ‘modern-day heroes’ should be enough reason to entitle us to political rights as basic as suffrage”<sup>28</sup> (quoted in Sison 2001).

On the other hand, the opponents in Congress referred most commonly to the lack of funds as well as the lack of safeguards to prevent fraud and potential cheating by Philippine diplomatic posts, as the obstacles to the implementation of an appropriate

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<sup>27</sup> This amount is much bigger than the biggest export sector of the Philippines (Ang 2005).

<sup>28</sup> Interestingly, under the Tax Reform Act of 1997, in recognition of the overseas Filipino workers’ economic contribution to national progress, they were exempted from paying a 1-percent-to-2-percent income tax. However, in 2004, the government announced its plan to reimpose the income tax on overseas Filipino citizens as a means to increase the revenues (see, for example, Abou-Alsamh 2004a and 2004b; Javellana-Santos 2004; Lagniton 2004; Lee 2004; Martin 2004; Santiago 2004).

legislation (*Manila Bulletin Online* Sep. 23, 2002; *Philippine Daily Inquirer* Oct. 23, 2002). Furthermore, some congressmen spoke up openly against enfranchisement of those who “abandoned the Philippines,” that is, those who acquired permanent residency in foreign countries (Rodis 2003). In fact, while the Senate was ready to extend the right to vote to all Filipino residing abroad, the House of Representatives opted for the exclusion of permanent residents of foreign countries “who have already turned their back on the native country” (*Business World*. Internet Ed.: Oct. 11-12, 2002). It was, therefore, only after the House consented to the inclusion of immigrants and permanent residents in the proposed law that the road was cleared to its implementation (*Philippine Star* Jan. 31, 2003). Still, it was reported that even after the law was ratified by the Senate, Senator Joker Arroyo, the only one who voted against the final version of the absentee voting bill, argued that the legislation violated the Constitution, which imposes residency requirements for electors – at least one year in country and six months in the place where they intend to cast a vote (*Philippine Daily Inquirer* Feb. 5, 2003). Consequently, some opponents of the law threatened to take the case to the Supreme Court.

All in all, however, even with some restrictions attached to the right to vote, it is rather evident that the actual decision to enfranchise overseas Filipinos was rooted in the Monetized Contract view of political membership. The arguments pointing to the value of the contribution to the home country’s economy are plainly embedded in the society-centered variant of this theoretical perspective, even though the fact that before the Tax Reform Act of 1997 overseas Filipino citizens were subject to paying an income tax may suggest the state-centered version of this conception. Yet, this particular type of the

contribution to the national community has been less pronounced in the arguments employed in the debate.

***Overseas voting rights limited to certain types of elections or electors***

It should also not be surprising that some states limit suffrage of their overseas citizens to certain types of elections or to specified categories of electors. To illustrate, in Brazil, overseas citizens are allowed to cast a vote but only in presidential elections<sup>29</sup> (Blais *et al.* 2001: 45, 57). Similarly, in Mexico, in June 2005, after a prolonged debate, the Congress eventually decided to grant the right to vote to Mexican citizens living abroad in their native country's 2006 presidential election<sup>30</sup> (Walker 2005). The case of the Netherlands is another interesting although rather unusual example. Dutch citizens living overseas are entitled to vote in national elections apart from those residing in the Dutch Antilles or in Aruba and those who have not been resident in the Netherlands for at least 10 years (Blais *et al.* 2001: 57). Still differently, in India, only a diplomatic staff and members of the armed forces have the right to vote from outside the country.

In South Africa, where the right to vote from abroad was extended after a stormy debate at the end of 2003, it is limited only to those who are temporarily out of the country on either government or private business, holiday, employment, or study commitments (Election Process Information Collection; *IOL*. Internet: Nov. 25, 2003).

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<sup>29</sup> Conversely, in Portugal, expats used to be allowed to keep the right to vote for legislative elections only. It was only the 1997 version of the Portuguese constitution that made provision for overseas voting in presidential elections and made it possible to enact appropriate regulations on the subject (see Blais *et al.* 2001: 57; Aguiar and Guirado 1999; Election Process Information Collection).

<sup>30</sup> Although they have long been enfranchised in presidential elections by a provision in the Mexican electoral law, its implementation was left to a decision of the Congress (Election Process Information Collection). And yet, of the estimated 11 million Mexican citizens residing outside the country, 98 percent of whom live in the United States, only less than a half, about 4 million, are believed to hold a valid, Mexico-issued, voter credential that is required to cast a vote (Medrano 2005; Walker 2005).

Initially, however, the Electoral Laws Amendment Bill that was passed by the South African Parliament would have given the right to vote only to overseas citizens on government business as well as their households. But in the public outcry that was generated, opposition parties argued for extending this right to all South African citizens who have found themselves temporarily overseas and threatened to challenge the newly passed legislation in the Constitutional Court on account of its breach of the Bill of Rights. As the Freedom Front leader Corne Mulder put it during the debate, “We are not talking about people who have emigrated, but about law-abiding citizens, who are temporarily abroad” (quoted in Msomi 2003a). As a result, the National Assembly approved at last the Electoral Law Second Amendment Bill, which makes it possible for South African citizens residing temporarily abroad to cast a ballot in national election from outside the country (see *IOL*. Internet: Nov. 21, 2003 and Nov. 25, 2003; Michaels 2003; Msomi 2003a, 2003b). Although it is somewhat difficult here to infer a clear-cut conception of political belonging, it is nonetheless apparent that the exclusion of emigrants and an evident reference to the law-abiding citizens who happened to find themselves overseas only for the time being disqualify the Descent and/or Culture notions of membership in the polity.

### ***Permanent voting rights***

Finally, a number of states allow their overseas nationals to keep the right to vote in national elections for an indefinite period, examples being France, Poland,<sup>31</sup> Mali, and Venezuela (Blais *et al.* 2001: 48, 56). Switzerland is another case in point. Its overseas nationals were enfranchised in 1966, following a lengthy debate that commenced after

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<sup>31</sup> Due to the alleged administrative problems, Poland used to restrict overseas voting to the first round of elections (Aguilar and Guirado 1999).

the adoption of the Federal Constitution of 1848 (Aguiar and Guirado 1999). In contrast to Switzerland, the actual right to vote was extended to overseas Italian citizens rather recently.<sup>32</sup> At the end of 1999, concluding a discussion, and without having recourse to a referendum, Parliament approved a constitutional amendment of Article 48 of the Italian Constitution, which in effect enables Italian expatriates to vote from abroad by providing for the setting up of a foreign constituency with a fixed number of seats in both chambers<sup>33</sup> (Morlino *et al.*: 79).

Similarly, citizens of the United States who are residing abroad are entitled to retain their voting rights indefinitely. It has been argued that the U.S. has allowed overseas voting as a matter of fundamental right (see, for instance, Solidarity Philippines Australia Network 2001). This may as well be the case; however, it is worth taking note of the fact that the gradual process of enfranchisement of overseas Americans has historically gone in tandem with the presence of the American military personnel abroad. In 1942, the Soldier Voting Act was enacted to guarantee voting rights for military personnel during wartime. This legislation mandated procedures for the state to allow members of the armed forces to take part in a ballot for presidential electors, as well as candidates to the U.S. Congress, without consideration of their previous registration and

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<sup>32</sup> In order to take part in the elections, Italian citizens residing abroad had been required to return to Italy to cast a vote at the polling station in their municipality on Election Day. To do so, state employees working overseas were given up to 3 days and their travel expenses were fully reimbursed by the government, whereas only train fares were refunded for the remaining portion of Italian citizens residing abroad due to their work (Blais *et al.* 2001: 57; Morlino *et al.*: 79). This option still remains valid for all electors, with no reimbursement of traveling expenses, and it is compulsory in the case of Italian citizens residing in certain countries (Consulate General of Italy, Vancouver).

<sup>33</sup> Overseas Italians are entitled to electing a total of 18 parliamentary representatives – 12 deputies and 6 senators (*Economist* Dec. 13, 2004; Morlino *et al.*: 79; see also Articles 56 and 57 of the Constitution of the Italian Republic).



irrespective of poll tax requirements<sup>34</sup> (Coleman 2004: 144). In 1952, following a request of President Truman to inspect the military voting problem and come up with recommendations, the American Political Science Association (APSA) put forward its legislative recommendations, which, after being endorsed by the President and Congress, eventually became law in 1955. The Federal Voting Assistance Act of 1955 recommended, although did not guarantee, the right to overseas voting for members of the military, federal employees, as well as civilian personnel affiliated with the armed forces. The legislation was amended in 1968, expanding the scope of inclusion to the U.S. civilians temporarily residing outside the country (Coleman 2004: 144). Thus U.S. expatriates could not vote unconditionally until 1975 when the Overseas Citizens Absentee Voting Rights Act was enacted, giving them the right to vote from outside the United States for candidates for federal office, even if they did not maintain a U.S. residence and their intention to return to the country was unclear.<sup>35</sup> Finally, in 1986, under President Regan, the Uniformed and Overseas Citizens Absentee Voting Act, which built-in all of the provisions of the previous law, superseded the 1975 Act. This Act was then amended in 2002 by the National Defense Authorization Act and the Help America Vote Act, both of which included provisions regarding military and overseas voting (Coleman 2004: 143-146).

Throughout this time, various groups, such as the Federation of American Women's Clubs Overseas (FAWCO) and the Association of Americans Resident

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<sup>34</sup> Note that it is only the Twenty-fourth Amendment (1964) to the U.S. Constitution that clearly postulates that "The right of citizens of the United States to vote in any primary or other elections [...] shall not be denied or abridged [...] by reason of failure to pay any poll tax or other tax."

<sup>35</sup> The Overseas Citizens Absentee Voting Rights Act was amended in 1978 in order to prevent a state from taxing U.S. citizens residing abroad solely because they cast their vote in an election for federal office (U.S. Department of Defense Federal Voting Assistance Program).

Overseas (AARO), worked actively to push through changes in laws and policies concerning enhancement of absentee voting rights for Americans abroad.

In any case, in the United States, starting from 1955, the law concerning overseas voting has been administered by the Secretary of Defense, who, at present, delegates that responsibility to the Director of the Federal Voting Assistance Program (FVAP) at the Department of Defense (DoD) (Coleman 2004: 143-146). This, however, is probably less surprising considering that of the Pentagon's estimated 6 million U.S. citizens who are eligible to vote under the FVAP, half are military personnel and their households (Sulaiman 2004). In the absence of a conspicuous and emotional debate, it is quite reasonable to suggest that the right to an overseas vote is now exercised by the U.S. citizens as a matter of fundamental right. But it is also important to recognize that this right has historically been linked to the military presence overseas, which hints at the state-centered variant of the Contract model of political belonging.

On the whole, the above overview clearly illustrates that there is no worldwide uniformity in the manner with which states approach the question of voting rights for their expatriates. On the contrary, this concise summary makes it clear that the subject of overseas voting is characterized by a range of approaches, which is a reflection of different theoretical conceptions of belonging to political communities. These various types of arrangements can be briefly illustrated in the following table.

**Table 2 Cross-National Differences in the Approach to Overseas Voting**

<i>Approaches to Overseas Voting</i>	<i>Examples of Countries</i>	<i>Fit with Thomas' Typology</i>
No overseas voting rights	South Korea	state-centered Contract and Monetized Contract models
Overseas voting limited to a specific period	the Philippines	society-centered Monetized Contract model
Limited to some types of elections or electors	Brazil South Africa	?
Permanent voting rights	France Poland the United States	?

### **3.2 Non-Citizens and the Right to Vote**

With respect to the extension of voting rights to non-citizens, states' obligations are not clearly defined in international law. Earnest (2004) notices two significant pieces of international law that tackle this issue. One is the Amsterdam Treaty of 1997, which amended and consolidated the Maastricht Treaty of 1992, developing the legal foundation for cooperation among member states of the European Community on issues relating to justice and home affairs and for their common foreign and security policies. The other one is the Universal Declaration of Human Rights of 1948. Article 19(1) of the Amsterdam Treaty, restating the directives put forward by Article 8 of the Maastricht Treaty, commits member-states of the European Union to establishing voting rights in their municipal elections for all citizens of the EU states who reside as non-citizens in their territory. These residents, the Article prescribes, should be allowed to cast a ballot in municipal elections of any EU country of their residence, under the same conditions as citizens of that state (Earnest 2004: 47; see also European Union 1997). But among the

“old” EU member-states, it appears that only Italy has so far failed to amend its electoral laws to comply with the provisions of the treaty (Earnest 2004: 48; see also Aleinikoff and Klusmeyer 2002: 51).

On the other hand, the Universal Declaration of Human Rights of 1948 does not identify citizenship as a requirement for political rights and, in fact, is rather silent on voter eligibility requirements. Article 21(1) of the Declaration stipulates that “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives” (Universal Declaration of Human Rights 1948). Thus the language of the Declaration, Earnest argues, is rather vague on this issue, as it refers to “everyone” instead of “every citizen.” Additionally, he further asserts that the reference to partaking in the government of his or her “country” is further ambiguous, as this could read as a suggestion to his or her country of citizenship, or his or her country of residence (Earnest 2004: 48). Earnest recognizes, therefore, and supports Raskin’s (1993) argument that this important articulation of principles of human rights is “written in such a way as to leave open the possibility that noncitizens will have the right to vote” (1458), which, in Earnest’s words, “decouples the idea of citizenship and political rights.” At the same time, however, he acknowledges Raskin’s further observation that the International Covent of Civil and Political Rights of 1966 confined the right of suffrage exclusively to

citizens<sup>36</sup> (Earnest 2004: 48-49; see also Raskin 1993). In that context, it is not surprising that states have approached the issue of the franchise for non-citizens in various ways.

At present, most democratic states do not extend the right of suffrage to their non-citizen population. However, this issue has been widely debated in recent years. Earnest demonstrates, for example, that by the end of 2003 there were at least 31 democratic states – one in four of the world’s democracies – that had tackled the issue of non-citizen voting rights. These states had in effect either considered but expressly rejected non-citizen voting rights, or had rescinded such rights, or, for the most part, had granted the franchise to their foreign population<sup>37</sup> (2004: 18). This ratio looks quite different right now, with more and more countries enfranchising their foreign populations or considering such a move. A typology of non-citizen voting rights proposed by Earnest helps us to differentiate among a wide diversity of approaches to this subject. Essentially, he isolates two factors: the scope – which refers to the size of the enfranchised population of non-citizens in a given state (that is, the right of suffrage belongs to specific nationalities versus all non-citizens) – and the scale – which refers to

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<sup>36</sup> For his part, Raskin positions these arguments against a document which was released in Paris in 1991 at the global Non-Governmental Organization Conference. He states: “It is the natural, and thus universal right of people to partake in decisionmaking that affect their lives, whether these decisions are taken inside or outside their national boundaries” (quoted in Raskin 1993: 1458). This argument seems to echo John Stuart Mill’s claim that “it is a personal injustice to withhold from any one, unless for the prevention of greater evils, the ordinary privilege of having his voice reckoned in the disposal of affairs in which he has the same interest as other people” (1972: 279). Consider also Michael Walzer’s (1983: 62) words: “The determination of aliens and guests by an exclusive band of citizens (or of slaves by masters, or women by men, or blacks by whites, or conquered people by their conquerors) is not communal freedom but oppression. The citizens are free, of course, to set up a club, make membership as exclusive as they like, write a constitution, and govern one another. But they can’t claim territorial jurisdiction and rule over the people with whom they share the territory. To do this is to act outside their sphere, beyond their rights. It is a form of tyranny. Indeed, the rule of citizens over non-citizens, of members over strangers, is probably the most common form of tyranny in human history.” It is thus ironic that often now, as Raskin notices referring to voting in the United States, “the citizenship qualification carries the aura of inevitability that once attached to property, race, and gender qualifications” (1993: 1394).

<sup>37</sup> Earnest examines only the rights of non-citizens to vote in elections for offices in municipal/local, regional or national governments. Although his study attempts to be comprehensive, he recognizes that some examples of states that enfranchise their foreign population may be not included in it.

the types of elections in which non-citizens may participate (that is, the right of suffrage in local versus national elections) (see Earnest 2004: 26-28).

Following Earnest's typology, it is possible to neatly distinguish six categories of states that have in one form or another tackled the issue of the franchise for non-citizen minorities.<sup>38</sup> These are states in which: first, non-citizen voting rights are determined by localities; second, non-citizen voting rights are granted to specific nationalities but in local/regional elections only; third, non-citizen voting are granted to specific nationalities in national elections; fourth, non-citizen voting rights are granted irrespective of nationality in local/regional elections only; fifth, non-citizen voting rights are granted irrespective of nationality in national elections; and finally, non-citizen voting has been explicitly rejected or rescinded.

#### ***Non-citizen voting rights determined by localities***

The first category refers to states whose national governments do not extend the franchise to non-citizens, but where the right to vote is granted to foreign residents by various localities. In Switzerland, for instance, the Federal Constitution reserves for cantons the explicit power to regulate political rights regarding cantonal and municipal matters. Consequently, two cantons, Neuchâtel and Jura, have constitutions that permit foreign residents who have met certain residency requirements to vote, and, in fact, non-citizen voting has been almost uninterruptedly practiced there since 1849 and 1979 respectively (Earnest 2004: 30). Similarly, in the United States, the Constitution places no obstacles on states and localities' decisions regarding who is eligible to vote (Raskin 1993: 1431; Hayduk and Wucker 2004). As a result, there are currently several municipalities that

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<sup>38</sup> Katz (2000) offers a three-fold, more simplistic typology of voting rights for non-citizens.

extend the franchise to their foreign population. Takoma Park, Maryland, is a primary example. Non-citizen residents have been allowed to vote there since 1991. Five other Maryland towns have since then adopted this practice. Similar initiatives have also been lately launched and are, reportedly, in various stages in Washington, DC, New York, Newton, Massachusetts, Portland, Main, and three cities in California – Los Angeles, San Diego, and San Bernardino (Hayduk and Wucker 2004). Canada, another federal state, is, in a sense, one more example in this category. As Galloway (2001) notes, the Canadian constitution does not expressly bar non-citizens from voting. It is the Canada Elections Act and most provincial acts governing elections that explicitly limit the franchise to citizens. The provincial Election Acts of Nova Scotia and Saskatchewan, however, grant, if only de jure, the right to vote in provincial elections to British subjects (for details, see Galloway 2001: 191-192). Finally, it may also be noted that the city of Vienna has recently enfranchised its non-citizen residents irrespective of nationality (Earnest 2004: 34).

### ***Non-citizen voting rights for specific nationalities in local/regional elections***

Another category encompasses states in which the national government allots the right to vote to non-citizens of specific nationalities only, but only for local and regional elections. Estonia, for example, has established voting rights limited to local elections for a population of Russian-speaking permanent residents, who, being native Estonians, are not recognized as citizens under the Estonian constitution<sup>39</sup> (Earnest 2004: 36; see also Laitin 1998). Also, as mentioned above, EU nationals residing in another member state may vote in local, as well as European, elections in their country of residence. The case

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<sup>39</sup> These are Russian-speaking native Estonians whose citizenship was revoked after the collapse of the Soviet Union.

of Iceland is one more interesting although somewhat convoluted example. Under the 1920 constitution, the right to vote was allotted to Danish citizens resident in Iceland. Local voting rights were then extended to all Nordic citizens. The 1995 constitution rescinded these practices, limiting explicitly the franchise to Icelandic citizens. At the same time, however, the new constitution provided voting rights for those who had received them under the 1920 constitution, purging in effect the franchise for future immigrants (Earnest 2004: 40). Israel has, furthermore, allowed its non-citizens to vote in local elections since 1950. This right is limited to only those immigrants who come to Israel under the Law of Return but refuse to acquire Israeli citizenship (Aleinikoff and Klausmeyer 2002: 49). The dependence of the Israeli practice on the Law of Return indicates a connection between the franchise and the Jewish ancestry, which in turn points to the Descent perspective of political belonging in Israel.

### ***Non-citizen voting rights for specific nationalities in national elections***

A number of states extend the franchise to non-citizens of specific nationalities only, but, conversely, they are allowed to cast a ballot in national elections. The earlier mentioned case of the Fourth French Republic (1946-1958), which in effect enfranchised non-citizen residents of its overseas possessions, is an interesting historical example of this category. Even now, however, the nationality criterion is often a reflection of the colonial past. This echoes historical relationships between a state and its former colonies, which, in a sense, could be seen as an expression of the Culture model of political membership. For instance, citizens from Commonwealth countries and the Republic of Ireland residing in the United Kingdom are eligible to vote in the country's national parliamentary elections. Similar "Commonwealth clauses," giving the right to vote to citizens of Commonwealth



states residing in the country, are found in Barbados, Belize, Guyana, Jamaica, Mauritius, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago.<sup>40</sup> In Ireland, the right to vote in national parliamentary elections is extended to British citizens only. In Portugal, the right to vote in national elections is extended to citizens of the European Union residing in the country. Citizens of Brazil who are residing in Portugal and have obtained a special “equal rights” status may also cast a ballot in Portuguese elections (Blais *et al.* 2001: 52-54; Earnest 2004: 37-38; Katz 2000: 174).

### ***Non-citizen voting irrespective of nationality in local/regional elections***

The next category comprises states that enfranchise their non-citizen residents irrespective of nationality, but only in local or regional elections. Importantly, however, this category encompasses states in which the right to vote in local and regional elections is guaranteed to non-citizens by national governments rather than by various localities in a given country. Ireland, Sweden, Denmark, Norway, the Netherlands, Hungary, Finland, and Venezuela are the most prominent, although not the only, examples of this category. In Ireland, non-citizens have been allowed to vote in local elections since 1963 and, at present, only six months residency in the Republic is required to meet voter eligibility requirements.<sup>41</sup> Sweden extended local suffrage to non-citizens in 1976, requiring three years of uninterrupted residency in the country.<sup>42</sup> In 1981, Denmark broadened the right to vote in local elections to everyone who had resided in the county

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<sup>40</sup> Note also that all of those countries, with the exception of Mauritius, have certain residency requirements for non-citizen electors (see Blais *et al.* 2001: 44-49; Katz 2000: 174).

<sup>41</sup> Earnest (2004) classifies Ireland as a hybrid case, as it imposes no nationality requirements for non-citizen voting in local elections, but only British citizens qualify for the franchise in legislative elections.

<sup>42</sup> Citizens of EU and Nordic countries may vote in country local elections under the same conditions as Swedish nationals (Blais *et al.* 2001: 54*n*; Dingu-Kyrklund 2001: 63). Sweden has also allowed foreign resident to vote in national referenda (Earnest 2004: 28*n*).

for one year, while Norway, which has a residency requirement of three years, allotted local suffrage to all non-citizen residents in 1982. In the Netherlands, which accomplished voting rights for all foreign residents in 1985, five years of residency entitles non-citizens to voting in municipal elections. In Hungary, non-citizen permanent residents were granted voting rights in municipal elections in 1990. Finland expanded local suffrage to all non-citizen residents in 1991.<sup>43</sup> Belize has extended the franchise in municipal elections to those non-citizens who have been residing in the country for at least three years. In Venezuela, on the other hand, non-citizens with at least ten years of residency are entitled to vote in municipal and state elections<sup>44</sup> (Earnest 2004: 37-44; see also Aleinikoff and Klausmeyer 2002, de Groot 2001, Dingu-Kyrklund 2001, Jacobs 1998, Nagy 1995, Raskin 1993, Rath 1990, Soysal 1994, Tung 1985).

Belgium and South Korea are the two most recent examples falling into this category. The two countries extended local suffrage to foreign residents in 2004 and 2005, respectively. But the earliest attempts to enfranchise non-citizens in Belgium date back to around 1970. In the 1970s and 1980s, almost a dozen bills were introduced in Parliament. It was only in February 2004, however, that Belgium granted suffrage in local elections to all non-citizens with five years of residency. The country's engagement in a three decade long public debate and a number of failed attempts to enfranchise foreigners in Belgium have been subsequently explained as a manifestation of the fear of cultural/linguistic communities that non-citizen suffrage would infringe upon their local

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<sup>43</sup> Originally, Denmark, Norway, and Finland permitted only foreign residents from other Nordic states to vote in local elections.

<sup>44</sup> Furthermore, Bolivia and Columbia have both explicit constitutional provisions for the national legislature to enact, at its discretion, local voting rights for foreign citizens who satisfy a residency requirement, but neither legislature has so far acted upon this constitutional prerogative (Earnest 2004: 38-39, 46).

rights of self-governance and upset the existing political equilibrium. The commonly reported reasons behind the eventual enfranchisement had little to do with any of the conceptual foundations identified by Thomas. The extension of the franchise was, rather, influenced by international factors. For one, the enfranchisement of non-EU foreign residents has been argued to be merely a modest extension of the already existing local voting system for EU nationals resident in Belgium, the establishment of which was prompted by the Treaty of Amsterdam. Furthermore, proponents of enfranchisement of non-citizens in Belgium pointed to the success of similar measures in other nearby states, such as the Netherlands, Ireland, Sweden, and Finland (for details, see Earnest 2005).

Unlike Belgium where the initiative was initiated by immigrants' groups themselves, the idea to enfranchise resident foreigners in South Korea was raised by political elites. This was also done relatively recently. The plan was first declared by President Kim Dae-jung in 1998. After receiving a degree of attention, the issue faded from view until the interest in it was revived in 1999, following Kim's urges directed at officials of the Justice Ministry, headed by Park Sang-cheon, to revise the election laws so that foreign residents could vote in local elections (*Korea Times* Mar. 25, 1999 and Mar. 28, 2001; *Korea Herald* Mar. 26, 1999 and Sep. 27, 2000). Although generally seen as a strategic consideration in the light of a dispute with Tokyo over voting rights for non-citizen ethnic Koreans permanently residing in Japan and a symbolic move aimed at polishing the international image of Korea, Kim's proposal sparked a national discussion. In this debate, an aide to President Kim argued that the proposal was reasonable considering that long-term non-citizen residents faced the responsibility of paying taxes (*Korea Times* Mar. 25, 1999). Some academicians, election experts, and even Ministry

of Justice officials, however, questioned the feasibility of Kim's recommendations on the grounds that they ran counter to the Constitution which allows only "citizens of Korean nationality" to have voting rights (*Korea Herald* Apr. 6, 1999). Then, the government disclosed its plan to grant local suffrage to foreigners, which was reportedly intended as an affirmative action for those who had no rights as residents in Korea despite the payment of taxes and contribution to the country with business activities (*Korea Times* Sep. 9, 1999).

In November 2000, an appropriate bill was submitted to the parliament and the then-ruling Millennium Democratic Party (MDP), along with the opposition, pushed for its approval (*Korea Times* Feb. 6, 2001 and Mar. 28, 2001). By early 2002, following an agreement reached earlier by a National Assembly panel, the parliamentary committee on political reforms approved revisions to the election laws concerning enfranchisement of long-term foreign residents in local elections. In an assessment of this decision, besides pointing to important political considerations, Seo In-deg, a National Election Commission (NEC) official, stressed that "[u]nder the principle of reciprocity, it is not reasonable but also desirable to give voting rights to foreigners. As foreigners are obliged to pay taxes here, the government should give them the right to vote" (quoted in *Korea Times* Feb. 28, 2002). Later, in the 2002 presidential campaign, two leading contestants, Grand National Party (GNP) candidate Lee Hoi-chang and Roh Moo-hyun of the MDP, expressed their support for the plan to allot limited voting rights to foreign residents. As Lee explained this, suggesting a possibility of a shift in a long-held conception of his polity's boundaries, "[g]lobalization has sharply increased the number

of cross-border travelers and migrants and our perception of foreigners should change accordingly” (*Korea Herald* Dec. 3, 2002; see also Dec. 7, 2002).

With an August 2005 revision of Article 15 paragraph 2 of the Public Office Election Act, foreigners’ voting in local elections in South Korea became possible. In order to vote, however, foreign residents must satisfy three requirements. They must be over 19 years old, have permanent resident status (hold a so-called F-5 visa), and have resided in the country for at least 3 years as permanent residents. Currently less than 10 thousand non-citizens qualify for voting (Chung 2006). They will be entitled to participate for the first time in general local elections that are to be held in June 2006.<sup>45</sup> The conceptual foundation of this extension of the right to vote is suggested in the fact that some mention of the value of the foreign residents’ economic contribution to the national community implies the society-centered version of the Monetized Contract model.<sup>46</sup> At the same time, the repeated references to the duty of paying taxes as an entitlement to the right to vote appear grounded in the state-centered variant of the Monetized Contract perspective of political membership.

### ***Non-citizen voting irrespective of nationality in national elections***

Still differently, some states enfranchise all foreign residents irrespective of nationality, and these residents have a right to vote in national elections. New Zealand is a prime

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<sup>45</sup> On July 27, 2005, in the first case of non-citizen voting in South Korea, qualified foreign residents cast their votes to decide a local policy. 114 foreigners (111 Taiwanese and 3 Japanese) joined a local referendum that was held in Cheju Island over the new administrative structure of the Cheju government (*Korea Times*. Internet: July 27, 2005 and July 28, 2005).

<sup>46</sup> This conception can be somewhat propped up when the extension of non-citizen suffrage in South Korea, which indicates recognition of political membership, is evaluated in conjunction with the recent changes in immigration policy. In August 2004, the South Korean government made eligible for permanent residency, regardless of the length of stay, all foreign individuals investing 5 million dollars or more. Shortly after, in June 2005, this right was extended to all foreigners who invest a minimum of 2 million dollars and hire at least five South Korean nationals (*Korea Times* Aug. 11, 2004 and June 25, 2005). This is significant in the view that these are foreign permanent residents who have been granted limited suffrage in South Korea.

example in this category. Prior to 1975, only British subjects were allowed to vote there in national elections. Then, instead of rescinding this right, as, for instance, Canada did (see below), New Zealand extended the franchise in national elections to all foreign residents who have established permanent residency in the country. Currently, to be eligible to vote in national elections, non-citizen permanent residents must have resided continuously in New Zealand for one year and one month in the constituency in which they intend to cast a ballot (Blais *et al.* 2001: 52; Spoonley 2001: 171-172).

Chile also allows foreign residents to vote in national elections. To exercise this right, however, non-citizens must reside in the country for at least five years. In Uruguay, 15 years of residency is required from foreign residents, coupled with a “good conduct” requirement, whereas Malawi’s residence qualification amounts to seven years. In Taiwan, while non-citizens with only four months of residency in the country are entitled to vote for presidential elections, only citizens may cast a ballot in legislative elections (Blais *et al.* 2001: 52-54).

### ***Non-citizen voting explicitly rejected or rescinded***

Finally, there are states that at one point considered but eventually rejected non-citizen voting rights. This category includes both those countries that have considered but ultimately failed to adopt such rights and those states that have granted and later rescinded them. Italy, Latvia, and France, as well as Switzerland and the United States, are all examples of states that have failed to enfranchise their foreign minorities following active public consideration of this option.<sup>47</sup> As noted earlier, Italy has yet to

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<sup>47</sup> Switzerland and the United States, the two being federal nation-states, differ in a sense, as they present both failed and positive cases of municipalities adopting voting rights for non-citizens.

revise its voter eligibility requirements to comply with Article 19(1) of the Amsterdam Treaty. It has been reported, however, that the Italian left intends, if electorally successful, to enfranchise the country's foreign residents in all types of Italian elections (Szczerkowski 2005). In Latvia, despite pressures from the Latvian Human Rights committee and the European local governments' Chamber of Regions, the parliament failed in 2000 to adopt legislation that would extend the right of suffrage in local elections to the state's non-citizens (Earnest 2004: 50-51).

Despite some history of non-citizen voting, France does not presently extend the franchise to non-nationals (with the exception of local voting rights for the citizens of the European Union who are considered resident in France). Nationality remains a necessary condition for the exercise of political rights including the right to vote (see Guiguet 2001: 91-94). In 1981, in light of a measure to enfranchise France's non-citizen residents put forward by the Socialist Party, the country embarked on a debate about non-citizen voting. This initiative encountered widespread opposition. A similar proposal failed in the National Assembly in 2000, owing to constitutional concerns and the Senate's resistance (Earnest 2004: 50; see also Rath 1990 and Aleinikoff and Klausmeyer 2002). In December 2002, the National Assembly once more denied non-citizens from outside the European Union the right to vote in local elections, as proposed again by the Socialist Party. Commenting on the vote, then-Prime Minister Jean-Pierre Raffarin stressed that French citizenship should continue to be the main path leading to integration into French society, from which voting rights would flow (Simon 2003).

To widespread national astonishment, the rightist French interior minister Nicolas Sarkozy has recently presented a "shocking" announcement that non-citizens could be

granted the right to vote in French local elections.<sup>48</sup> He has argued that there is no reason to deny the right to vote to a foreigner who has been living in France for ten years, working there and paying taxes. The subsequent widespread criticism was grounded in arguments that this idea threatens French identity and that the right of suffrage should be reserved exclusively to French citizens. Sarkozy has responded that the measure would embrace only those who are already integrated into French society, and this would serve therefore as an encouragement for others to integrate (Szczerkowski 2005). It is interesting to note that Sarkozy's references to paying taxes and engagement in productive employment hint at both the state-centered and society-centered versions of the Monetized Contract model of political membership. At the same time, however, the assurance that only those already integrated into French society would be beneficiaries of his proposal implicates the Culture conception.

As noted above, two Swiss cantons, Neuchâtel and Jura, permit foreign residents to vote. But seven others – Aargau, Bern, Geneva, St. Gallen, Solothurn, Vaud, and Zurich – have at one point considered but ultimately rejected a similar course of action (Earnest 2004: 51). In the United States, despite some positive cases, most notably Takoma Park, numerous attempts to enfranchise foreign residents have ultimately failed. Amherst and Cambridge, Massachusetts, for example, have both passed non-citizen voting initiatives, but the state legislature has failed to pass the necessary home-rule legislation to enable the Amherst and Cambridge laws. Attempts in the early 1990s in Washington, D.C., San Francisco, and Los Angeles to adopt voting rights for foreign residents were rejected by the voters (Earnest 2004: 51; see also Harper-Ho 2000). And

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<sup>48</sup> According to this proposal, they would not be able to run for office, however (Szczerkowski 2005).



legislation of this type introduced in Texas in 1995 died in committee (Hayduk and Wucker 2004).

Furthermore, in the Federal Republic of Germany, the federal commissioner on immigration issues had raised the possibility of enfranchising foreign residents as early as 1979, but the executive branch did not initiate new legislation on this matter, leaving its interpretation to the courts. In 1989, the two states of Schleswig-Holstein and Hamburg extended suffrage to their non-citizen residents. In the case of Schleswig-Holstein, the right to vote in local elections was severely limited, as it was allotted only to Danish, Irish, Dutch, Norwegian, Swedish and Swiss residents with at least five years of residency (excluding, therefore, Turkish and Polish residents, for example), whereas Hamburg enfranchised non-German EC citizens with eight years of residency in the state. Earnest (2005: 20) argues that the very presence of a nationality criterion in these initiatives suggests that “[i]n this sense even these limited voting rights reflected a logic that the political community is constituted along ethnic, linguistic or national lines rather than on criteria of locality, residency, or economic status.” In any case, even these highly restricted voting right initiatives were a sufficient reason for opponents to file court challenges that triggered nationwide debates over non-citizen suffrage, which, as Joppke (1999: 195) notes, became essentially “a foundational debate over the meaning of membership and citizenship in the nation-state.”

Ultimately, non-German voting never took place in these two German states, as their franchise rights were very short-lived. In 1990, the German Federal Constitutional Court struck down their local laws, arguing that they violated the Basic Law, which extends the franchise as a collective rather than an individual right. Commenting on the

decision of the Constitutional Court, which had in the past advocated various social and economic rights for foreign residents, Earnest notes that “[b]ecause the vote speaks to membership in the polity in a way that economic and social rights do not, it is no surprise that the constitutional court found the alien franchise to violate a widely held conception of the German nation as ethno-linguistic community that itself antedated the German state”<sup>49</sup> (2005: 22). He argues, furthermore, that the Court’s verdict, delivered on the eve of the Berlin Wall’s fall, simply “reaffirmed the German nation as an ethnic construct” (Earnest 2005: 22). In other words, the ruling has confirmed that membership in the German polity is innate and unchangeable, which are the primary and intrinsic characteristics of the Descent model of political membership. As a result, Germany’s community of non-citizens, comprising at present over 7 million, or nearly 9 percent of the total population, remains disenfranchised until today. One quarter of these so-called foreigners were born in Germany. As of 1999, 55 percent of the foreign population had been in residence for more than 8 years. Further, based on the demographic projections, the number of foreign residents living in Germany is expected to increase to almost 17 percent of the total population in 2030 (Chung 2003a: 294; Hailbronner 2001: 101; Smith 2005).

Australia, Canada and the United States are all examples of states that have rescinded non-citizen voting rights. Until 1984, British citizens resident in Australia were allowed to vote in parliamentary elections. Those who were previously enfranchised and had resided in Australia prior to January 1984, however, were granted a

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<sup>49</sup> Earnest argues that the case of the Federal Republic of Germany could be seen as an example of both a failure to adopt non-citizen voting rights and as an instance in which such rights have been rescinded. Yet, the fact that the German courts have never recognized the legality of non-citizen voting allows him in the end to assert, quite reasonably, that it rather exhibits the former than the latter case (Earnest 2004: 53-54).

grandfather exception (Earnest 2004: 52-53). Similarly, since 1975 British subjects have not been able to vote federally in Canada (Kondo 2001b: 239).<sup>50</sup>

The case of the United States is especially intriguing. As noted earlier, the United States has historically not required citizenship as a condition for political participation. The country has a rich tradition of enfranchising non-citizens that dates from 1776, the founding of the republic, to 1926,<sup>51</sup> with 22 states and federal territories allowing non-citizens to vote in local, state, and even federal elections at the height of this practice in 1875 (Aylsworth 1931; Raskin 1993; Harper-Ho 2000; Hayduk and Wucker 2004). Also, Aylsworth (1931) remarks that during the era of weak federalism in the United States, non-citizens voted in every presidential election up until 1925. The remarkable reversal and eventual repeal of this practice, it has been argued, were fostered by the shift in immigration sources and the rise of xenophobic nationalism preceding and accompanying World War I (see, for instance, Raskin 1993).<sup>52</sup> Many legal scholars have argued, however, that state enfranchisement of non-citizens in the United States is not prohibited by the Constitution. And since the Constitution allows states to define “electors,” non-citizens may legally vote in elections for national office, and, as noted above, they had done so, as by law any voter in a state of the Union is a federal elector. These observations are further supported by the fact that during the time of non-citizen suffrage, neither the Supreme Court nor any lower federal or state court ever found this practice in violation of the Constitutional provisions (see Raskin 1993: 1416-1441). The very

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<sup>50</sup> Note that both Australia and Canada had non-citizen voting rights limited to specific nationalities.

<sup>51</sup> This is when Arkansas, as the last state, purged non-citizen suffrage (Raskin 1993: 1416).

<sup>52</sup> Hayduk and Wucker (2004) point out, for example, that the anti-immigrant sentiment in Southern states during the Civil War era resulted from immigrants’ opposition to slavery. In other states, on the other hand, “wartime hysteria and the Red Scare after World War I made Americans want immigrants to ‘prove’ their loyalty before receiving the privilege of voting” (Hayduk and Wucker 2004).

existence of this practice in the past suggests indeed that the issue of non-citizen voting in the United States is “purely a political rather than legal one” (Earnest 2004: 33).

Obviously, enfranchisement of non-citizens in the United States in the past served a number of different political aims (for details, see Raskin 1993 and Harper-Ho 2000). As Raskin writes, referring to that period, “alien voting occupied a logical place in a self-defined immigrant republic of propertied white men: It reflected both an openness to newcomers and the idea that the defining principle for political membership was not American citizenship but the exclusionary categories of race, gender, property and wealth” (1993: 1395). It is also worth mentioning that non-citizen suffrage served an important goal of political socialization, especially following Wisconsin’s lead of extending full voting rights only to so-called “declarant aliens,” that is, those white non-citizens who declared their intention to become citizens. Equally important, in the light of the Enrolment Act of 1863, non-citizen males who had declared their intent to naturalize and who had previously voted in the United States were subject to the draft, along with U.S. citizens, with no possibility of exclusion. Only those who could prove to their draft enrolment boards “that they had never voted in this country” were eligible for exemption<sup>53</sup> (quoted in Raskin 1993: 1413). Hence, even without a close inspection of contemporary debates, it becomes apparent that political belonging in the United States derived in the past from a number of factors, all of which are, to various degrees, manifested in the range of theoretical conceptions of membership in political communities proposed by Thomas. This also demonstrates how the idea of political

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<sup>53</sup> After the Civil War, a number of new states adopted declarant alien suffrage, which is sometimes seen as a reward to white male non-citizens, many of whom had fought for the North during the war. This explanation of the post-Civil War suffrage extension goes along the lines of Shklar’s claim that suffrage history is marked by returning soldiers demanding and obtaining voting rights as the deserved reward for their political acts (Raskin 1993: 1414-1415; see also Shklar 1991).

membership in the United States has been profoundly transformed over time, as currently most of the estimated 12 million legal permanent residents are disenfranchised, even though they engage in productive employment, pay taxes, educate their children in American schools, and serve in the military (Hayduk and Wucker 2004).

In conclusion, various types of approaches to non-citizen voting that I have discussed thus far can be shown in the following table.

**Table 3 Cross-National Differences in the Approach to Non-Citizen Voting**

<b><i>Approaches to Non-Citizen Voting</i></b>	<b><i>Examples of Countries</i></b>	<b><i>Fit with Thomas' Typology</i></b>
Voting rights determined by localities	Switzerland	?
Voting rights for specific nationalities in local/regional elections	Estonia	?
Voting rights for specific nationalities in national elections	the United Kingdom	Culture model
Voting rights irrespective of nationality in local/regional elections	South Korea	state- and society-centered Monetized Contract models
Voting rights irrespective of nationality in national elections	New Zealand Chile	?
Non-citizen voting explicitly rejected or rescinded	France Germany the United States	?

At this point, it is interesting to note that a particular vision of political membership as exercised through the extension of the franchise to overseas citizens often does not correspond to that expressed in the approach to voting rights of non-citizen minorities. In

other words, this preliminary analysis indicates that the two are frequently not two sides of the same coin.

## **CHAPTER 4.**

### **OVERSEAS VOTING: THE CASE OF JAPAN**

#### **4.1 Japan's Debates over Overseas Voting Rights: An Historical Overview**

Japan's national election system dates back to the promulgation of the Constitution of the Empire of Japan in 1889. But at first, the exercise of the right to vote in Diet elections was restricted to adult males over 25 years of age who paid a direct national tax of not less than 15 yen annually.<sup>54</sup> The electoral reform of 1900 reduced the tax qualification for the franchise to 10 yen, which increased the electorate by about three times. And then, in 1920, the tax qualifications were lowered once more, this time from the existing 10 to 3 yen, which again doubled the electorate. All this in effect increased the number of eligible voters to about 3 million from the initial 500,000 thirty years earlier.<sup>55</sup> It was only the Universal Manhood Suffrage Law of 1925 that extended the right to vote to all adult male citizens over 25 years of age, raising the electorate to some 12 million. However, women remained disenfranchised until December 1945. Finally, following the Public Offices Election Law of 1950, suffrage was extended to all Japanese citizens over 20 years of age who met a three-month residency requirement in their localities, excluding in effect those residing overseas (*Japan: Profile of the Nation* 1999: 235-236;

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<sup>54</sup> As a result of these restrictions, in 1890, only 1.26 per cent of the population was allowed to cast a vote, while only about 6 per cent of the population belonged to enfranchised households. This enfranchised elite constituted roughly the same proportion as the former samurai class, but it was mainly composed of peasant landowners and entrepreneurs (Reischauer and Jansen 1995: 245).

<sup>55</sup> Thus, from the initial 6 per cent, the number of families with a member who had voting rights increased to 25 per cent (Reischauer and Jansen 1995: 245, 247).

*Mainichi Daily News* Jun. 17, 1995: 12; Norman 2000 [1940]; Reischauer and Jansen 1995).

In the meantime, the number of Japanese citizens residing abroad was growing steadily over the years. About 776,000 Japanese emigrated from the country between 1868 and 1942, establishing large communities on the West Coast of the United States, and in Brazil and Peru<sup>56</sup> (Goodman *et al.* 2003: 5-6). Even after World War II the phenomenon of overseas Japanese (*zairyū hōjin*, that is, those residing abroad for longer than three months) continued: emigrants, students, diplomats, company employees, etc. They all remained disenfranchised, the only exception being seamen aboard government ships on Election Day, who were entitled to vote with their captains acting as absentee voting supervisors (*Daily Yomiuri* Jun. 25, 1993: 2).

It was 1975 and 1978 when Japan's Ministry of Foreign Affairs officials first investigated overseas voting systems and unofficially released their opinions on the issue (Nakafuji 1995: 36). In 1984, one year after an association of Japanese emigrants living in Brazil submitted a petition to the Japanese government demanding voting rights in Japan's national elections,<sup>57</sup> and sent its secretary general, Taketo Haneda, to Tokyo to lobby for an appropriate legislation, the Cabinet of Prime Minister Yasuhiro Nakasone

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<sup>56</sup> The large-scale emigration from Japan started in 1868, when the new Meiji government, aiming at easing domestic population problems and expanding economic opportunities and territories abroad, began to sponsor sending emigrants to Hawaii as a form of contract labor migration. Overall, 130,000 Japanese had moved to the United States by 1910 (Goodman *et al.* 2003: 5), whereas between 1908 and 1941, an estimated 190,000 Japanese migrated to Brazil alone, ending up staying indefinitely. Additional 70,000 followed in the 1950s, prompted by the economic conditions of the post-war Japan (Roth 2003: 105). See also, for example, Maeyama (1972) and Lesser (1999) for overviews of the history of Japanese immigrants in Brazil.

<sup>57</sup> This organization, called the Federation of the Japanese Prefectural Associations in Brazil (*Burajiru Todofukenjinkai Rengo*), submitted a similar petition to all members of the Diet in 1986 (Nakafuji 1995: 31).



put forward a bill that would have enfranchised Japanese citizens residing overseas<sup>58</sup> (*Mainichi Daily News* Jul. 19, 1993: 12; Nakafuji 1995: 31). This proposed revision of the Public Offices Election Law intended to give the right to vote in national elections, but not in by-elections, to those Japanese citizens who had resided abroad for at least three months. It excluded, however, those Japanese nationals who had become permanent residents of foreign countries (*Daily Yomiuri* May 15, 1994: 2; *Mainichi Daily News* Apr. 14, 1994; *Nikkei Weekly* May 16, 1994: 4). Nevertheless, although set for debate, the bill died with the dissolution of the House of Representatives in 1986, leaving the issue unaddressed by the Diet for the next several years.<sup>59</sup>

The Liberal Democratic Party (LDP) resumed studying an overseas voting system at the beginning of 1991, due to the increase in the number of Japanese citizens residing abroad. In 1994 a special panel on political reform in the Lower House decided to hold out of country public hearings, in Sydney and Kuala Lumpur, on voting rights of overseas Japanese in Japan's national elections<sup>60</sup> (*Daily Yomiuri* Jan. 7, 1991 and Mar. 7, 1994: 2).

The announcement of the hearings came only a few days after representatives of four

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<sup>58</sup> By 1984, an estimated 478,168 Japanese nationals, both nonimmigrant long-term residents (government officials, business representatives, investors, students, international representatives, temporary workers and trainees, representatives of foreign information media, intracompany transferees and their households, etc.) and permanent overseas residents, were living abroad, according to the official statistics of the Ministry of Foreign Affairs (MOFA). The split between the two groups was nearly even (228,914 and 249,254, respectively). 138,134 overseas Japanese citizens were residing in the United States alone (Nakafuji 1995: 17).

<sup>59</sup> It has been argued that the bill was doomed to failure anyway, as it was perceived as giving unfair advantage to parties maintaining extensive international organizations, such as the Clean Government Party (Komeito), and as a result of the opposition's insistence that electoral reform should be given priority over the overseas voting issue (*Daily Yomiuri* May 15, 1994; *Mainichi Daily News* Apr. 14, 1994).

<sup>60</sup> As of October 1993, the number of overseas Japanese citizens increased to a total of 687,579 (432,703 of nonimmigrant long-term residents and 254,876 permanent overseas residents). An estimated 252,043 were residing in the United States (36.7 per cent of the total overseas population), followed by 94,322 (13.7 per cent) residing in Brazil and 56,355 (8.2 per cent) in the United Kingdom. As for the ratio of long-term vs. permanent residents, it amounted to 64.6 vs. 35.4 per cent in the U.S., 3.5 vs. 96.5 in Brazil, and 94 per cent vs. 6 per cent in the UK respectively. Other countries with a significant percentage of an overseas Japanese population included Canada, Germany, Australia, Thailand, Singapore, France, and Hong Kong (Nakafuji 1995: 17-18).

voting rights organizations from New York, Sydney, Los Angeles, and Bangkok assembled in Tokyo to solicit the establishment of an overseas voting system from Diet members and government officials<sup>61</sup> (Nakafuji 1995: 27). The June 1993 shake-up of Japanese politics had intensified interest in the issue of voting rights among overseas Japanese nationals. They showed a strong desire to participate in their homeland politics at the time of a momentous political change,<sup>62</sup> and had high hopes for the political reforms announced by Prime Minister Morihiro Hosokawa.<sup>63</sup> This became a turning-point in the overseas Japanese citizens' quest for the right to vote (Nakafuji 1995).

Following public hearings in Australia and Malaysia, Japan Renewal Party's Hajime Ishii, chairman of the House of Representatives Special Committee for Political Reform Research, declared the government's intention to submit a bill to the following year's Diet session to enfranchise Japanese citizens residing abroad. And although the details of the bill were not revealed, it has been reported that Ishii's committee indicated support for the inclusion of permanent overseas residents in this legislation (*Daily Yomiuri* Mar. 23, 1994: 2; *Mainichi Daily News* Apr. 14, 1994; *Nikkei Weekly* May 16, 1994: 4). The course of action was anticipated to accelerate when, after Hosokawa's

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<sup>61</sup> At this gathering, the four virtually independent groups formed the Japanese Overseas Voters Network, which was then quickly joined by three other groups from São Paulo, Manila, and Paris, in order to share information and work closer together on achieving their common goal. In their efforts, the groups adopted various practices, such as petitioning the government and all of the Diet members for a proper bill, raising the issue at conventions for overseas Japanese descendants to highlight the importance of an overseas voting system, organizing press conferences and contributing articles about the voting rights issue in local Japanese newspapers abroad to arouse public opinion for the issue, and finally, actively lobbying for the bill Diet members and influential politicians in Tokyo (Nakafuji 1995: 27-33, 49-62).

<sup>62</sup> The June 1993 fall of the government of Prime Minister Kiichi Miyazawa brought an end to the 38-year era of uncontested dominance of the LDP.

<sup>63</sup> A broad anti-LDP coalition from which the new Cabinet emerged consisted of eight coalition partners, seven parties – the Social Democratic Party of Japan (SDPJ), the Japan Renewal Party (Shinseito), the Clean Government Party (Komeito), Hosokawa's Japan New Party (Nihon Shinto), the Democratic Socialist Party (DSP), the New Party Sakigake (Harbinger, or Pioneers), and the United Social Democratic Party – and one Upper House parliamentary grouping known as the Democratic Reform Party. Besides the most numerous LDP (223 Lower House seats), the coalition exclude the Japan Communist Party (JCP) which held 15 seats (Nakafuji 1995: 13-16; Sims 2001: 336-337, 344-348).

resignation in April 1994, Ishii was appointed to the post of Home Affairs Minister under Prime Minister Tsutomu Hata. Being a strong advocate of overseas voting rights, Ishii participated, for instance, in the 35<sup>th</sup> Convention of Japanese Abroad Tokyo which was held in May 1994, where he supported establishment of an overseas voting system. In his speech, Ishii stressed that besides long-term residents this system should also embrace permanent overseas residents (Nakafuji 1995: 53-54). Shortly after, however, in June 1994, Hata's government was forced to resign.<sup>64</sup>

And yet, in 1995, both allies in the coalition government headed by Prime Minister Tomiichi Murayama and the main opposition group unveiled their plans to submit appropriate bills to the next Diet session.<sup>65</sup> The ruling coalition, which agreed in principle to allow overseas Japanese to vote, revealed more details of its proposed legislation in June 1995. The proposal recommend extension of the right to vote from overseas in both Diet House elections, but only under a proportional representation system (i.e., for 200 members out of 500 in the House of Representatives and for 100 representatives out of 252 in the House of Councillors). In addition, the projected bill intended to exclude Japanese citizens who had obtained permanent residency abroad (*Mainichi Daily News* Jun. 17, 1995: 12; *Nikkei Weekly* May 29, 1995: 4; see also *Daily*

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<sup>64</sup> Although following Hosokawa's resignation the same group of coalition parties succeeded in holding on to office by selecting Tsutomu Hata of the Japan Renewal Party as Prime Minister, the SDPJ and the New Party Sakigake left the coalition almost immediately, turning it into a minority government, which was forced to resign after barely two months (*Japan: Profile of a Nation* 1999: 248-249).

<sup>65</sup> Following the fall of Hata's administration, the LDP, Murayama's SDPJ, and the New Party Sakigake came together to form a coalition government. Soon after, six opposition parties, including the Japan Renewal Party, Komeito, the DSP, and the Japan New Party, merged into the New Frontier Party (Shinshintō) (*Japan: Profile of a Nation* 1999: 248-249; Sims 2001: 350).

*Yomiuri* Jan. 14, 1997: 6). But neither parliamentary coalition submitted such a bill by the time of Murayama's resignation in January 1996.<sup>66</sup>

Meanwhile, Japanese expatriates associated with overseas voting rights movements in the United States, Australia, France, Brazil, Thailand, and the Philippines pleaded for help to the Japan Federation of Bar Associations, a powerful legal lobby. The Federation's call for a revision of the election law was submitted to Prime Minister Ryutaro Hashimoto in May 1996 (*Mainichi Daily News* May 11, 1995: 12 and May 3, 1996: 12). Further, in November 1996, one month after the Lower House election,<sup>67</sup> fifty-three overseas Japanese residents affiliated with the Japanese Overseas Voters Network filed a lawsuit with the Tokyo District Court against the government, claiming that the existing election law was unconstitutional. The move was made at the time of reports that both the Home Affairs Ministry and Foreign Ministry agreed on the need to establish an overseas voting system, but held different opinions on the details (*Daily Yomiuri* Nov. 21, 1996: 2; *Daily Mainichi Daily News* Oct. 3, 1996: 14).

In May 1997, in response to the pressure, the ruling LDP and its two non-Cabinet supporters, the SDPJ and New Party Sakigake, disclosed a draft bill aimed at amending the voting rights provisions of the Public Offices Election Law. The proposed legislation would have enabled Japanese overseas residents who intend to return to Japan in the future to vote for the proportional representation part of both the Lower and Upper Houses of the Diet only. Soon, the bill received approval from the Cabinet, and in June

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<sup>66</sup> After Murayama stepped down, the LDP-SDPJ-New Party Sakigake coalition remained in place, but Ryutaro Hashimoto of the LDP was selected as the new Prime Minister (*Japan: Profile of a Nation* 1999: 249).

<sup>67</sup> It was the first election to the Lower House (which was reduced to 500 seats from the previous 511) held under the new electoral system combining 300 single-member seats and 200 proportional seats chosen in eleven regional constituencies.

the government submitted to the Diet the Partially Amended Public Offices Elections Law Concerning the Establishment of an Election System Abroad (Revised Election Law) (Japan Civil Liberties Union 1998a; *Mainichi Daily News* May 17, 1997: 12 and Jun. 10, 1997: 16; *Nikkei Weekly* May 19, 1997: 4). Earlier, in April, the opposition had submitted an alternative bill that would have in addition allowed for voting in electoral districts (*Daily Yomiuri* Feb. 13, 1998: 2; *Mainichi Daily News* Apr. 16, 1997: 12). Even so, it was only in April 1998 that a House of Representatives committee, despite LDP Upper House members' criticism of the scope of restraint in the bill and calls for more discussions, endorsed the government-sponsored legislation. Unexpectedly, however, the committee removed an eligibility clause from the bill that would have limited the right to vote only to those intending to return to Japan, including thereby those planning to reside abroad for extended periods or even permanently (*Daily Yomiuri* Apr. 4, 1998: 2 and Apr. 6, 1998: 6).

On April 24, 1998, following the earlier approval in the Lower House, the House of Councillors passed the bill, due to be enforced within two years, which in effect revised the Public Offices Election Law (promulgated on May 6, 1998) by giving limited voting rights in national elections to about 560,000 overseas Japanese nationals eligible to vote as of October 1996 (of a total of an estimated 764,000).<sup>68</sup> In brief, they were

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<sup>68</sup> In accordance with the legislation, all Japanese citizens aged 20 or older who had continuously resided in a foreign country for at least three months were made eligible to vote. As voters living abroad, however, they must have registered in advance in the municipality of their last residence in Japan in order to be able to cast a ballot in Japanese overseas diplomatic or consular establishments (such as embassies or consulates), although the law provided also for postal ballots in certain areas (*Daily Yomiuri* Apr. 25, 1998: 2; Japan Civil Liberties Union 1998a; *Nikkei Weekly* Apr. 27, 1998: 4). After a partial revision of the Public Offices Election Law in 2003, voters were given a choice of voting either in overseas diplomatic establishments or by mail ballots (Ministry of Foreign Affairs of Japan 2004: 248). Note also that the August 1999 amendment to the election law, calculated primarily for those engaged in open-sea fishing, allows Japanese ship crew members to vote in national elections by fax (*Daily Yomiuri* Jun. 14, 2000: 2; *Japan Times*. Internet: Jun. 14, 2000).

permitted to cast ballots but only for the nationwide proportional representation part of the Lower and Upper House elections, and were not allowed to vote in single-seat constituencies during Lower House elections and electoral (prefectural) districts in Upper House elections (*Daily Yomiuri* Apr. 25, 1998: 2). In the absence of discussion on the issue, the revised law did not extend voting rights to the local level, as “[s]uffrage in local elections is, in principle, limited to those who have their residence registered in Japan” (*Daily Yomiuri* Aug. 25, 1999: 3).

In 1999, the Tokyo District Court rejected the lawsuit launched in November 1996, prior to the election law amendment, by fifty-three overseas Japanese residents affiliated with the Japanese Overseas Voters Network. The Court argued that the state could limit voting rights in order to run elections equitably and efficiently, and principally, that specific regulations on voting remained within the prerogative of the Diet. Also, in 2000, the Tokyo High Court, when examining an appeal on the case, gave an analogous judgment and dismissed the complaint. However, both courts stayed away from making a ruling on the constitutionality of the law (*Asahi Shimbun*. Internet: Sep. 15, 2005; *Japan Times*. Internet: Sep. 15, 2005 and Sep. 20, 2005; *Mainichi Daily News* Sep. 1, 2005). Following these judicial rejections, thirteen of the plaintiffs, headed by Hayahiko Takase, former secretary general of the Los Angeles-based Japanese Overseas Voters Association (JOVA), appealed to the Supreme Court. On September 14, 2001, three days after the House of Representatives election,<sup>69</sup> the Supreme Court made what some see as an “epochal” ruling. The court overturned the previous lower court rulings and criticized the Diet’s failure to revise the Public Offices Election Law, described as

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<sup>69</sup> By that time, participation of overseas Japanese voters in the proportional representation part of national elections had taken place in the House of Representatives elections of June 2000, November 2003 and September 2005, as well as in the House of Councillors elections of July 2001 and July 2004.

“unconstitutional and illegal,” in both its original and revised forms, on the grounds that by denying overseas Japanese citizens the same rights it did not treat them equally with their counterparts in Japan (*Asahi Shimbun*. Internet: Sep. 15: 2005; *Daily Yomiuri* Sep. 15, 2005: 4; *Japan Times*. Internet: Sep. 15, 2005; *Nikkei Weekly* Sep. 20, 2005). As Chief Justice Akira Machida declared in the ruling, “[i]t is unconstitutional to impose restrictions on voting rights without reasonable cause,” hence “[t]he stipulation of the Public Offices Elections Law that restricts the right to vote is against the Constitution”<sup>70</sup> (quoted in *Japan Times*. Internet: Sep. 15, 2005 and *Asahi Shimbun*. Internet: Sep. 15, 2005, respectively).

This ruling obliged the Diet to enact laws that would allow Japanese citizens residing abroad to vote for both individual candidates in local constituencies as well as for political parties in proportional representation constituencies in both Lower and Upper House elections. Immediately thereafter, government officials acknowledged the court’s judgment and the need for it to be reflected in proper legislation, and it was announced in January 2006 that a new revision to the election law had been already compiled and would be submitted to the Diet by the end of the month (*Asahi Shimbun*. Internet: Jan. 13, 2006). The revised election law is therefore expected to come to being before a House of Councillors election that is scheduled to be held in summer 2007 and is estimated to affect over 720,000 overseas Japanese nationals eligible to vote (see *Japan*

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<sup>70</sup> Article 15 of the Constitution of Japan stipulates that “The people have the inalienable right to choose their public officials and to dismiss them,” which the plaintiffs argued to mean an inalienable right for all Japanese citizens, regardless of their place of residence. The ruling, going in line with this argument, has been described as “epochal” or “epoch-making” as in the past the Supreme Court was inclined to refrain from passing verdicts on the constitutionality of an action or inaction by the Diet and/or the central and local governments. In fact, this case marked only the seventh time since World War II that the nation’s highest court has found a law unconstitutional (*Daily Yomiuri* Sep. 15, 2005: 1 and 4; *Japan Times*. Internet: Sep. 20, 2005).

*Times*. Internet: Sep. 15, 2005 and Sep. 16, 2005). More importantly, however, it is expected that this new election law, just like the existing law that limits voting rights only to the proportional representation part of the Diet elections, will permit Japanese citizens residing abroad to retain their right to vote indefinitely.

Interestingly, in the aftermath of the Supreme Court's ruling, some voices have been raised about the need of establishing an overseas constituency, so the specific needs of the nearly 1 million Japanese residing abroad could be reflected nationally. Kagefumi Ueno, senior vice president of the Japan International Training Cooperation Organization (JITCO) and a former ambassador to Guatemala, have been one of the strong advocates of this initiative (*Asahi Shimbun*. Internet: Nov. 14, 2005). In fact, however, this idea is not completely new. In 1992, Kenichi Ohmae formed the Reform of Heisei Group, a reform-oriented grass roots political action group with a membership of some 30,000 supported by 92 Diet members of diverse ideological stripes, which, among other reforms, advocated a creation of the 301<sup>st</sup> electoral district as part of an overseas electoral district system (Nakafuji 1995: 33-36). Further, Michio Takakura, president of the *Nikkei Journal*, a Japanese-language newspaper in Paraguay, ran unsuccessfully on the ticket of the LDP in the proportional representation segment of the July 2004 Upper House election. During his official campaign outside Japan he proposed that overseas constituencies be created for Japanese living abroad (*Japan Times*. Internet: Jun. 26, 2004). In any case, all this suggests that a new debate on the issue of the expatriate voting can be soon expected to arouse the public.



## **4.2 Testing Competing Conceptions of Political Membership**

In the quest for the right to vote for overseas Japanese, many advocates of an overseas voting system stressed that their campaign was conducted beyond any ideology or in support of any political party, but rather on the grounds that the Japanese constitution guaranteed this right to all its citizens. On the other hand, the participants in the discussions who recommended caution in introducing such a system pointed most commonly to the fact that the Japanese law did not extend its jurisdiction to Japanese nationals residing abroad, and to the logistic and technical difficulties involved in this endeavor. In other words, the debate took the form of technical legal discourse. Politicians of the major parties in general supported enfranchisement of overseas Japanese, and the outstanding points were largely over the methods; hence the matter was thought to be bottlenecked due to the bureaucracy.

But it would be mistaken to accept this account as a complete depiction of the nature of the debates. With a closer look, it becomes apparent that along the way these public deliberations seemed to have also hinted at a deeper conception of political belonging. Any conclusive assessment of this topic, however, requires a disciplined examination of these debates with a proper theoretical framework.

The following table presents potential predictions as to who should be enfranchised according to various models identified by Thomas.

**Table 4 Overseas Vote: Prediction as to Who Should Get the Franchise  
According to Thomas' Typology**

<i>Tie with Japan</i>		<i>Key Concepts</i>	<i>Temporary Overseas Japanese Citizens</i>	<i>Overseas Japanese Citizens with Permanent Residency Abroad</i>
Descent		ancestry; race	O	O
Culture		socialization; shared culture (e.g., language); attachment to the polity	O	O
Belief		political principles	?	?
Contract	state-centered	military service	?	?
	society-centered	service/contribution to the community	?	?
Monetized Contract	state-centered	tax	O	X
	society-centered	productive employment	O	X

*Note: "O" corresponds to "yes;" "X" corresponds to "no;" "?" indicates difficulty in assessing the position univocally.*

According to this table, if a Japanese debater had the Descent conception, he or she should have referred to such concepts as ancestry or race. The table also shows that such a Japanese debater should have supported the enfranchisement of both temporary overseas Japanese citizens (e.g., businesspeople with short-term assignments abroad) and overseas Japanese nationals with permanent residency abroad (e.g., those with landed immigrant status in Canada and American green cards). If I find these pieces of empirical evidence, then, I can conclude that the Japanese debater in question had the Descent conception. Now let me report my findings.

### *The Descent conception*

**Hypothesis 1 (1):** If the Descent conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that overseas Japanese citizens should be enfranchised because they are of the same ancestry as those residing in the country.

A thorough inspection of the debates reveals that there is no direct and clear-cut evidence for the Descent model. No direct arguments have ever emerged during the recent public debates, which appealed to the need for enfranchisement of overseas Japanese because of the common ancestry. Consider as an illustration the Conventions of Japanese and Nikkei Abroad, which have long served not only as the place for cultural and information exchanges among overseas Japanese descendants, but also as the place of their political negotiations with the Japanese government. The issue of voting rights has always been taken up at this forum since 1980. In such events, one would imagine that advocates for overseas Japanese enfranchisement would refer to the common ancestry as a basis of their demand. However, that was not the case. Yet, the Descent model of political membership cannot be fully rejected here given that the franchise, with the right to retain it indefinitely, has been ultimately extended to all overseas Japanese nationals, including overseas permanent residents. Even though the common ancestry was not referred to during the debates, it is possible that it might have been taken for granted all along the way.

### *The Culture conception*

**Hypothesis 1 (2):** If the Culture conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that overseas Japanese citizens should be enfranchised because they share the Japanese culture and are attached to their native country.

There are some important indications that the virtues of the shared culture and attachment to Japan have been evoked in support of enfranchisement of overseas Japanese. To give an example, on the return from the public hearings conducted on the issue of overseas voting rights in Australia and Malaysia in March 1994, Hajime Ishii, head of the House of Representatives Special Committee for Political Reform Research investigating this topic, declared the government's intention to submit a bill which would have in effect enfranchised Japanese nationals residing abroad. Such an announcement came for the very first time since the initial 1984 legislative proposal was scrapped with the dissolution of the House of Representatives two years later. More importantly, in contrast to the Nakasone administration, Ishii's committee indicated its support for the inclusion of permanent overseas residents in the proposed legislation. Masao Sakon, a Diet and committee member who participated in the hearings, revealed his motivations when he stated: "One thing that particularly struck me during the public hearings is how strongly attached the permanent residents feel to Japan" (quoted in *Mainichi Daily News* Apr. 14, 1994). Likewise, Lower House representative Yuriko Takeyama of the Japan New Party, who had served as a spokesperson in the Diet for and advisor to the Japanese Overseas Voters Network, supported the idea of extending the franchise to overseas permanent residents on similar grounds. Her statement referring to Japanese residents in the United States elucidates: "As far as immigrant permanent residents with green cards are concerned, I think that voting rights should be extended up to them because they are

also Japanese nationals. I was also a permanent resident with a green card in New York. I felt that while Japanese residents were living in New York they were always looking toward Japan” (quoted in Nakafuji 1995: 58).

There is thus little doubt that the overseas Japanese and those campaigning for their voting rights were generally perceived by the lawmakers as being deeply attached to their homeland. In fact, however, this observed affection towards Japan has been rather complex in its nature. Analyzing the *shin-issei*<sup>71</sup> community in the United States, for example, Shigeru Ishitoya has pointed to the ambiguous character of this attachment. In his words:

Although Shin-Isseis are living in the United States, they are nothing but strangers who are in a precarious position. Fully realizing their situation, on the one hand, many of them still love the United States and want to be accepted to the [American] society. Observing Japan from abroad, and sometimes questioning and trying to think hard about the activities of their fellow countrymen in the homeland, on the other hand, they have a strong attachment to Japan. Their behavior and feelings sometimes seem to be full of contradictions (quoted in Nakafuji 1995: 78).

This perspective has been also argued to be at least partly held by members of the Los Angeles-based Japanese Overseas Voters Association (JOVA) headed by Kitoshi Kanai, the most powerful and influential group among the seven members of the Japanese Overseas Voters Network (Nakafuji 1995). But Japanese emigrants in Brazil

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<sup>71</sup> Note that a definition of the term *Shin-Issei* is still in the evolutionary stage. Literally, the term transfers to the “new first generation.” Some, however, refer to the *shin-issei* as any Japanese who immigrated to the United States after World War II, whereas for others the term refers only to the Japanese newcomers, that is, to those who arrived in the United States in the last two decades or so. Despite the ambiguity, the term can be defined as associated with those Japanese who came to the United States voluntarily, for whatever purpose and regardless of their background, after the new Japanese immigration law was enacted in 1952. So, for example, the intracompany transferees’ (*chuzaiin*) spouses would not be included in this category. The Los Angeles-based Japanese Overseas Voters Association (JOVA) has commonly been perceived as a *Shin-Issei* movement, although it is interesting to note that at the inaugural convention held by the JOVA in February 1994 in Los Angeles, it was stressed that the organization was opened to anyone with Japanese citizenship who actively supported the movement for overseas voting rights (see Nakafuji 1995: 42-45, 49).

seem to share a similar, if not more profound, feeling of ambiguity as well, as many of them have spent the majority of their lives in Brazil. Fearing a threat to their sense of identity, Yataro Amino, the head of the São Paulo-based 20,000-member association of Japanese emigrants, adopted an identity discourse from the early stage of the quest for the Japanese emigrants' right to vote. He has explained this as follows:

Both before and after the war, a fairly large number of Japanese moved to Brazil, and it is hard to say now whether they are Japanese or Brazilian. If we look at the color of their passports, clearly they are red [the color of Japanese passports generally had been]. They have not naturalized as Brazilians. Since birth, however, they have not participated in an election. What nationality are they [*nanijin nan daro ka*]? [The voting rights issue] comes from this problem of identity (quoted in Roth 2003: 106).

The voting rights campaign shows that affiliation with and a deep-seated sense of belonging to their homeland have ultimately overcome other feelings. One leader of the Japanese community in Brazil has probably best captured this by stating that it was “the sincere wish of the elderly [migrants] to have the chance to cast a vote, even just once, before dying” (quoted in Roth 2003: 103). In any case, the pursuit of the right to vote has been interpreted as motivated by nostalgia for and deep-rooted attachment to Japan. Teruyuki Taniai, head of the Kansai bureau of the Japanese-language daily *Nippaku Mainichi Shimbun* based in São Paulo, which had then a circulation of 15,000, has reported that according to the newspapers' June 1992 poll about 90 percent of its readers expressed a desire for the right to vote in Japanese elections. He has explained this finding by saying: “Many first-generation migrants want to confirm their relationship with their mother country by demanding voting rights” (quoted in *Mainichi Daily News* Jul. 17, 1993). This statement undoubtedly points to a deep-seated attachment to the native country, which is most commonly instilled by primary socialization.

### *The Belief conception*

**Hypothesis 1 (3):** If the Belief conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that overseas Japanese citizens should be enfranchised because they consciously identify with Japan's distinct political principles.

The political turmoil of 1993 became a turning point in the campaign for the right to vote, underscoring the intentions of the vote seekers.<sup>72</sup> Seeing the face of Japanese politics changing radically, overseas Japanese nationals began to demand participation in their homeland politics more strongly than ever before, launching a series of influential voting rights movements in the major-Japanese populated cities around the world (Nakafuji 1995). At the inaugural convention of the JOVA, for instance, Hayahiko Takase, the secretary general of the movement, captured this widespread sense of commitment to the home country's political realm in the following words:

As a result of the reform measures promised by Prime Minister Morihiro Hosokawa, many overseas Japanese have been taking an interest in what is happening in their homeland. But for some, this was the first time they found out they couldn't vote. Those who were already aware of this found it frustrating because they did not have a voice in their government (quoted in Nakafuji 1995: 48-49).

However, a close scrutiny of the arguments employed reveals that the allusions to the Belief view of political membership are rather difficult to sustain. Despite some signs of the conscious identification of overseas Japanese with the political realm of their native country, their very arguments lacked direct references to Japan's specific political values with which the vote seekers had supposedly sought to identify. These assertions need to be seen thereby as merely procedural claims stemming from the deep-seated

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<sup>72</sup> Note also that this growing interest in politics among Japanese expatriates was cited by supporters of an overseas voting system during the debates (*Nikkei Weekly* May 16, 1994: 4).

attachment to their motherland, that is, as squarely imbedded in the identity discourse. This falls back then on the Culture conception of political membership.

### ***The Contract conception***

#### *a) The state-centered variant*

**Hypothesis 1 (4a):** If the state-centered version of the Contract conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that those overseas Japanese citizens who perform or had in the past performed military service should be enfranchised.

In South Korea, the case has been explicitly made against enfranchisement of overseas Koreans because they did not carry out the duty of performing military service. By contrast, references to military obligations were virtually unheard in the public debates on the overseas voting rights in Japan. Article 9 of Japan's "pacifist" Constitution does not explicitly outlaw the military, as it has been argued that the American and Japanese drafters of the document had intended not to prohibit Japan from maintaining self-defense military units or contributing to the collective security arrangement under the United Nations (Pyle 1992: 10, 124). In effect, in the early post-occupation period, a modest military establishment was built up and named in 1954 the Self-Defense Forces (SDF). Limited initially in their activities to serving the public within Japan's borders in times of natural disasters, the SDF undertook over time a more active role outside the country becoming increasingly involved in the U.N. supervised peacekeeping operations, for example in Cambodia and Mozambique. But even then, there were no public debates over the enfranchisement of SDF members stationed abroad. In the more recent deliberations, this group has not been singled out either in the arguments supporting the establishment of an absentee-ballot system for overseas



Japanese citizens. The same is true about those who had in the past performed military service.

*b) The society-centered variant*

**Hypothesis 1 (4b):** If the society-centered version of the Contract conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that those overseas Japanese citizens who serve the community should be enfranchised.

Also in this case, a careful scrutiny shows that the arguments citing service of overseas Japanese nationals to local communities in their homeland, or even Japanese communities abroad for that matter, are wholly absent from the public debates. In fact, it is quite revealing that over the course of the campaigns, no demands have been advanced for voting rights in local elections in Japan. The lack of such demands clearly suggests that even overseas Japanese and their supporters must have recognized that local suffrage is a privilege reserved for those actually residing in and contributing to Japan's local communities.

***The Monetized Contract conception***

*a) The state-centered variant*

**Hypothesis 1 (5a):** If the state-centered version of the Monetized Contract conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that overseas Japanese citizens should not be enfranchised because they do not contribute to the homeland society by paying taxes.

The argument that overseas Japanese nationals should remain disenfranchised because they do not perform the duty of paying taxes has been continuously evoked during similar public debates in South Korea. In contrast, this line of reasoning has not explicitly emerged in Japan's open debates. But it appears that at the same time a certain

degree of uneasiness about this matter at least tacitly existed in the public consciousness, as judged by the fact that the proponents of overseas voting directly addressed this concern. Consider, Hayahiko Takase's statement made at the inaugural convention of the JOVA in February 22, 1994:

[T]here is an opinion that overseas Japanese do not pay taxes to the Japanese government. The Japanese constitution clearly states that an individual cannot be discriminated on account of income. Nowhere in the constitution does it state that voting rights are connected to the amount of taxes an individual pays to the government. Also, there is an agreement between the Japanese government and the U.S. government that Americans living in Japan pay taxes to the Japanese government and Japanese living in the United States pay taxes to the U.S. government. So in terms of obligations, we pay our dues (quoted in Nakafuji 1995: 48).

On another occasion, Ben Kiyoshi Takahashi, a naturalized American lawyer of the Japanese ancestry, directly challenged Takase on this issue on the pages of the *Rafu Shimpo* newspaper, asserting that paying taxes to the Japanese government was a duty of Japanese nationals, and that it was therefore unreasonable on the part of overseas Japanese to demand voting rights in Japan considering that they were not fulfilling this obligation. In his response in the newspaper, Takase simply reiterated his earlier argument:

Voting rights should not be connected to the amount of taxes that an individual pays to the Japanese government. Overseas Japanese nationals directly or indirectly pay taxes to the Japanese government in various forms. The agreement between Japan and the United States for taxation clearly states that Americans living in Japan pay taxes to the Japanese government and Japanese living in the United States pay taxes to the United States government (quoted in Nakafuji 1995: 63).

Overall, the advocates of overseas voting did not bring in themselves the arguments pointing to the direct or indirect payment of taxes to their motherland government. It rather appears that instead utilizing such claims in support of their cause,

they merely incorporated them as counterarguments while engaging in rebuffing the accusation put forward by the opponents. In any case, the references in the debates to the duty of paying taxes were only sporadic and did not originate from the lawmakers or government authorities.

*b) The society-centered variant*

**Hypothesis 1 (5b):** If the society-centered version of the Monetized Contract conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that those overseas Japanese citizens who contribute to Japan's economy through engagement in productive employment should be enfranchised.

The argument pointing to the contribution of overseas nationals to their native country's economy through engagement in productive employment abroad emerged as the most prominent one during the debates in the Philippines, providing in the end conceptual basis for the extension of the franchise to Filipino expatriates. Roth (2003) writes that the pressures on Japanese lawmakers to institute an overseas voting system followed the enormous increase in the number of Japanese businesspeople temporarily stationed abroad in the 1980s,<sup>73</sup> and that it was this group for which an absentee-balloting system was originally intended. This assertion could be seen as confirmed by the fact that the initial legislative proposal of 1984 planned to exclude overseas permanent residents. This in turn implies an acknowledgement of the value of the overseas businesspeople's contribution to the Japanese society.

However, as shown above, the later campaign for the right to an overseas vote was driven by voting rights movements, such as those based in Los Angeles and São Paulo, composed mainly of Japanese nationals with permanent residency status in their

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<sup>73</sup> For more on company transferees, see, for instance, Ben-Ari (2003), Glebe (2003), and White (2003).

countries of residence, who have been in the end embraced by the revision of the election law.<sup>74</sup> Indeed, there is no evidence that direct arguments resembling those advanced in the Philippines have ever been employed over the course of public debates in Japan. This line of reasoning was only squarely articulated in the most recent calls for the establishments of an overseas constituency, such as the one of Kagefumi Ueno, senior vice president of the Japan International Training Cooperation Organization (JITCO) and a former ambassador to Guatemala, who articulated this logic on the pages of the *Asahi Shimbun* (Internet: Nov. 14, 2005) in the following words:

Personally, I am very concerned about the recent propensity for Japanese companies operating overseas to withdraw their presence from foreign markets, and the declining interest among Japanese businesspeople to advance their careers overseas. In order for Japan to maintain its national strength, I believe it needs to substantially maintain its overseas presence for the foreseeable future. For that, Japanese citizens living abroad must be treated the same as their counterparts in Japan, at the very least to the full extent that that is possible.

A similar line of reasoning did not surface during the debates that have led to the enfranchisement of overseas Japanese nationals.

### ***Analytical Conclusion***

The campaign for the right to an overseas vote was primarily driven by voting rights movements based in major Japanese-populated cities across the globe, such as New York, Sydney, Los Angeles, Bangkok, São Paulo, Manila, and Paris, which in 1994 formed the Japanese Overseas Voters Network. Of these seven, arguably the most powerful Los Angeles-based Japanese Overseas Voters Association (JOVA) and the most numerous São

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<sup>74</sup> In fact, these are also overseas permanent residents, as opposed to businesspeople, who have later on tended to show interest in Japan's national elections in which all overseas Japanese nationals were entitled to cast a ballot (see, for example, *Japan Times*. Internet: Nov. 2, 2003; Roth 2003).

Paulo-based Federation of the Japanese Prefectural Associations in Brazil were the two most industrious in their activities. With virtually no opposition to their campaign on conceptual grounds, the arguments advanced by the vote seekers appeared to be accepted by the lawmakers. Essentially, besides evoking a legal discourse, the movements pointed to the deep-seated attachment of overseas Japanese nationals to their motherland. This feeling of attachment was then recognized by various politicians concerned and gave support to their backing of the idea of extending the franchise to overseas permanent residents as well.

This line of reasoning squarely fits with the Culture conception of political membership as identified by Thomas. Although arguments pointing to the common ancestry were not explicitly evoked during the debates, the supposed common biological descent might have been tacitly assumed all along the way. Thus considering that the right to an overseas vote has been in the end unconditionally extended to all Japanese citizens residing abroad, the Descent model cannot be fully rejected here. Other arguments which would have provided support for the remaining theoretical perspectives did not emerge during the public debates. It can be thereby safely concluded that with regard to overseas voting Japan has actively exercised the Culture conception of membership in the political community. In the light of Thomas theoretical framework, the expectations and actual research findings for the debates concerning overseas voting can be summarized in the following table.

**Table 5 Expectations and Research Findings for Overseas Voting**

<i>Hypothesis</i>	<i>Expectation</i>	<i>Finding</i>
<p><i>The Descent conception</i>  Hypothesis 1 (1): If the Descent conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that overseas Japanese citizens should be enfranchised because they are of the same ancestry as those residing in the country.</p>	O	X
<p><i>The Culture conception</i>  Hypothesis 1 (2): If the Culture conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that overseas Japanese citizens should be enfranchised because they share the Japanese culture and are attached to their native country.</p>	X	O
<p><i>The Belief conception</i>  Hypothesis 1 (3): If the Belief conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that overseas Japanese citizens should be enfranchised because they consciously identify with Japan's distinct political principles.</p>	X	X
<p><i>The Contract conception</i>  a) The state-centered variant  Hypothesis 1 (4a): If the state-centered version of the Contract conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that those overseas Japanese citizens who perform or had in the past performed military service should be enfranchised.</p>	X	X
<p>b) The society-centered variant  Hypothesis 1 (4b): If the society-centered version of the Contract conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that those overseas Japanese citizens who serve the community should be enfranchised.</p>	X	X
<p><i>The Monetized Contract conception</i>  a) The state-centered variant  Hypothesis 1 (5a): If the state-centered version of the Monetized Contract conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that overseas Japanese citizens should not be enfranchised because they do not contribute to the homeland society by paying taxes.</p>	X	X
<p>b) The society-centered variant  Hypothesis 1 (5b): If the society-centered version of the Monetized Contract conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that those overseas Japanese citizens who contribute to Japan's economy through engagement in productive employment should be enfranchised.</p>	X	X

Note: "O" corresponds to "yes;" "X" corresponds to "no."

## **CHAPTER 5.**

### **NON-CITIZEN MINORITY VOTING: THE CASE OF JAPAN**

#### **5.1 Japan's Debates over Non-Citizen Minority Voting Rights: An Historical Overview**

Foreign minorities residing in Japan have no right to vote in mayoral, gubernatorial, local assembly, or national elections. Like most non-citizens in advanced industrial democracies, they originate from post-colonial societies, and are therefore not only foreigners, but also ethnic minorities. Assuming that previous growth rates continued through 2005, the population of registered foreigners (i.e. those staying officially for 90 days or more) is believed to have topped 2 million, which comprises about 1.6 percent of Japan's total population.<sup>75</sup> Indeed, the total foreign population in Japan has more than doubled since the mid-1980s. Additionally, there were also an estimated 300,000 unregistered foreigners in Japan as of 1999 (Debito 2006; Japan Management and Coordination Agency 1995-2003; Japan Ministry of Justice 1986-1999).

More specifically, according to the Japan's Ministry of Justice, of 1.91 million foreigners registered as residents in Japan as of the end of the year 2003, over 740 thousand had permanent residency status. Historically this group has primarily been composed of Koreans and Taiwanese who were previously subjects of Japanese colonies

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<sup>75</sup> In comparison, registered foreign population as a percentage of total population was 4.6% (2003) for the United Kingdom, 5.5 % (1999) for France, 9.7% (2002) for Germany, 12.1 (2005, legal and illegal) for the United States, 21.8% (2001) for Australia, 5.6% (1998) for Sweden, and 2.1% (1998) for Italy (Center for Immigration Studies; International Labour Organization; OECD 2001).

and those who are their descendents.<sup>76</sup> They are commonly referred to as *Zainichi* or “old comers.” By the end of 2003, 70 percent of the nearly three-quarter of a million permanent residents were Koreans (*Japan Times*. Internet: Nov. 10, 2004). But due to death or naturalization, the number of “old comers” is shrinking,<sup>77</sup> while a growing number of “newcomers” are taking out permanent residency. As the Japan’s Ministry of Justice reports, the number of “old comers” shrank to 465,619 in 2004, while the number of “newcomers” with permanent residency swelled to 312,964 in the same year (Debito 2006).

The “newcomers” are foreigners who entered to the country later, particularly since the late 1980s. They come mainly from other Asian countries including China, the Philippines, Thailand, South Korea, Indonesia, and Vietnam (Chung 2003a: 181-182). The *Nikkei* diaspora in Japan has also experienced phenomenal growth following the 1990 revision of the immigration control law, which was enacted in response to pressures from ethnic Japanese politicians in Brazil that coincided with an acute shortage of labor

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<sup>76</sup> Japanese citizenship policies are based on the principle of *jus sanguinis* (citizenship by descent) and, therefore, second generation immigrants do not automatically qualify for Japanese citizenship. They may remain foreigners indefinitely unless they acquire citizenship through naturalization later in life. Note also that following the signature of the UN convention for eliminating discrimination against women, Japan revised its nationality and family registration laws in 1984, shifting the principle of nationality from a patrilineal system to a bilineal system of *jus sanguinis* where children obtain both their father’s and mother’s nationality. But the bilineal attribution of nationality, coupled with an ever-increasing number of international marriages by Japanese citizens (many of them with Koreans), was anticipated to create a large number of potential dual nationals at birth. Thus in order to defend the principle of “one and only one nationality,” the government instituted a “nationality selection” system under which persons with two or more nationalities are advised to choose only one before reaching the age of 22, or, in the case of naturalization, within two years from becoming dual nationals (Kashiwazaki 2000: 450-451).

<sup>77</sup> It has been reported, for instance, that in 2000 Koreans made up about 90 percent of all permanent residents in Japan, whose number was then estimated at some 630,000 (*Japan Times*. Internet: Sep. 28, 2000 and Oct. 5, 2000).



for small and medium-sized manufacturers in Japan<sup>78</sup> (Kashiwazaki 2000: 452, 453n; Takao 2003: 542). The amendment of the Immigration Control and Refugee Control Act allowed Japanese descendants (*Nikkeijin*), up to the third generation, and their spouses, to enter the country under a special category, “settlers” (*teijūsha*), and take up employment without any restrictions. This has de facto given them the status of “quasi-permanent residents”<sup>79</sup> (Kondo 2001a: 16). Consequently, the number of workers of Japanese ancestry, especially from Brazil and Peru, experienced a rapid increase over the past decade, reaching around 300,000 in 2000 (Goodman *et al.* 2003: 14; Kashiwazaki 2002b). Overall, by the end of 2000, the number of foreign workers in Japan was estimated by the Ministry of Health, Labor and Welfare to be over 700,000, accounting for over 1 percent of the entire Japanese workforce. This figure excludes permanent foreign residents, both “old comers” and “newcomers”<sup>80</sup> (Kashiwazaki 2002b).

With all these changes in the migrant’s population, the Korean community has declined from 80 percent of all foreign residents in 1985 to about 35 percent in 2001 (Chung 2003a: 180). It continues to be, however, the largest non-citizen ethnic minority group in Japan. Thus because of the size of their community, as well as the historical

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<sup>78</sup> In particular, the demand for foreign workers came from Japanese companies which found it increasingly difficult to recruit Japanese laborers into so-called “3K jobs” – *kitsui* (demanding), *kitanai* (dirty), and *kiken* (dangerous). These jobs were commonly taken by visa overstayers from Asian countries, such as Korea, China, the Philippines, Thailand, Malaysia, and Iran, hence it was at the same time a policy instrument designed to halt the growth of unauthorized immigration (Kashiwazaki 2000: 452 and 2002b).

<sup>79</sup> While Japan has maintained a policy of not accepting “unskilled” foreign labor, there are no employment restrictions imposed upon the *Nikkei* diaspora. Moreover, unlike other immigrants or foreign residents, ethnic Japanese immigrants automatically qualify for secure residential status. This preferential treatment was justified on the grounds of history and culture. Still, the long-term resident visa issued to *Nikkei* immigrants has a time limit of three years, albeit renewal is possible (Goodman *et al.* 2003: 13; Kashiwazaki 2000: 453n; Tsuda 2003; see also de Carvalho 2003, Ishi 2003; Takenaka 2003).

<sup>80</sup> Note that it is possible to come across sources according to which this figure is significantly lower. This might be because foreign workers (*gaikokujin rōdōsha*) in Japan include several categories of people. For example, although it should also include Westerners employed in white-collar jobs, such as English language teachers and staff members in corporations, in the popular discourse about foreign workers these people are not considered *gaikokujin rōdōsha* (literally “foreign national laborers”), as this term is associated with workers from less-developed, non-Western countries (Kashiwazaki 2000: 452).

context, ethnic Koreans have been in the center of the ongoing debates surrounding the voting rights for non-citizen ethnic minorities in Japan.

Unlike the establishment of immigrant communities in Western Europe, mass Korean settlement in Japan began well before World War II following Japan's colonization of the Korean Peninsula in 1910, and culminated during the Japan's wartime mobilization, when a massive number of Korean draft laborers were forcibly incorporated into Japan's wartime economy. Inhabitants of Korea were formally declared "imperial subjects" (*teikoku shinmin*) upon their incorporation into the Japanese empire in 1910, and were since then regarded as Japanese nationals by virtue of this annexation<sup>81</sup> (Chung 2003a: 92-93). Takenaka (1997: 144) argues, however, that the fact that they were not granted full citizenship rights proves that "they were not admitted into the Japanese 'nation' in the proper sense of the word." Yet, despite their second-class citizenship status, those Koreans, as well as Taiwanese, who resided on the Japanese home islands were formally entitled to participate in local and national elections.<sup>82</sup>

But given that between 1889 and 1925 the exercise of the right to vote was limited by the tax payment, virtually no Korean, or Taiwanese, in Japan qualified to vote in that period due to these restrictions. It was only the Universal Manhood Suffrage Law of 1925 that effectively extended suffrage to Korean and Taiwanese adult males. Hence the policy granting political rights, including the right to vote, to resident Koreans and

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<sup>81</sup> Taiwanese, who were declared imperial subjects upon their incorporation into the Japanese empire in 1895, were formally decreed Japanese nationals in 1899.

<sup>82</sup> In fact, prior to the end of the World War II, one Korean, Pak Chun-gum, was successfully elected to the Diet, while over 30 Koreans were victorious in local elections (Hicks 1997: 49, 102-103; Kashiwazaki 1998b: 117; Weiner 1994: 147-150).

Taiwanese “reflects the colonial state’s interest in the ‘inclusion’ of its subject people”<sup>83</sup> (Kashiwazaki 1998b: 118).

At the same time, the government refused to enfranchise those living in the colonies. In response, between 1920 and 1944, Koreans consistently petitioned the Diet for the extension of suffrage, whereas Taiwanese demanded the establishment of a colonial assembly for self-rule. Favoring the Korean proposal, Diet members adopted it in nine sessions of the Lower House, but the government kept on rejecting it on the basis that it was too early to extend the franchise, given social conditions in Korea. In fear of an uprising among Koreans and Taiwanese toward the end of World War II, the election law was amended in March 1945, permitting Koreans and Taiwanese to vote and be elected in the elections to the Lower House. More specifically, the amendment made provisions for 23 Koreans and 5 Taiwanese representatives to be elected from the colonies to the Lower House. However, the right to vote fell short of universal male suffrage as it was conditioned by the minimum tax payment, amounting to at least 15 yen in national taxes annually, which in reality could have been fulfilled by only a handful of privileged imperial subjects from the overseas territories. This law was never implemented as Japan’s capitulation later that year put an end to Japanese colonialism itself (Kashiwazaki 1998b: Ch.3; Takenaka 1997: 148-149).

After Japan’s defeat in World War II, there were nearly 2.3 million Korean residents in the mainland Japan. Most of them rushed back to the Korean Peninsula but

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<sup>83</sup> Interestingly, Koreans and Taiwanese were not subject to military service even when they resided in the Japanese mainland, which shows that “military obligations depended on whether one was ‘Japanese’ or not” (Kashiwazaki 1998b: 118). It was only in 1938 that a voluntary military service system for Koreans was introduced, preparing them for a wider participation in the Japanese army. Eventually, the system of conscription was extended, taking effect in 1944 in Korea and in 1945 in Taiwan (Kashiwazaki 1998b: Ch.3; Takenaka 1997: 148).

500,000 to 600,000 could not or did not return immediately and remained in the country. In December 1945, the Diet suspended their suffrage on all government levels and in every phase of the electoral process by amending the election law. Further, upon the effectuation of the San Francisco Peace Treaty in April 1952, the Japanese government unilaterally deprived the residents from the former colonies of their Japanese nationality, making them de facto foreigners (Japan Civil Liberties Union 1998b; Takao 2003: 535). This act exhibited that “the possession of Japanese nationality was confined to those who were ‘Japanese’ by descent” (Kashiwazaki 2000: 439). The residence in Japan of those who had been stripped of Japanese nationality was only secured when the government awarded them the status of so-called “special permanent residents” (*tokubetsu eijuusha*). Those who acquired South Korean nationality become eligible for permanent residency following the 1965 Japan– the Republic of Korea (ROK) Normalization Treaty, whereas those Koreans who affiliated themselves with North Korea, or the then-defunct Chosen state, were granted permanent resident status in 1981.<sup>84</sup>

In the meantime, the League of Korean Residents (*Zainichi Chōsenjin Renmei*) was formed in Japan in 1945 to facilitate migration to the Korean Peninsula. Following the political turmoil over establishment of a liberated Korea, however, the Korean residents’ community split forming the pro-South Mindan (Korean Residents Union in Japan; *Zainippon Daikanminkoku Kyoryū Mindan*) and the pro-North Chongryun

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<sup>84</sup> Note that since Japan has no diplomatic ties with North Korea, North Korean nationality is not officially recognized in Japan. Hence Korean residents who have obtained neither South Korean nor Japanese nationality, including those who identify with North Korea, have been practically stateless. In extreme cases, the Japanese government has not allowed its citizens who have become naturalized North Korean citizens to renounce their Japanese nationality on the grounds that this would imply recognition of North Korean citizenship. Yet, the Japanese government has no means to force all Korean residents in Japan to adopt South Korean citizenship and, in fact, the treatment of South Korean residents and those identify with North Korea does not differ much.

(General Association of Korean Resident in Japan; *Zainippon Chōsenjin Sōrengōkai*, or *Sōren*) in 1946 and 1955, respectively. This split has consequently been reflected in the debate that emerged over a reinstatement of suffrage. Mindan has become the most vocal lobby group for the suffrage bill, whereas Chongryun has continued to argue that suffrage would result in the loss of identity for the Korean community and, in accordance with its policy of not intervening in the politics of a foreign country, that it would plainly amount to foreigners' interference in Japanese domestic affairs.<sup>85</sup>

This should not suggest, however, that the issue of voting rights came into sight straight away. Korean residents began demanding the right to vote in Japan only in the mid-1970s. Suh Yong-dal, a first-generation South Korean resident in Japan and professor at St. Andrew's University in Osaka, initiated an appeal for permanent residents' suffrage in Japan's local elections in 1976 (Nakafuji 1995: 20-21). In 1986 Mindan passed a pro-suffrage resolution (but until 1989 it took no steps toward a plan to petition local authorities across Japan for voting rights). Also in 1986, the media made the first major move to address the issue when the national daily *Asahi Shimbun* ran on its readers' opinion page an article by Hweng Kap-sik demanding voting rights for foreign residents (*Japan Times*. Internet: Nov. 29, 2000). The debate over the extension of the franchise to non-citizens, and its coverage in the media, has been widening constantly since then.<sup>86</sup>

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<sup>85</sup> Even so, the majority of North Korean residents seems to want suffrage. For example, a 1984 survey conducted in Kanagawa Prefecture found that 79 percent of them acknowledged the necessity of local suffrage, which barely contrasts with 82.4 percent of South Korea nationals who supported this idea (Takao 2003: 538*n*).

<sup>86</sup> To illustrate, the number of articles addressing the subject of local suffrage for non-citizens in two major national newspapers, the *Asahi Shimbun* and the *Nikkei Shimbun*, increased from 9 in 1987-1993 to 104 in 1994-2000 (Takao 2003: 534).

In the March 1992 interpellations at the House of Councillors Special Committee on the Election System, voting rights were defined as “belonging to the citizens” (quoted in *Daily Yomiuri* Oct. 25, 1994: 7), but the formation of a mock political party, the Foreign Residents’ Voting Rights Party (*Zainichito*), in the same year only advanced the movement to obtain voting rights. In a campaign to publicize the issue, the party founder, Lee Young-hwa, a third-generation North Korean resident in Japan and professor at Kansai University in Osaka, as well as other party members, contested the Upper House election of 1992 and the Lower House election of 1993. And although their candidacies were rejected on the grounds that they lacked their family registers (*koseki*) as proof of Japanese citizenship, they campaigned unofficially for votes (which would be treated as invalid) and signatures, and arguably influenced those Korean residents who had taken the lack of suffrage for granted. On the other hand, some Koreans criticized their actions, arguing that the efforts should be devoted to securing voting rights in local elections first rather than at the national level. To this, Lee responded that the two were inseparable and that he was merely demanding a return of these rights (Hicks 1997: 89-100; Nakafuji 1995: 23).

Meanwhile, the 1991 South Korea– Japan Memorandum concerning the legal status of Korean nationals residing in Japan disclosed that “the Korean government expressed a request to grant municipal voting rights to resident Koreans” (quoted in Higuchi 2002: 260). Also, some local government units in Japan began passing resolutions favoring local suffrage for foreign residents, with Kishiwada City in Osaka Prefecture becoming the first local government in September 1993 to adopt a resolution urging the central government to give permanent foreign residents the right to take part in

local elections (*Mainichi Daily News* Sep. 10, 1993). In that context, in November 1994, the Shimane prefectural chapter of the ruling New Party Sakigake announced a package of draft bills that would allot foreign residents local-level suffrage and the right to run for public office.<sup>87</sup>

The Korean community had taken simultaneous steps to secure its voting rights by a court ruling. In September 1990, a group of 11 second-generation South Korean residents filed a lawsuit with the Osaka District Court challenging the constitutionality of the Public Offices Election Law which explicitly limits voting in local elections. A lawsuit aiming at having the franchise in local elections ruled unconstitutional was also filed by four resident Koreans in the city of Fukui, on the Sea of Japan coast, in May 1991. Chongryun distanced itself from those attempts arguing that the right to vote would amount to a “loss of ethnicity,” while this viewpoint was not shared by Alan Higgs, a British resident who filed a comparable suit in Osaka. Also, soon after his rejection in the 1992 Upper House election, Lee Young-hwa filed his lawsuit with the Osaka District Court in the form of an appeal against this decision on the grounds that the Constitution did not bar permanent residents from participating in the electoral process (*Daily Yomiuri* Jun. 30, 1993; Hicks 1997: 100-101; *Mainichi Daily News* Jan. 30, 1994). Sooner or later, however, all courts dismissed the aforementioned claims. Consequently, the key 1990 lawsuit filed initially in Osaka was eventually brought to the Supreme Court.

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<sup>87</sup> According to the plan, local-level voting rights and electoral eligibility would be granted to those foreigners who have resided in Japan for a minimum of five years. On that occasion, it was also reported that the two other governing coalition parties, the LDP and the SDPJ, as well as opposition Komeito and the DSP, all agreed on the need to examine the issue of suffrage for permanent residents in Japan (*Daily Yomiuri* Nov. 13, 1994: 2; *Mainichi Daily News* Nov. 13, 1994: 12).

On February 29, 1995, the Supreme Court issued a landmark decision designed to clarify the Constitution and stating that it was not unconstitutional to grant foreign permanent residents the right to vote in local elections.<sup>88</sup> Essentially, the top courts' "epoch-making" ruling asserted that "it is not forbidden by the Constitution to have and recognize a law granting foreign residents with permanent resident status the right to vote in local, mayoral and gubernatorial elections"<sup>89</sup> (quoted in *Mainichi Daily News* Mar. 2, 1995: 1; see also *Daily Yomiuri* Mar. 1, 1995: 1). Yet, the presiding Judge Tsuneo Kabe also said that "Whether voting rights can be given to permanent foreign residents will have to be decided by national legislation"<sup>90</sup> (quoted in *Daily Yomiuri* Mar. 1: 1995: 1). By suggesting then that suffrage for foreign residents is not an inherent right guaranteed by the Constitution and leaving this matter for the National Diet to legislate, the judgment only intensified the nationwide debate. Nevertheless, the endorsement of the idea that the supreme law of Japan does not prevent qualified foreign residents from having their voice in local politics aroused public interest in the issue and seemed to have given momentum to the movement.

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<sup>88</sup> The contention surrounded the interpretation of Articles 15 and 93 of the Constitution. As stated earlier, Article 15 stipulates that "The people have the inalienable right to choose their public officials and to dismiss them," which has been commonly interpreted as suffrage being an inalienable right for Japanese citizens. However, Article 93 stipulates that "The chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities," which has been often argued to refer to all local "residents" or "citizens," as opposed to only Japanese nationals (see *The Constitution of Japan*).

<sup>89</sup> The court did not comment, however, on the constitutional status of foreigners running as candidates. Note also that with this ruling the Supreme Court indicated a clear distinction between national and local politics, considering that in a February 1993 ruling it asserted a clause in the Public Offices Election Law, which allots only Japanese nationals the right to vote in Diet elections, as being constitutional. In that way, the court showed its negative stance toward enfranchising foreign residents in national elections. The aforementioned case was brought by a British citizen with permanent residency in Japan, who demanded compensation from the government after he was not allowed to cast a ballot in a national election (*Daily Yomiuri* Mar. 1, 1995: 1; *Mainichi Daily News* Mar. 2, 1995: 1).

<sup>90</sup> This legislative move would have to involve a revision of the Public Offices Election Law and the Local Government Law, which stipulate that only Japanese nationals are eligible to vote.



In the aftermath of the ruling, Prime Minister Murayama said that the verdict “must be respected” and assured that the ruling coalition would work on appropriate legislation. Besides, most ruling and opposition parties issued comments supporting the court judgment (Hicks 1997: 102; *Daily Yomiuri* Mar. 1: 1995: 2, Mar. 3, 1995: 1, and Mar. 9, 1995: 2; *Mainichi Daily News* Mar. 2, 1995: 1). However, with parties being divided over specifics and the LDP slowing the pace of reform, no tangible bill was tabled any time soon despite these assurances.

After the Supreme Court’s ruling, Korean residents continued unsuccessfully to file lawsuits with various lower courts, seeking to have the nation’s existing electoral laws declared unconstitutional.<sup>91</sup> In September 1996, in an attempt to advance a nationwide campaign for the extension of the franchise, the Korean Youth Association, a group affiliated with Mindan, submitted a petition to Prime Minister Hashimoto demanding suffrage for foreign residents. The same petition was also submitted to Takako Doi, Speaker of the House of Representatives, and Juro Saito, president of the House of Councillors (*Mainichi Daily News* Sep. 21, 1996: 12). It was not until South Korean President Kim Dae-jung’s visit to Japan in October 1998, however, that the debate over local voting rights for foreign residents was truly reopened. During the visit, in his speech at the Diet, Kim openly expressed his hope to see the suffrage bill passed during the then-ongoing Diet session, which Prime Minister Keizo Obuchi promised to “seriously consider.”

Timing their proposal to coincide with this visit, the main opposition Democratic Party of Japan (Minshuto) and the parliamentary group Heiwa-Kaikaku (Peace-Reform),

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<sup>91</sup> One appeal made even its way to the Supreme Court where it was rejected in April 2000 (*Mainichi Daily News* Apr. 26, 2000: 12).

consisting of Komeito and other groups, jointly submitted legislation proposing to extend suffrage in local elections to foreign permanent residents (“Local Suffrage Investment Law for the Permanent Foreign Residents”) (Mindan; Takao 2003: 540). In December, the Japan Communist Party submitted a separate bill to not only grant permanent-resident foreigners the right to vote but also give them the right to run in local elections. These proposed pieces of legislation were carried over to the 1999 Diet session. In 1999, Obuchi pledged to study this matter when he visited South Korean President Kim Dae-jung in March. Kim then again urged the Japanese Prime Minister in November, at the Korea-Japan Summit meeting in Manila, to reach an agreement on the Korean minority’s voting rights by the end of 2000, but Obuchi failed to accomplish this (Takao 2003: 541; *Daily Yomiuri* May 5, 1999: 3).

Before forming a tripartite ruling coalition in October 1999, the LDP, the Liberal Party (Jiyuto) and Komeito agreed in principle to pass a law allowing foreign permanent residents to vote in local elections (*Japan Times*. Internet: Nov. 4, 1999; *Mainichi Daily News* Jan. 25, 2000: 2). The coalition partners also agreed to resubmit to the Diet the bill that was initially put forward in October 1998. Komeito revised the bill, however, and proposed that the franchise be extended only to foreign permanent residents from “countries recognized by Japan,” thus effectively excluding North Koreans (*Daily Yomiuri* Nov. 2, 1999: 3; *Mainichi Daily News* Oct. 28, 1999: 1). This compromised bill was then submitted by Komeito and the Liberal Party in January 2000, but the proposed legislation died due to the dissolution of the Lower House in June. Earlier in April, the Conservative Party (Hoshuto) had replaced the Liberal Party as a coalition partner,

agreeing to uphold the aforementioned agreement.<sup>92</sup> The Conservative Party and Komeito decided to remove the stipulation of excluding nationals of the countries to which Japan does not extend diplomatic recognition, and jointly submitted in July a bill that would have enfranchised all permanent residents in elections of prefectural governors, mayors and members of prefectural and municipal assemblies. On the same day, the opposition Democratic Party of Japan submitted its own version of an analogous bill, which gained support from the JCP and the SDPJ (*Daily Yomiuri* Aug. 16, 2000: 3 and Sep. 20, 2000: 3; *Mainichi Daily News* Sep. 14, 2000: 1).

In September, ahead of a South Korean President Kim Dae-jung's visit to Japan, Prime Minister Mori indicated that he wished for the bill on local suffrage for foreigners to be debated in the then-upcoming Diet session. But it was at the same time reported that Hiromu Nonaka, LDP Secretary General, proposed that the right to vote be extended only to Japan's "special permanent residents" from the Korean Peninsula and Taiwan,<sup>93</sup> the idea being strongly opposed by Komeito (*Japan Times*. Internet: Sep. 20, 2000 and Sep. 25, 2000). Thus with the coalition partners being in disagreement over the legislative proposal,<sup>94</sup> and a number of parliamentarians forming an alliance against any

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<sup>92</sup> In the aftermath of the departure of the Liberal Party, led by Ichiro Ozawa, from the three-party coalition, the Liberal Party split into two parts, one of which became the Conservative Party, which then joined the ruling coalition. In the context of this departure, Prime Minister Obuchi suffered a stroke and went into a coma from which he did not recover before his death in May. Subsequently, in the prospect of upcoming elections, Yoshiro Mori was quickly elevated by LDP leaders to the prime ministership.

<sup>93</sup> Some other senior LDP members proposed that each local municipality decide whether to grant voting rights to foreign permanent residents. This idea, in turn, received rather unfavorable response from the local government units on the grounds that the issue fell within the responsibility of the central government (*Japan Times*. Internet: Oct. 8, 2000).

<sup>94</sup> Note also that at that time, following similar moves by the cities of Arao in Kumamoto Prefecture and Kushiro in Hokkaido Prefecture, as well as the town of Imakane in Hokkaido Prefecture, the Kagawa prefectural assembly, on request of its LDP members, adopted a resolution against the suffrage bill tabled in the Diet (*Japan Times*. Internet: Oct. 18, 2000).

quick resolutions of this issue,<sup>95</sup> the bills were eventually carried over to the next session. This delay occurred in spite of Diet legislators being petitioned by Mindan and urges from South Korean ruling and opposition parties' lawmakers, including the chief executive.

As of the end of 2000, some 1,500 prefectural and municipal assemblies out of all 3,302 local self-governing bodies nationwide, including the Tokyo Metropolitan Assembly, had adopted resolutions asking the central government to extend local electoral rights to non-citizens with permanent residency.<sup>96</sup> This figure amounts to about 45 percent of all local governments, representing over 73 percent of Japan's total population (Takao 2003: 534; *Japan Times*. Internet: Dec. 30, 2000). The public attitude towards this issue was also rather favorably changed by that time, as compared to the mid-1990s.<sup>97</sup> According to the *Asahi Shimbun* poll conducted in 1994, only 47 percent of respondents had favored the idea of voting rights in local elections for non-citizens, with 41 percent were against. In 2000, however, the numbers changed to 64 and 28 percent, respectively (Takao 2003: 533n). Similarly, a separate poll conducted in 2000 by the *Mainichi Shimbun* revealed that 58 percent of all respondents were in favor and 32 percent opposed to the idea of local suffrage for foreigners (*Mainichi Daily News* Oct. 3, 2000: 16). According to the opinion poll done by the *Yomiuri Shimbun* in 1999, 65

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<sup>95</sup> In November 2000, the LDP formed an intraparty party group to block any bills granting local suffrage to foreigners (Takao 2003: 549n; *Japan Times*. Internet: Nov. 29, 2000 and Nov. 30, 2000).

<sup>96</sup> As of the end of 2004, the figure was reported to reach the total of 1,522 local governments, including Tokyo and other 35, of 47, prefectural governments (*Mainichi Daily News* Oct. 20, 2003: 1; Network of Japanese, Korean and Foreign Residents in Japan to Realize the Suffrage of Long-Term Foreign Residents in Japan in Local Politics 2005).

<sup>97</sup> It is interesting that at the same time the *Daily Yomiuri*, one of the country's major newspapers, showed evidence of the contrary trend, as judged by the content of its editorials. The editorial ensuing the 1995 Supreme Court's ruling (Mar. 2, 1995: 11) addressed the topic in a rather favorable light, whereas the latter editorials took a considerably negative stand on the prospect of the extension of local suffrage to non-nationals (e.g., Sep. 14, 2000:6, Jan. 19, 2001: 6, and especially Feb. 27, 2004: 4, for a recent opinion).

percent of Japanese supported granting long-term foreign residents the right to vote in local elections, whereas a 2000 survey conducted by a student body at Tokyo University among university students across Japan showed an overwhelming 90 percent of support for this idea (Kakuchi 2000; Kanabayashi 1999: A26).

And yet, Junichiro Koizumi, Prime Minister as of April 2001, proved very reluctant to extend voting rights to non-citizens. Thus in June 2001, the two bills that had been initially tabled a nearly one year earlier were once again carried over to the next Diet session. In the meantime, Ozawa's Liberal Party announced that it would submit the party's own bill, one which would exclude North Korean residents (*Daily Yomiuri* May 18, 2001: 3; *Japan Times*. Internet: Jun. 30, 2001).

In June 2003, South Korean President Roh Moo-hyun took up the issue in his speech before the Japanese Diet. In the following February, Komeito, the governing LDP's junior partner, presented another local suffrage bill concerning non-citizens. It was a new move to revive the topic after legislation tabled in the previous Diet session was scrapped when the Lower House dissolved for a general election without the bill being put to vote. Before long, a group of LDP lawmakers announced that it would continue to disrupt any efforts to extend local electoral rights to foreign nationals (*Daily Yomiuri* Feb. 27, 2004: 4; *Japan Times*. Internet: Oct. 20, 2004). Even so, the legislation found its way to the House of Representatives Special Committee on Political Ethics and Election Law where it was debated in November 2004. Going all the way back to October 1998, when the first legislation was submitted, the foreigners' local suffrage bill had been by then deliberated for a total of 13 hours (*Japan Times*. Internet: Nov. 17, 2004). With no favorable outcomes forthcoming, Komeito, a parliamentary champion of

the issue, assured in the 2005 election campaign that it would continue to push for suffrage for foreign residents. This pledge was echoed by Mindan. Consequently, as recently as October 2005, Komeito for the fifth time introduced the bill providing for local suffrage for non-citizen permanent residents (*Mindan News*. Internet: Oct. 26, 2005).

Interestingly, the first direct recognition of non-citizens' political participation in Japan came from the Maihara Municipal Assembly in Shiga Prefecture, which in January 2002 became the first local authority in the country to allow, albeit as a one-time action, foreign nationals with permanent residency to vote in a local plebiscite on a proposal to merge with neighboring municipalities<sup>98</sup> (*Japan Times*. Internet: Jan. 19, 2002). Soon other towns, cities and villages across Japan introduced similar measures concerning local referendums, including Takahama, Aichi Prefecture (June 2002),<sup>99</sup> Takaishi, Osaka Prefecture (September 2002), Iwakimachi, Akita Prefecture (September 2002), Nabari, Mie Prefecture (October 2002), Kobuchisawa, Yamanashi Prefecture (August 2004),<sup>100</sup> and Kishiwada, Osaka Prefecture (June 2005).<sup>101</sup> According to the Network of Japanese, Korean and Foreign Residents in Japan to Realize the Suffrage of Long-Term Foreign Residents in Japan in Local Politics (2005), there were 175 self-governing bodies in Japan that had enfranchised foreign residents in local referendums as of the end of 2004.

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<sup>98</sup> This right was extended to those aged 20 or older who have been residing in the town for at least 3 months.

<sup>99</sup> In addition, Takahama lowered the voting age to 18 and extend the right to vote to prisoners.

<sup>100</sup> Both Iwakimachi and Kobuchisawa also lowered the voting age to 18.

<sup>101</sup> Kishiwada is an interesting case as it extended suffrage to all those non-citizens who had lived in Japan for at least 3 years. In that way, besides becoming the first city to adopt a resolution urging the central government to give permanent foreign residents the right to vote in local elections, it also become the first local authority in Japan to recognize the right to vote of foreign residents without permanent residency status (all above information are gathered from *Japan Times*. Internet: Jun. 2002-Aug. 2004; *Mainichi Daily News* Jun. 24, 2002: 1; *Daily Yomiuri* Oct. 19, 2002: 17 and Jul. 1, 2005: 3).

## 5.2 Testing Competing Conceptions of Political Membership

Non-citizen ethnic minorities in Japan continue to be disfranchised. The main arguments against their enfranchisement have been that non-citizen local suffrage would work against the interests of Japanese citizens in areas such as national security and education. It has further been argued that granting voting rights to foreigners in local elections could eventually lead to their participation in national elections. However, the debates have also more explicitly exhibited contestation over the collective Japanese conception of their own polity. For example, during the May 2001 LDP hearings on the issue, Lower House member Takeo Kawamura argued that “Japan as a nation will not be shaken if permanent foreign residents are given the right to vote in local elections.” To this, former Justice Minister Masahiko Komura argued that “[g]ranted voting rights [to them], even only in local elections, affects the foundation of the nation” (quoted in *Daily Yomiuri* May 25, 2001). In the midst of the nationwide debates some political observers asserted therefore that they saw “the increased emphasis on the vote issue as a sign that politics at the national level is under pressure to be more responsive to the need to bring together the nation’s different ethnic groups – a departure from the long-held notion that Japan is

ethnically homogenous”<sup>102</sup> (*Asahi Evening News* Nov. 3, 1999). Katsuhiko Okazaki, a professor of administrative law at Shimane University in Matsue, was among those holding this viewpoint, although he linked it also with the question of Japan’s maturity as a democratic country. As he put this, “The issue poses the question of whether Japan really wishes to move on to a truly democratic society, in which human rights of all individuals are protected and local residents govern themselves, or back again to a country of statism and ethnocentrism, in which state interests infringe upon individual rights” (quoted in *Japan Times*. Internet: Dec. 2, 2000). In this context, it is thus natural that when the LDP’s conservative opponents of the suffrage bill attempted to sidetrack the issue by offering to amend the nation’s naturalization policy instead, Hiroshi Tanaka, a professor of sociology at Ryukoku University in Kyoto, argued that they were simply “trying to avoid criticism that they are too nationalistic or ethnocentric” (quoted in *Japan Times*. Internet: Dec. 1, 2000).

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<sup>102</sup> The notion of Japan’s homogeneity was popularized and reinforced in the 1970s and 1980s by the literature known as *nihonjinron*, or “the theory of Japanese,” which is devoted to discussions of the “uniqueness” of Japanese culture, society, and national character (on the *nihonjinron* literature, see Yoshino 1992). The pivotal premises of the *nihonjinron* discourse, as identified by Dale (1986:1), are as follows: “Firstly, they implicitly assume that the Japanese constitute a culturally and socially homogenous racial entity, whose essence is virtually unchanged from prehistorical times down to the present day. Secondly, they presuppose that the Japanese differ radically from all other known peoples. Thirdly, they are consciously nationalistic, displaying a conceptual and procedural hostility to any mode of analysis which might be seen to derive from external, non-Japanese sources.” This discourse has consequently served “as a broadly based ideological stance for Japan’s nationalism throughout its ethnocentric emphasis on the nation as the preeminent collective identity of the people, and overall it has become a societal force which shapes the way Japanese regard themselves” (Kowner 1999: 250). Dale (1986: 1) refers to this discourse as “the commercialized expression” of modern Japanese nationalism, while Yoshino (1992) regards *nihonjinron* as cultural nationalism. In any case, this form of nationalism became especially prominent during Prime Minister Nakasone’s five-year term (1982-87). Nakasone advocated a “new” liberal nationalism based on a conception of Japanese national interests as a global leader, which transcended that of traditional pre-war Japanese nationalism (for details, see Pyle 1992: 85-105). Asserting that the Japanese must regain a sense of self-confidence and national pride, Nakasone encouraged an appreciation of Japan’s unique strength and abilities, often recouring to statements like the following one: “The Japanese race is excellent because since the time of the goddess Amaterasu, the Japanese have remained as pure as unadulterated rice wine [...]. We have accomplished much because for more than 2,000 years no foreign race has mixed itself within the Japanese” (quoted in Chung 2003a: 87-88n). More recently, Prime Minister Mori echoed Nakasone’s sentiment when he made a remark about Japan being a “divine nation centering on the Emperor” (quoted in *Japan Times*. Internet: Jun. 13, 2000). For recent treatment of *nihonjinron*, see Mishima (2000) and Burgess (2004). See also Yoshino (1998) and Suzuki (2003).



Tackling explicitly the issue of political belonging, the abovementioned public debates require a systematic scrutiny. Let me thus again employ Thomas' typology. Following are subsequently the consistent positions as to what group should get the franchise from the perspective of various conceptual models of political membership advanced by Thomas.

**Table 6 Non-Citizen Vote: Prediction as to Who Should Get the Franchise According to Thomas' Typology**

<i>Tie with Japan</i>		<i>Key Concepts</i>	<i>South Koreans</i>	<i>North Koreans</i>	<i>Nikkeijin</i>	<i>Others*</i>
Descent		ancestry; race	X	X	O	X
Culture		socialization; shared culture (e.g., language); attachment to the polity	O	O	X	?
Belief		political principles	O	X	O	?
Contract	state-centered	military service	X	X	X	X
	society-centered	service/contribution to the community	O	O	O	O
Monetized Contract	state-centered	tax	O	O	O	O
	society-centered	productive employment	O	O	O	O

Note: "O" corresponds to "yes;" "X" corresponds to "no;" "?" indicates difficulty in assessing the position univocally.

\* This category includes various non-citizen minority groups long-term resident in Japan such as Chinese, Taiwanese, South Asians, and Westerners.

As the above table shows, if a Japanese debater has hinted at the Descent conception of political membership, he or she should have referred to such concepts as ancestry and race. Consequently, such a debater would have only supported the enfranchisement of the *Nikkeijin*, the only single non-citizen group with the alleged common Japanese ancestry. If I find empirical evidence to support this logic, then, it can be concluded that

the aforementioned Japanese debater had the Descent conception. Following are my research findings.

### ***The Descent conception***

**Hypothesis 2 (1):** If the Descent conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that only those foreign residents who are of the Japanese ancestry should be enfranchised.

It is rather evident that since the franchise has not yet been extended to foreign residents in Japan, state authorities' thinking about Japan's collectivity continues to derive from the long-held conception of ethnocentrism and ideology of racialization, which are predominately rooted in such characteristics as the common descent and "blood."<sup>103</sup> This philosophy, in other words, mirrors the Descent model. It is thus undoubtedly this subdued perspective that has been implicitly held by the conservative politicians who have argued that the acquisition of citizenship should precede the right to vote, as citizenship is here only an expression of this conception or simply supersedes it.

However, there are some challenges that partly undermine the Descent perspective. First, even the conservative politicians have not clung to the pure Descent model during the course of the public deliberations on the issue. LDP Secretary General Hiromu Nonaka had proposed to enfranchise Japan's "special permanent residents" from the Korean Peninsula or Taiwan. Second, second and third generation immigrants of Japanese origins are not enfranchised and a close scrutiny of the public records reveals

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<sup>103</sup> Japan's racial ideology draws upon two terms: *jinshu* and *minzoku*. Although the term *jinshu* usually refers to race in a sense of pseudo-biological or physiological characteristics, whereas *minzoku* is used to refer to a culturally defined ethnic group, these two terms are used in Japan interchangeably. In Japanese, concepts such as "race," "ethnic group," and "nation" are subsequently manifested in the term *Yamato (Nihon) minzoku* (Japanese race), which comprises both blood relationships and cultural criteria. However, this is race as "Japanese blood" that has long been at the very core of the Japanese identity. For details, see Suzuki (2003).

that *there have virtually been no arguments in support of their enfranchisement*, although these are the very people that should have won voting rights according to the Descent model. The 1990 Immigration Control and Refugee Control Act allowed these immigrants of Japanese origins to enter and settle in Japan more easily, becoming de facto “quasi-permanent residents.” Their population was estimated to be 300,000 in 2000.

This second point is worth elaboration. The preferential treatment of laborers of the Japanese ancestry has commonly been interpreted as a reflection of ethnocultural understanding of the nature of belonging. Goodman *et al.* (2003: 14) write, for instance, that during the debates preceding the introduction of the new immigration law it was argued that “these workers, because they had some Japanese ‘blood’ and understanding of Japanese culture – albeit many of them had never been to Japan and did not speak Japanese – would be able to fit into Japanese society more easily than workers from East, Southeast and South Asia and thereby not upset the important ideology of social homogeneity which, it was taken for granted, lay behind Japan’s economic strength.”<sup>104</sup> Regardless of this, however, it is important to keep in mind that *this by no means implies their admission to the political community*. Analyzing this through the lens of

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<sup>104</sup> In the same way, in 1986, Prime Minister Yasuhiro Nakasone praised the achievement of the Japanese education system by saying that “our average [intelligence] score is much higher than those of countries like the U.S. There are many blacks, Puerto Ricans and Mexicans in America. In consequence the average score over there is exceedingly low.” Attempting then to explain away his statement in the light of the uproar that it caused in the U.S., Nakasone said that “[t]hing are easier for the Japanese because we are a monoracial society” (quoted in Kowner 1999: 233). On that point, opening the job market to the *Nikkeijin* could be seen as a compromise between those who during the late 1980s heated debates on the issue of foreign orkers advocated “opening up” the country and those who argued for “staying closed,” echoing fears of the prominent writer, Kanji Nishio, who insisted that “If Japan opens its doors to foreign immigrants...it will bring about a dangerous situation of psychological and biological chaos and racial class differentiation which Japan has never before experienced.” Another author, Toru Yano, wrote in that context: “I see little likelihood of the tightly held nature of the Japanese sense of national identity giving way to an enthusiasm for racial mixing or multinational and ethnic community living (both quoted in Pyle 1989: 53).

immigration policy, Kashiwazaki (2000) has explained that ethnic Japanese immigrants are not entitled to full citizenship, which makes this legal arrangement significantly different from both the Law of Return in Israel and the approach to *Aussiedler* in Germany. More importantly here, immigrants of the Japanese ancestry are not, of course, entitled to vote in Japan, which sharply contrasts with the case of Israel. As noted earlier, those immigrants who have come to Israel under the Law of Return but refused to acquire Israeli nationality are still entitled to vote simply because of their Jewish roots. This line of reasoning has never occurred in the public deliberations in Japan. Moreover, the Federal Constitutional Court in Germany rebuffed a possibility of non-ethnic German voting, which hints at the Descent model of political membership, whereas Japan's Constitutional Court endorsed a prospect of enfranchisement of foreign and therefore ethnic minorities.

In sum, these two points suggest that the Japanese version of the Descent model is not as strict as Thomas' version.

### ***The Culture conception***

**Hypothesis 2 (2):** If the Culture conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that those foreign residents who are culturally and socially assimilated into Japan should be enfranchised.

In this case, there is some support for the hypothesis. Although as shown above, there has generally been no support for the enfranchisement of the *Nikkeijin*, who had been argued to have some "understanding of the Japanese culture" (albeit they had not lived in Japan before and spoke no Japanese), the debate surrounding the right to vote for foreign residents has been predominantly centered around the Korean minority. Several

local suffrage bills that were proposed or eventually tabled in the Diet, for example, explicitly referred to Japan's denizens,<sup>105</sup> the bulk of whom have been former colonial subjects and their descendents. According to the early opposition parties' bills, about 90 percent of foreign residents eligible to vote would have been Koreans (*Daily Yomiuri* May 5, 1999: 3). Besides, Komeito Secretary General Tetsuzo Fuyushiba, a prime advocate of voting rights for foreign permanent residents, insisted that local suffrage should be extended to Koreans in particular (*Japan Times*. Internet: Nov. 30, 2000).

It is true that this group has low naturalization rates in Japan, as for the bulk of Koreans naturalization amounts to assimilation to Japanese society and is perceived as an extension of the colonial policy of forced cultural assimilation, which involved the eradication of the Korean language, names, and cultural expressions<sup>106</sup> (Chung 2003a: 2-3). And yet, the level of sociocultural assimilation among long-term Korean residents in Japan is rather high. As Chung (2003a: 2) explains:

[U]nlike the Korean community in the United States or the long-term Korean resident population in China, Koreans in Japan show few signs of maintaining a strong Korean sociocultural identity according to the conventional indicators of language, education, and marriage. An estimated 90 percent of this population – which now spans four generations – was born in Japan. The overwhelming majority of school-age Korean residents attends Japanese elementary and secondary schools using Japanese aliases. Furthermore, intermarriages between Korean residents and Japanese nationals have increased to over 80 percent of all marriages among Korean residents.

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<sup>105</sup> The old English word "denizens," as employed by Tomas Hammar, refers to a category of "privileged noncitizens" who are, in his definition, "foreign citizens who have a secure permanent residence status [in the host country], and who are connected to the state by an extensive array of rights and duties" (Hammar 1989: 84).

<sup>106</sup> See Chung (2003a) for figures of annual naturalizations in Japan (1952-1999), and OECD (2001) for a comparison of Japan's naturalization rates with those of other OECD countries.

This argument seems to have been reiterated by Korean residents themselves in the context of their quest for the right to vote. For example, Lee Young-hwa, a third-generation North Korean resident in Japan and founder of the Foreign Residents' Voting Rights Party, posited: "We are born and raised in Japan. [...] Japanese is my native tongue. Japan is my home country. I cannot understand why I cannot vote here" (quoted in Nakafuji 1995: 24). Kim Hyang-doja, one of the plaintiffs in a lawsuit filed with the Osaka District Court against the central government, said during a press conference which was held after the lawsuit was filed: "We are raised in Japan and are citizens of this country, yet the government denies our voting rights by saying we are foreigners" (quoted in *Daily Yomiuri* Apr. 8, 1995: 2). Consider also Kim Kil-choong's claim made in the context of the September 2000 summit between South Korean President Kim and Japanese Prime Minister Mori that was held in Japan: "I was born and raised here. So there should be no differences between me and any other Japanese. I do not expect that we will be allowed to get into national politics, but is there any harm in giving us the right to vote?" (quoted in *CNN*. Internet: Sep. 22, 2000).

In view of the above, it is not surprising that in the deliberations over the bill submitted jointly in July 2000 by Komeito and the Conservative Party, which would have enfranchised all permanent residents in local elections (but in effect mostly Korean residents), Komeito Secretary General Tetsuzo Fuyushiba justified the legislation with the following words: "More than 20,000 fourth-generation foreign permanent residents were born in Japan and have a sense of belonging to Japan. They should be treated in a different way from foreigners who are temporarily living in Japan" (quoted in *Daily Yomiuri* Sep. 20, 2000: 3). Also, Akira Nishino, an LDP member who wholly supported

the proposal, stated: “The Constitution says that to vote in for Parliament, you must be a citizen, but in the case of election for local governments, it is up to the residents to decide who votes. Many foreigners have the right to stay in Japan for life. Since they pay taxes here,<sup>107</sup> they live the same lifestyle as Japanese, they use the same language we do and bury their ashes here, I think that’s the least we can do” (quoted in French 2000). More recently, when the Komeito sponsored bill was discussed in the House of Representatives Special Committee on Political Ethics and Election Law in November 2004, Fuyushiba told the committee session: “If the people who were born and raised in Japan and intend to spend the rest of their lives in this country wish so, they should be treated almost like Japanese citizens” (quoted in *Japan Times*. Internet: Nov. 17, 2004).

The LDP opponents of the local suffrage bills acknowledged in fact that many foreign permanent residents, especially Koreans, have been “culturally assimilated” into Japan, but, backed by some academics, they insisted that they would be more contented if these permanent residents became “completely Japanese” by acquiring citizenship<sup>108</sup> (*Japan Times*. Internet: Dec. 1, 2000; see also *Asahi Shimbun* Jan. 11, 2002: 23). And yet, the aforementioned fact that the LDP’s Hiromu Nonaka offered a compromise to extend the franchise exclusively to permanent Korean and Taiwan residents of Japan and their descendents may provide some support for the Culture perspective of political

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<sup>107</sup> On the analysis of the arguments referring to the duty of paying taxes, see below.

<sup>108</sup> Chung Dae-kyun, professor of Japan-Korean relations at Tokyo Metropolitan University, has urged Koreans not to refuse Japanese citizenship, but acknowledged that in reality the bulk of them have already been assimilated into Japanese society. “Socially as well as culturally, most *zainichi* live in Japanese society, and they hardly share the sense of belonging to Korea unlike first- and second-generation,” he said (quoted in *Asahi Shimbun* Jan. 11, 2002: 23). It also seems to be the case, however, with many second-generation Koreans. For example, Pak Yu-cha, a second-generation North Korean with no Korean language ability, has refused to take Japanese nationality, but expressed support for suffrage for ethnic Koreans claiming that she has no intention to leave Japan because this is where she was born and raised (Kakuchi 2000).

membership (although many would undoubtedly regard this move as a merely pragmatic consideration tied to the issue of war repatriations to Koreans).

### *The Belief conception*

**Hypothesis 2 (3):** If the Belief conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that those foreign residents who have consciously adopted Japan's distinct political principles should be enfranchised.

There is clear evidence in support of this hypothesis. North Korean residents affiliated with Chongryun have explicitly advanced an argument to that effect. Chongryun vocally opposed suffrage on the grounds that it would amount to foreigners' interference in Japanese domestic affairs. Its spokespeople also contended that normalization of diplomatic ties between Japan and North Korea should come before Korean residents take eventually part in local elections. These positions demonstrate their conscious commitment to the North Korean regime (or at the very least a lack of commitment to Japan's political principles). As established earlier, most Korean permanent residents, who have de facto been in the center of the ongoing deliberations, have a broad acceptance of the Japanese culture. Yet, the Belief conception itself does not involve socialization but is a reflection of a conscious and rational commitment to the distinct founding principles of the political collectivity. In that sense, despite these citizens having undergone socialization within Japan, their mere affiliation with the North Korean regime serves as evidence of a commitment to different political principles.

This tendency is by no means universal among all North Korean residents. However, it is certainly not unreasonable to assume that it is being commonly perceived



as such.<sup>109</sup> Implicitly, therefore, state authorities evoked the Belief view of political membership by presenting the legislative proposals that would have excluded foreigners from countries that do not have diplomatic relations with Japan, including North Korea.<sup>110</sup>

### ***The Contract conception***

#### *a) The state-centered variant*

**Hypothesis 2 (4a):** If the state-centered version of the Contract conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that those non-citizens who perform military service should enjoy the right to vote.

References to this perspective have not surfaced in the public deliberations over the extension of the franchise to foreign residents in Japan. Interestingly, however, this issue is slowly making its way to polemics over political membership as examined through the window of immigration policy. Despite considerable support from the public for the existence of the Self-Defense Forces (SDF), particularly for their service in times of natural disaster, they have recently found it increasingly “difficult to fill their ranks, and conscription is, of course, entirely out of the question” (Reischauer and Jansen 1995: 358). Consequently, Akira Kurihara, a sociology professor at Meiji University, has argued that this might in the future open another way for foreign minorities to join

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<sup>109</sup> Consider as an illustration the case of Lee Young-hwa, a third-generation North Korean resident in Japan and member of the pro-North Chongryun, who, as the founder of the Foreign Residents’ Voting Rights Party, has been an ardent advocate of voting rights for Korean permanent residents. It has been reported, for example, that during his studies in Pyongyang, Lee, as an “overseas citizen”, was entitled to cast a vote in a local election, which he in fact did for the first time in his life. But it has also been rumored that while there, he received instructions of his further activities from Chairman Kim Il-sung (Hicks 1997: 99).

<sup>110</sup> Subtle references to this conception of political membership can also be recognized in an LDP local officials’ choice not to support the resolution passed by the municipal assembly of the city of Osaka, which is home to over 100,000 North and South Koreans, on the grounds of the murkiness of relations between Japan and North Korea (*Daily Yomiuri* Mar. 16, 1995: 2).

Japanese society. As he puts it: “From an economic view, Japan cannot avoid accepting immigrants, and these immigrants, probably low-paid workers, may be offered citizenship and the rights that accompany it. However, in return, they will be expected to join the SDF” (quoted in *Japan Times*. Internet: Apr. 13, 2004). In other words, with the decline of patriotism among Japanese young people and the subsequent prospect of a shortage of military recruits in the future, the argument has come to be recognized that “[j]oining the SDF and risking their lives may well become an officially sanctioned shortcut for foreigners to get citizenship” (*Japan Times*. Internet: Apr. 13, 2004). Nevertheless, this theme has not yet emerged in Japan in the debates over suffrage for non-citizens.

*b) The society-centered variant*

**Hypothesis 2 (4b):** If the society-centered version of the Contract conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that those non-nationals who serve the community should be able to vote.

There is rather clear evidence of references being made to the society-centered contractual view of political membership during the nationwide debates. Mindan, for instance, has long demanded local suffrage rights on the grounds that foreign residents bear the development costs of local communities (see Mindan). In a press conference held in April 1995 after a lawsuit was filed with the Osaka District Court against the central government for an alleged violation of the Constitution, Hong In-song, one of the 118 Korean plaintiffs, stated that he intended to appeal to the close ties he had built with local communities over more than 40 years of his residence in Japan (*Daily Yomiuri* Apr. 8, 1995: 2). Following the rejection of the case, 43 plaintiffs appealed to the Osaka High Court, which in February 1999 also dismissed their demands for the right to participate in

local governmental administration. Commenting on the ruling, Kim Hyang Do Ja, one of the plaintiffs, said: “It has been more than 50 years after World War II, and we are the fifth generation of Korean residents in Japan. But we are still not recognized as members of our local communities” (quoted in *Japan Times*. Internet: Feb. 24, 1999). Although courts rebuffed all claims concerning the unconstitutionality of the nation’s electoral laws, the verdict came sometimes along with recognition of plaintiffs’ arguments. For example, in June 1993, while rejecting a lawsuit filed by 11 South Korean residents with the Osaka District Court, presiding Judge Masaaki Fukutomi said he could sympathize with foreigners settled in Japan as it was only natural for them to argue that it is “unfair” to be deprived of suffrage when they are a part of and contribute to the local community (*Daily Yomiuri* Jun. 30, 1993: 2).

Indeed, the resolutions (*ikensho* [opinions of the matter]) adopted by local assemblies nationwide that have urged the central government to extend local electoral rights to non-citizens with permanent residency can be seen as extensions of the abovementioned logic. For example, the resolution adopted by the city of Osaka, which has the largest number of Korean residents in the country, has stressed that permanent foreign residents are not bestowed with the same rights as Japanese despite paying taxes and making other contributions to the local communities (*Daily Yomiuri* Mar. 16, 1995: 2). In so doing, the petition has made a clear distinction between their contributions to the community as local taxpayers and as local residents. Consider further the resolution approved by the Osaka Prefecture Assembly, which states: “Currently, 210,000 foreign residents from 144 countries live as members of the local communities in the prefecture. It is natural and welcome that such people participate in community-making and

contribute to the communities”<sup>111</sup> (quoted in *Japan Times*. Internet: Mar. 12, 1999).

There is also little doubt that local authorities’ measures enfranchising non-citizens in local referendums are a sign of recognition of their contribution to the development of local communities. As Toshio Muranishi, Mayor of the town of Maihara, the first local authority in Japan to allow foreign nationals with permanent residency to vote in a local plebiscite, put it: “The town believes that, as members of the community, permanent foreign residents should also have a forum to express their views regarding any merger, which will affect the future of the town.” He was also quoted as saying: “This is to let [foreigners], as town members, participate in building up the town” (quoted in *Japan Times*. Internet: Jan. 10, 2002 and *Mainichi Daily News* Jan. 19, 2002: 1, respectively).

### ***The Monetized Contract conception***

#### *a) The state-centered variant*

**Hypothesis 2 (5a):** If the state-centered version of the Monetized Contract conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that those foreign residents who contribute to the society by paying taxes should be entitled to vote.

Advocates of the franchise for foreign minorities have most regularly referred to this conception of political belonging. One argument has been reiterated by virtually all supporters of non-citizen voting rights. This is that foreign residents should be enfranchised because their taxes contribute as much to Japanese society as do the taxes of

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<sup>111</sup> Takao (2003) asserts that the resolutions adopted by local governments have embraced the 1995 Supreme Court decision stating that it is not constitutionally forbidden to allot local suffrage to foreign residents, especially permanent residents. The court believed that the Constitution’s provisions related to local autonomy are set out with the intention that “public affairs that are closely linked to residents’ daily living” should be secured in accordance with the will of local residents (quoted in *Daily Yomiuri* Mar. 1, 1995: 1). It is most certainly in view of this that the resolution says: “Having considered the [Supreme Court] ruling and the meaning of the Constitution and regional governments, it is important and necessary as a member of international society that our country guarantees to foreign residents some form of participation in local politics” (quoted in *Japan Times*. Internet: Mar. 12, 1999).

Japanese nationals. Mindan, of course, has openly campaigned on behalf of non-citizen ethnic Koreans for acquisition of local suffrage on the grounds that they, just like other local Japanese citizens, have been paying various taxes including residence and income taxes for a long period of time (see Mindan). This logic has been probably best articulated in the words of Kim Yong-ho, a 78-year-old restaurant owner who has lived in Japan since he was 20. As he put this: "I would not want voting rights if I were only here for the short time. I think it's only natural if I work, live and pay taxes here" (quoted in *CNN*. Internet: Sep. 22, 2000). Similarly, in a lawsuit filed with the Osaka District Court, the group of 118 Korean residents argued that it was only natural for them to demand the right to vote and to run for public office since they had been paying taxes and therefore fulfilling their duties as "residents." This logic, they claimed, was in line with Article 93 of the Constitution<sup>112</sup> (*Daily Yomiuri* Apr. 8, 1995: 2).

Marutei Tsurunen of the Democratic Party of Japan is a naturalized Japanese citizen who had served on a local council before eventually making political history by becoming the first Westerner to take a seat in the Japanese Diet. Tsurunen has recognized the foreigners' right to the franchise at the local level. Drawing on the example of his native Finland where non-citizens had long been able to vote in local elections after three years of residency,<sup>113</sup> Tsurunen argued that foreign residents in Japan were taxpayers whose daily lives were directly connected to the work of their local governments (*Japan Times*. Internet: Jun. 20, 2000). Tetsuzo Fuyushiba and his Komeito, a driving force behind the local suffrage bill, have also long insisted that

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<sup>112</sup> According to the Local Autonomy Law, the term "resident" includes everyone with a fixed address in any given area, without imposing restrictions on nationality. Under this provision, foreign residents are obliged to pay taxes, but are not entitled to vote in elections or to run for office.

<sup>113</sup> Note that it has been pointed out elsewhere that foreign residents in Finland are granted the franchise after four years of residency (Aleinikoff and Klausmeyer 2002: 48).

because foreign permanent residents are obliged to pay taxes, they should have some say in electing the officials in charge of spending that money (see, for instance, *Daily Yomiuri* Oct. 27, 1998: 3 and Aug. 16, 2000: 3; *Japan Times*. Internet: Nov. 30, 2000 and Nov. 10, 2004). Lee Young-hwa, the founder of the Foreign Residents' Voting Rights Party, has contended that foreigners, as taxpayers and members of local communities, were a part of the Japanese society as whole (see, for instance, *Japan Times*. Internet: Nov. 29, 2000; Nakafuji 1995: 24).

Finally, local assemblies across the country have been questioning the policy of denying non-Japanese with permanent resident status participation in local government matters while imposing taxes on them. The country's first resolution urging the central government to enfranchise permanent foreign residents at the local level was adopted by the Kishiwada Municipal Assembly in September 1993. Both opposition and ruling assembly members pointed to the obligation of non-nationals to pay taxes. Issei Kotobuki, speaker of the assembly, explained it as follows: "It is natural for foreign residents to have the right of participation in local politics here because they pay taxes as members of the community" (quoted in *Mainichi Daily News* Sep. 30, 1993; see also Sep. 10, 1993). The same argument was incorporated into the resolution passed shortly after by the city assembly in Yokaichi, Shiga Prefecture.<sup>114</sup> As for prefectures, the Fukushima Prefectural Government, for instance, has expressed support for this argument. Moreover, Tottori Prefecture Governor Yoshihiro Katayama and Oita Prefecture Governor Hiramatsu Morihiko have both strongly argued for enfranchisement at the local level of those foreign residents who pay same taxes as Japanese nationals, with Katayama

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<sup>114</sup> This resolution pointed also to the unequal treatment with regard to certain types of social security benefits (*Daily Yomiuri* Oct. 3, 1993: 2)

rallying “No taxation without representation” (quoted in *Japan Times*. Internet: Oct. 8, 2000; see also Takao 2003: 548). It may also be interesting to note that during his October 1998 visit to Japan, South Korean President Kim publicly stated: “Korean residents have paid taxes and contributed greatly [to Japanese society], and I hope the Japanese government will grant local suffrage to them” (quoted in Takao 2003: 540).

Over the course of analogous debates in Korea, political elites’ arguments stressing the duty of paying taxes by foreign residents were not particularly challenged on the grounds of their logical consistency but rather on the grounds of constitutional restrictions. This has not been the case in Japan. The very logic stressing the entitlement to the right to vote in exchange for the duty of paying taxes has been challenged there. To illustrate, Setsu Kobayashi, a lawyer and professor at Keio University’s Faculty of Law, has argued that taxes are merely the price one pays for government services, which benefit both foreigners and citizens alike. The connection between the duty of paying taxes and the right to vote is thereby illogical, he has maintained; if this argument were to be accepted, then low- or no-income people who pay no taxes would have to be deprived of their voting rights. In his words: “Some people say non-Japanese permanent residents should have the franchise because they pay taxes the same as Japanese residents. However, suffrage is not something that can be bartered for taxes. It would be illogical if

a Japanese were to be deprived of the right to vote for not paying taxes”<sup>115</sup> (quoted in *Daily Yomiuri* Aug. 25, 1999: 3; see also *Mainichi Daily News* Oct. 9, 2000: 7).

Yoshinobu Shimamura, former LDP Agriculture, Forestry and Fisheries Minister, echoed this line of argument when he stated that enfranchisement of foreign resident justified on the grounds that the duty of paying taxes “would be against the nation’s universal suffrage system that grants all citizens the right to vote irrespective of tax liability” (quoted in *Daily Yomiuri* Nov. 2, 1999: 3).

b) *The society-centered variant*

**Hypothesis 2 (5b):** If the state-centered version of the Monetized Contract conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that those foreign residents who contribute to Japan’s economy through engagement in productive employment should have the right to vote.

No confirming evidence for this hypothesis has been found in the debates. As shown above, an increasing number of foreigners resident in Japan has recently been referred to as “newcomers.” They are mainly laborers from South and East Asian countries (including South Korea and China) and ethnic Japanese workers from Latin American countries who entered the country later, particularly since the late 1980s or after 1990, as in the case of the *Nikkeijin*. It is also rather inevitable that Japan will see

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<sup>115</sup> But some, including Lee Young-hwa, have argued that it is also illogical to have the number of prefectural assembly representatives determined according to the number of residents, many of whom cannot be registered to vote. More importantly, however, this issue has been discussed in the context of the law to subsidize political parties, which involves taxation of permanent foreign residents to pay for the subsidies. Consequently, in 1993, members of the Foreign Residents’ Voting Rights Party submitted to the Home Affairs Ministry a letter protesting the possibility that the taxes they are being obliged to pay may be used for the campaigning of major political parties. Kotobuki of the Kashiwada assembly mirrored this concern in his rhetorical question: “Part of the taxes paid by foreign residents is used for financing political parties [after the reform bills are passed]. Will Diet members now give some consideration to the idea of giving them the right to vote and run in elections?” (quoted in *Mainichi Daily News* Sep. 30, 1993).



an influx of foreign job-seekers given the nation's aging and shrinking population, which threatens to leave Japan with a labor shortage in decades to come.<sup>116</sup>

In such circumstances, the importance of foreign workers has slowly been gaining recognition in Japan. Even the frequent foreigner basher Tokyo Governor Shintaro Ishihara has softened his stance on immigration.<sup>117</sup> Yet while arguing that Japan must open its doors to foreigners to counter a growing labor shortage and offering some suggestions,<sup>118</sup> he has offered no direct solution to the question of local voting rights for foreign residents (*Japan Times*. Internet: May 30, 2000). Moreover, in an October 2004 report submitted to the Foreign Ministry, an advisory policy panel headed by Kazuo Kumagai urged the government for the very first time ever to look squarely at the role unskilled foreign laborers are playing in Japanese society (given that according to 2002 statistics about three out of every four foreign workers were employed for basic labor). The report also advised the government to consider opening the job market to unskilled workers from abroad amid the rapid graying of society (*Japan Times*. Internet: Oct. 6, 2004 and Oct. 11, 2004). Assuming thereby that even more foreign job-seekers will have to be incorporated into Japanese society, it can be seen as rather surprising that the report made no mentioning of the issue of foreign suffrage (although it has recommended

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<sup>116</sup> With Japan's birth rate reaching its record low of 1.28 in 2004, the population is projected to drop from its current high of 127.7 million to 126 million by 2015, 101 million in 2050, and 64 million in 2100 (*Japan Times*. Internet: Dec. 17, 2005; *LifeSiteNews.com*. Internet: May 26, 2005).

<sup>117</sup> Ishihara, described by the *Newsweek* as the "most controversial politician in Japan," has often caused a stir in the public with his provocative comments. He came under fire, for example, for his use of the term "*sangokujin*" in a speech to a unit of the Self-Defense Force on April 9, 2000. This term, literally meaning "people from third countries," is widely considered as derogatory because it was used during the Occupation (1945-52) to refer to people from the former colonies of Korea and Taiwan who lost their Japanese nationality. In this speech Ishihara said: "Atrocious crimes have been committed again and again by *sangokujin* and foreigners who have illegally entered Japan. We can expect them to riot in the event of a major disaster" (quoted *Japan Times*. Internet: May 30, 2000). In the ensuing uproar in the media, Ishihara refused to apologize maintaining that he was referring to illegal immigrants, not long-term Korean residents. It has been also reported that earlier in the past Ishihara claimed that the 1937 Nanjing Massacre was a fabrication.

<sup>118</sup> Ishihara most recently reaffirmed his position at a December 2005 press conference.

improving economic and social conditions for foreign residents). This is especially striking in light of Zhu Jianrong's argument, concerning Korean and Chinese communities, that "[a]s long as Japan needs these people as a workforce to help run the economy, the government must create a mechanism that can *reflect their views*, reform the alien registrations system to grant legal status to more foreigners and create a social security net for them" (quoted in *Japan Times*. Internet: Jun. 13, 2000; emphasis mine).

In many states, particularly in Europe, workers from foreign countries have acquired political rights, including the right to vote, only after having secured economic and social rights first.<sup>119</sup> The franchise has been eventually extended to them partially in recognition of their contribution to the host country's economy. As Zhu Jianrong explains, "Taking such steps [as suffrage] is becoming a common practice in countries that depend more or less on foreign labor" (quoted in *Japan Times*. Internet: Jun. 13, 2000). In Japan, the issue of foreigners' engagement in productive employment has not yet been linked with the issue of direct non-citizen suffrage.<sup>120</sup> It could be argued that since the number of the "newcomers" taking out permanent residency is swelling, this group has subsequently been encompassed in the debates centered around the permanent foreign residents' right to vote. However, as established earlier, the public debates on

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<sup>119</sup> Marshall (1950) has argued that citizens acquire first civil, then political, and finally social rights. See Rokkan *et al.* (1999) for a similar argument. On the other hand, Klausen (1995), and Joppke (1999), among others, have shown that non-citizens have historically acquired social rights first, followed by civil rights and only then limited political rights. Also, on the argument that economic and social rights are granted to guest workers before political rights, see Soysal (1994). On the same argument in the context of Japan, see Fukumoto (2004).

<sup>120</sup> Limited and *indirect* suffrage for foreign residents has been argued to be first introduced in Japan in December 1996 with the establishment of a foreign residents' assembly by the city of Kawasaki. The Kawasaki City Assembly for Foreign Residents, which has been modeled after similar assemblies in Germany, is an advisory panel to the city mayor composed solely of non-Japanese residents and intended to reflect foreigners' needs in local administration. Currently, at least 15 local governments around Japan have advisory bodies made up of foreigners or that have a mix of Japanese and non-Japanese members. However, Kawasaki's panel remains the country's only one established by ordinance, so it is impossible to abolish it without a decision by the city assembly, as it happened in 2001 to a similar body set up by the Tokyo Metropolitan Government (*Daily Yomiuri* Oct. 25, 1994: 7; *Japan Times*. Internet: Jan. 3, 2006).

this subject have essentially focused on the “old comers,” and the Korean minority in particular. In other words, even with a steadily growing number of foreign laborers, and recognition of their importance for Japan’s economy, there has virtually been no direct reference to this subject throughout the public deliberations concerning enfranchisement of Japanese non-nationals.

### *Analytical Conclusion*

The case of non-citizen voting is far more convoluted than the one of the overseas franchise. The Foreign Residents’ Voting Rights Party headed by Lee Young-hwa, Mindan, some academics, and ordinary foreign residents who filed a number of lawsuits, have been the main forces behind the quest for the foreign residents’ right to vote in local elections in Japan. In their campaign, they have received considerable backing from local governments and various political parties, ranging from the JCP to some factions within the LDP, with Komeito being the most ardent champion of the cause. Although the support has not directly come from the courts, they have not blocked non-citizen local suffrage and in some cases even sympathized with promoters of the idea. Outside Japan, the issue has been backed by South Korean executives and legislators. The line of reasoning advanced during the course of the campaigns differed across supporters. Most commonly, however, advocates evoked arguments pointing to the foreign permanent residents’ sociocultural assimilation and deep sense of belonging to Japan, contribution to local communities, and contribution to society in the form of taxes. These arguments correspond with the Culture, society-centered Contract, and state-centered Monetized Contract conceptions of political membership, respectively. A conscious commitment to political principles, somewhat expressive of the Belief model of political belonging, has

also been used as a reference point in the debates. Chungryun has incorporated this argument in its standpoint against non-citizen local suffrage, and it has been approvingly acknowledged by some state authorities.

A number of politicians, led by the conservative members of the LDP and backed by some academics, have actively worked on preventing non-citizen voting from materializing. They have acknowledged that some foreigners are fully assimilated to Japanese society, but have insisted nonetheless that the acquisition of citizenship should come before that of the franchise. In that sense, they have taken for granted a subdued, modified version of the Descent model. Consequently, this conception cannot be totally rejected. However, it is important to stress that the logic of the pure Descent model has not been actively exercised during the non-citizen suffrage debates, as it would have otherwise extended to incorporate foreigners of Japanese ancestry. In sum, the expectations and findings of the research can be illustrated in the following table.

**Table 7 Expectations and Research Findings for Non-Citizen Voting**

<i>Hypothesis</i>	<i>Expectation</i>	<i>Finding</i>
<p><i>The Descent conception</i>  Hypothesis 2 (1): If the Descent conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that only those foreign residents who are of the Japanese ancestry should be enfranchised.</p>	O	X
<p><i>The Culture conception</i>  Hypothesis 2 (2): If the Culture conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that those foreign residents who are culturally and socially assimilated into Japan should be enfranchised.</p>	X	O
<p><i>The Belief conception</i>  Hypothesis 2 (3): If the Belief conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that those foreign residents who have consciously adopted Japan's distinct political principles should be enfranchised.</p>	X	O
<p><i>The Contract conception</i>  a) The state-centered variant  Hypothesis 2 (4a): If the state-centered version of the Contract conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that those non-citizens who perform military service should enjoy the right to vote.</p>	X	X
<p>b) The society-centered variant  Hypothesis 2 (4b): If the society-centered version of the Contract conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that those non-nationals who serve the community should be able to vote.</p>	X	O
<p><i>The Monetized Contract conception</i>  a) The state-centered variant  Hypothesis 2 (5a): If the state-centered version of the Monetized Contract conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that those foreign residents who contribute to the society by paying taxes should be entitled to vote.</p>	X	O
<p>b) The society-centered variant  Hypothesis 2 (5b): If the state-centered version of the Monetized Contract conception of political membership has been prevalent in Japan, the argument heard in the public debates would be that those foreign residents who contribute to Japan's economy through engagement in productive employment should have the right to vote.</p>	X	X

*Note: "O" corresponds to "yes;" "X" corresponds to "no."*

## **CHAPTER 6. CONCLUSION**

This thesis has conducted a disciplined analysis of political membership in Japan as seen through the lens of voting rights, utilizing the conceptual framework of political membership developed by Elaine R. Thomas. This conceptual framework includes five models: the Descent model, the Culture model, the Belief model, the Contract model (with its state- and society-centered versions), and the Monetized Contract model (also with its two, state- and society-centered variants). I have specifically analyzed two separate Japanese debates: one on overseas voting and the other on non-citizen minority voting inside Japan. Given the absence of any systematic analysis of this type before this thesis, my study constitutes an important first attempt in understanding the dynamics in Japan's polity-making as revealed in debates about voting rights.

To be sure, this project is only a preliminary study because it utilizes English translations of the Japanese material. Nevertheless, it has generated some significant findings. In the case of the overseas voting, it is evident that the discourse is grounded only in the first two conceptions identified in Thomas' analytical framework, that is, the Descent and Culture models. My data do not allow me to definitively conclude whether the Descent or Culture perspective was the driving force. However, a careful examination of the collected data indicates that the Descent model is not as obvious as one could expect. In fact, there were no explicit references to common ancestry during the public debates whatsoever. Yet, given that eventually all overseas Japanese nationals have been granted the right to vote, this model cannot be fully rejected, as it is possible

that common Japanese descent was taken for granted all along the way. In any case, while the Descent view cannot be fully discounted, the weight of the arguments favors the Culture model. As for the second case, despite the fact that state authority has tended to preserve the fixity of political membership, which expresses the Descent view, those forcing the non-citizen inside minority voting rights have overtly embedded their arguments in the Culture, society-centered Contract, and state-centered Monetized Contract ideas of membership in political collectivities. The Belief model finds also considerable support. I do not find clear and strong support for my hypothesis concerning the Descent model, which has clearly not been referred to by the advocates of non-citizen suffrage.

These findings are significant for the following reasons. First, given the conventional wisdom that Japan is ethnically homogenous, one would expect to find that the Descent model of political membership, which emphasizes the common biological ancestry, is the only conception that clearly fits with Japan. However, this inference from the conventional wisdom cannot be supported. My research findings reveal that the Japanese are not prisoners of this line of thinking about political belonging. Indeed, their views are rather diverse. Hence without conducting a proper analysis of the two cases, the conventional wisdom would lead us to incorrect conclusions, preventing us from understanding the complex processes in Japan's polity development.

Second, referring to the campaigns of the overseas Japanese and non-citizen ethnic, particularly Korean, minorities inside Japan to win voting rights, Nakafuji (1995: 77) has insisted that the "two types of movements are theoretically connected to each other; therefore, the success of one side will necessarily lead to that of the other. Both

movements are two sides of the same coin.” This is because, he has further argued, the “crux of the problem, after all, is not the law itself, but the ideology underlying the law, that is, the attitudes Japan has toward ‘others’ whether they are Koreans in Japan or overseas Japanese nationals.” And yet, my research has found that the two debates have actually generated diverse logics, producing so far very dissimilar results. In other words, in contrast to Nakafuji’s argument, the debates over voting rights for overseas Japanese nationals and non-citizen minorities have in the end not proven to be two sides of the same coin.

Third, as far as the comparative context is concerned, this thesis has found that the case of Japan is surprisingly dissimilar to that of South Korea, as far as the voting rights of the “marginal” are concerned. This finding is different from what one would have expected given the relatively high ethnic homogeneity of the two countries and their geographic proximity. But the public debates in the two countries have after all generated quite opposite results, with Korea clearly exercising more utilitarian arguments (i.e., those embedded in the Contract and Monetized Contract conceptions) and Japan being in contrast a more complex case containing strong references to identity-based arguments (i.e., to arguments that could be situated between the Descent and Belief models, emulating the Culture model in particular). In short, the findings of this research have a strongly counterintuitive character.

Consequently, there are three major implications of my findings. First, the utility of Thomas’ conceptual framework proves to be clearly substantial in light of my research findings. Using Thomas’ framework has allowed me to provide indirect but suggestive



support for the increasing consensus among contemporary scholars that contemporary citizenship is empirically complex and culturally variable.

Second, my research suggests that the method of examining political membership through the window of voting rights is a promising avenue for an in-depth analysis that can be explicitly conducted for other countries as well. Moreover, the implications of choosing the window of voting rights as opposed to immigration policy in examining the larger question of political membership in Japan are that the two approaches appear to have generated rather dissimilar findings. My research thus demonstrates that the large question of belonging within Japan's political collectivity needs to be further studied.

Third, given my finding that the case of Japan is very different from that of South Korea, possible hypotheses about this important gap should be developed in the future. For example, the findings relating to both the Japanese and Korean cases may imply that ethnic homogeneity may not have any direct bearings on the extension of the franchise. As for non-citizen voting in particular, these two cases cast a shadow on Earnest's (2004) argument pointing to the possibility of the geographic patterns of the emergence of voting rights for foreign residents. It remains to be determined whether the size of migration decisively influences the level of ethnic minority and overseas citizen incorporation into the political community. The level of economic development may also determine whether a country resorts to the identity-based or rather utilitarian arguments. Or perhaps the diversity and competitiveness within the party system might influence conceptual change in perceptions of political membership. The impact of these types of variables on national conceptions of political membership needs to be systematically explored.

Testing such hypotheses requires further analysis that incorporates primary language sources and includes other countries in the region, such as Taiwan. As far as the case of Japan is concerned, this project leaves open doors to inquiry on the historical transformation of Japan's imagining of political membership as seen through the lens of the right to vote.

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