Exploring the roots of Japan’s democratic tradition – and the challenges it faces today

This volume examines the careers and intellectual positions of three prominent Japanese “dissidents” in the later Imperial period: Minobe Tatsukichi (1873–1948), a constitutional scholar, Sakai Toshihiko (1870–1933), a socialist reformer, and Saitō Takao (1870–1949), an opposition member of Parliament. In particular, it follows the development of their thought and political activities as individual responses to the new forms of authority that appeared after the Meiji Restoration of 1868. The principles to which each adhered – respectively the rule of law, socialist egalitarianism, and representative government – contributed to the new ideas about authority and the individual in post-Restoration Japan. They also remain fundamental (at least in theory) in today’s Japanese polity and society.

The study reaffirms the serious limitations of Japan’s pre-war political system, its structural and institutional problems, and deep-rooted ambivalence about democratic change. But it also confirms the birth of an alternative tradition in which individuals began to define and sponsor the processes of national self-regulation. The book traces the perspectives of three such individuals who chose to contest the new power arrangements through their writings and political activities.

Although this is an historical study, the issues explored resonate with the situation in Japan today; once again there are signs that its politics are at an historical crossroads.
POWER AND DISSENT IN IMPERIAL JAPAN
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For my parents
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In any study of national governance the following question seems inescapable: is it possible to pursue national unity and free government simultaneously? How is it possible to find a balance between authority and the individual? The question is crucial for any society, particularly so with respect to the formation and evolution of government. Nevertheless political authority, either realised in the form of government or perceived as coterminous with the state, is primarily a construction of the perceptions and choices of a people, although history and tradition will give a particular hue to such constructed authority. In this study of Japanese conditions I hope to show how this abiding tension is present in modern Japan.

Absolutism and constitutionalism constitute complementary expressions of an informing dynamic. Hobbes, concerned with the restoration of social order in a period of civil war, endorsed absolute power. He proposed absolute submission to Leviathan, “an undivided sovereign power,” which might be one man or an assembly of men. Locke, on the other hand, denied absolute power. Lawmakers make laws, he says, but they also have to obey them. Locke asserts that legitimate government must have the consent of the governed.

Yet these contrasting views of legitimate political authority reflect a common concern for good government in the defence of intellectual and political freedom. Deeply sceptical about man’s ability to possess absolute knowledge, which itself was a strong defiance of the prevailing scholasticism of the time, Hobbes endorsed a strong state that could protect individuals from the influence exercised by the restored Church of England. Locke defended the political opposition mounted by Parliament against the rule of King Charles II. The contrasts reflect the social and political conditions of their times and the divergent results of a shared concern.

In our own era Jürgen Habermas has described the shift from absolutism to a civil society as a transformation in the “public” sphere. In his civil society, state authority is monitored and scrutinised through
traditions of open political debate and “a system of norms legitimated by public opinion.”1 Similarly, for Andrew Barshay, civil society is made up of people with “the commitment to open political process, to clarity in public matters, to freedom of thought and action.”2 At the heart of such a society is the vision of man as “a learning, creating and communicating being,”3 and belief in man’s ability to organise the common life. The emergence of such models of a civil society thereby signals a radical shift in our notions of social organisation and of man’s role within it.

On a cursory view it may seem difficult to detect the emergence of such a civil society in post-Restoration Japan. Yet the Restoration called into question the traditional hierarchical order, and awakened the individual to his potential empowerment. The dissemination of such awareness was, of course, uneven. And a certain kind of individualism had always existed, most obviously in the areas of aesthetic expression, in quotidian life philosophies such as the Shingaku (studies of the heart) movement, and in what Eiko Iekami describes as the “honorific individualism” of the samurai.4 At the same time many Japanese who were born after the period of chaotic transition certainly felt it increasingly difficult to assert their autonomy in the face of an intrusive government and the increasing regimentation of society.5 Nevertheless, the idea that the individual could clearly influence the way in which society was organised was now available to most Japanese. Thus what is truly remarkable about this period is its growing awareness not only of the inter-connectedness of society and the individual but also of the indi-

individual’s own ability to affect that relationship. Available now was a set of values and attitudes favourable to social renewal. Society was no longer a cluster of immediate and immutable conditions, but a system of institutions, agreements, and dynamic relationships. The post-Restoration years, in Douglas R. Howland’s words, were opening up “new spaces of experience and new horizons of expectation.” They saw “the creation of the intellectual and social space for a new public discourse.” One was no longer a product of a given social order but an active participant in social and economic sustenance and change. Despite its limitations and the forces of coercion ranged against it, this new awareness of personal autonomy, and the new relationship between society and the individual based on it, are the formative components of an emerging Japanese consciousness. Accordingly we can trace the beginnings of Japanese civil society to the outset of the Meiji Restoration.

The Restoration, however, appears to have ushered in elements of absolutism and a civil society simultaneously. How was this possible? And if so, what shifts in the public sphere occurred, and how was it transformed? This study assumes a radical metamorphosis in the Japanese public sphere and its transformation by the tensions of post-Restoration politics and social change.8

Indeed the tension between collective well-being and the rights of the individual, between unaccountable government authority and participatory democracy, is the leitmotiv of Japan’s modernisation. In

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8. In The Age of Visions and Arguments: Parliamentarianism and the National Public Sphere in Early Meiji Japan (2007), Kyu Hyun Kim examines political debate during the period of the Popular Rights Movement in the 1870s and 1880s, and introduces the notions of civil society and the public sphere in his analysis. Following Habermas’s conceptualisation, he focuses his analysis on newly created open forums such as newspapers, journals, public lectures, and academic and literary associations, as well as new prefectural assemblies and political parties, that enabled the people to participate in and discuss common affairs. My usage of the public sphere is in line with Kim’s.

However, unlike Kim who uses civil society mainly as a sociological or Hegelian term dissociated from liberal or democratic values, my usage of civil society emphasises the key assumption of liberal individualism that people can be free and equal and can take part spontaneously in the management of the affairs of their society. It therefore highlights the role of significant individuals in the promotion of the rule of law, the idea of equality, and representative government within the Japanese context. I also adhere to Habermas’s important characterisation of the public sphere as the site where organised power operates (see Habermas, The Structural Transformation of the Public Sphere, p. 24).
the evolution of Japan from a federation of han domains under the rule of the Tokugawa shogunate to a centralised modern state, this tension is central.

The tension is observable both at the personal and the national level, most notably in a drastic oscillation of social policy or thought, a feature common throughout modern Japanese history. Thus, on the individual level, Fukuzawa Yukichi, a staunch critic of traditionalist Confucianism and a champion of bunmei kaika (civilisation and progress), became an intractable imperialist in his attitudes towards the rest of Asia in the 1880s. The journalist Tokutomi Sohō and the philosopher-cum-bureaucrat Katō Hiroyuki, who each had worked to promote ideas of the common man and of inalienable rights, also began to take strong nationalistic positions late in their careers. Such shifts of allegiance are recognised by historians as highly representative of the Japanese elite of the period, and they epitomise the conflicts of the larger society.

The pull of contradictory forces is similarly marked in domestic policy. Thus in 1868 the Charter Oath and the repressive Five Board Notices coincide, in 1875 the promise to open parliament coincides with various press laws and laws to restrict political activities, and in 1925 universal male suffrage is contemporary with the Peace Preservation Law, a law used to oppress domestic opposition in the late 1920s and 1930s. The Meiji Constitution of 1889, as I hope to show, encapsulates such tensions very vividly. Simultaneous implementation of “liberal” and “oppressive” measures is a consistent pattern in post-Restoration Japan.

How to assess this tension influences the historian’s assessment of Japan’s modernisation. The so-called Japanese “Marxist” historians, whose views are influenced by those of the Communist International of the 1930s, tend to ignore the conflict, since they are more concerned with the authoritarian aspect of the Japanese state. The rigidity with which Marxist doctrine was applied means that it is rarely a guide to actual social conditions. On the other hand, the so-called modernisation school, which is more interested in Japan’s economic and industrial progress, also tends to underplay the tension. It claims that it was understandable to use oppressive measures to implement a liberal policy. It is

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political wisdom to implement “carrot-and-stick” measures, and Japan is no exception in this respect.

Both views, I think, are unsatisfactory. The “Marxist” view tends to ignore the diverse debate about forms of government that persisted throughout pre-war Japan until it was forcibly terminated in the 1930s. Instead, the conflict is subsumed into reductive accounts of the unregenerate “feudal” constituents of Japanese society. The interpretations of the modernisation school also have problems. When we assess Japan’s history, from the Meiji Restoration to the outbreak of the Pacific War, as one integrated sequence, the “political wisdom” argument seems more than a little threadbare: Japan’s experience highlights problems of government, as well as its benefits.

There seems, however, to be broad consensus that the pre-war Japanese state was indeed authoritarian. A key question is whether or not the social and political conditions of pre-war Japan could justify the operation of such a state and by what criteria. Also, when we discover that the very system that was created in the Restoration was inseparable from the rise of the militant state in the 1930s, it becomes necessary to examine the underlying trajectories of the Meiji polity. In my view the most effective way to expose Japan’s deeply divided political heritage is to listen to those who lived through the period, who, through their writings and political activities, were part of its collective conscience. This study consists of a close examination of the lives and careers of three post-Restoration radicals, in order to show how their thought and behaviour illuminate the larger problems of their society.

The work will therefore trace the thought and careers of three individuals, Minobe Tatsukichi (1873–1948), Sakai Toshihiko (1870–1933), and Saitō Takao (1870–1949), who all embraced creative political dissent in the milieu of post-Restoration Japan. Their adversary roles were largely shaped by the contextual forces which came into being in their lifetime. Confident that they were proposing better and necessary alternatives to prevailing orthodoxies, they were responding, in their respective ways, to the immediate conditions of a country and society which they found deeply problematic. Engaging profoundly with a troubled yet “living culture,”10 theirs was an attempt to define and realise new solutions to new disorders.

The three men were born shortly after the Meiji Restoration, and grew up during the period of Japan’s tumultuous transition from a semi-unified, insular, and largely agrarian country to a young nation-state with a strong mercantilist orientation, keen to find its place in the wider world. They became politically active in the early twentieth century when various organs of the state—such as the constitutional monarchy, a central bureaucracy, a national army and navy, new educational institutions, Parliament, and political parties—began to create a new institutional framework for intellectual enquiry and political activism. The fundamental questions they ask concern the new mechanisms of state and the grounds of obedience to these new forms of authority.

Their concerns were also exacerbated by the stresses of imposed industrialisation. For the rapid growth of a capitalist economy was creating new kinds of fissure within society, manifest in large-scale migration to the cities, radical changes in work patterns, and novel forms of exploitation. These problems, in turn, highlighted the questions of power, principle, and policy which all three men grappled with in this era of new disorder.

Nevertheless it must be said that the institutional reforms of this period, as Dankwart A. Rustow and Robert E. Ward point out, were also aimed at improved social provision, at “schooling for all children” and “a road into every village,” as well as “a tax out of every pay envelope.” These measures, taken together, helped to increase social mobility, expanded communication networks, and provided the population with new learning experiences. Most crucially the early Meiji leaders quickly abolished the traditional class system, the linchpin of Tokugawa rule. Such approaches, even if hard to implement in a short period of time, were nonetheless essential for the increased geographical and vocational mobility of the population, and Minobe, Sakai, and Saitō were all the beneficiaries of the new opportunities.

The availability of new forms of higher knowledge was also significant, thanks to the elite’s pragmatic eagerness to learn from the Western powers. Foreign travel became much easier, and foreign books became more easily available, although the former was still beyond the means of most Japanese. Our three subjects all benefited from this new environment. Minobe, a son of a doctor, travelled to Germany and England and

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became a law professor at the newly created Tokyo Imperial University. Sakai, son of a former samurai, became a socialist and one of the earliest interpreters and promoters of Marx’s work in the country. Saitō, son of a farmer, became a lawyer, studied at Yale briefly, and became an important member of Parliament. Exemplars of the new mobility, they were all from small provincial towns, had migrated to Tokyo for study, and then established themselves in the metropolis of a country which was then in the throes of radical political, institutional, and economic change (and of which they themselves were the conspicuous products).

Members of what the literary critic Katō Shūichi calls the 1868 generation, their common experience is replete with the signs of a transitional period. Products of the new internationalism, they were exposed to the contemporaneous “enlightenment” movement influenced by European culture and philosophy, and also witnessed the Jiyūminken Undō, the nationwide movement seeking the establishment of a national assembly. They grew up with a clear awareness that radical historical change was under way, and their sense of human agency was sharpened by personal experience, experience which became increasingly remote to later generations. In this way their social awareness was formed by the radical events they witnessed, which gave them a sense of entitlement they would maintain for the rest of their lives.

The three men became professionally and politically active around 1905, the year some historians identify as the beginning of the relatively liberal yet expansionist Taishō period. Minobe began to publish a series of articles that scrutinised the roles of key institutions of the Japanese state, including one which anticipates his quintessential Emperor-as-Organ theory. Sakai and his friends published a Japanese translation of The Communist Manifesto and were about to launch the country’s first legal socialist party. Saitō, who had returned from study in the United States a year earlier, began to write about contemporary political and legal issues and to think seriously about a political career while practising law in Tokyo. They thus began their life-long engagement with the nature and limits of power and the individual’s relationship with it on the threshold of a new era.

The next 35 years, however, saw their fortunes seriously fluctuate. Sakai’s socialism constantly pitted him against the government, and he was frequently imprisoned. This was particularly so after the so-called
High Treason Incident of 1910. But his reputation as a learned socialist scholar and grass-roots activist grew, and he was elected to the Tokyo city assembly in 1929 as a member of a proletarian party. He died in 1933 while campaigning against Japan's invasion of China. Minobe had a distinguished career as a law professor at Tokyo Imperial University. Prior to his retirement he was appointed a member of the House of Peers. However, his Emperor-as-Organ theory became prey to the nationalist upsurge in the 1930s, and in 1935 his major works were banned and he was forced to resign from public office. Saitō was first elected as a member of the House of Representatives in 1912, and successfully defended his seat for most of the next 28 years (he was out of office between 1920 and 1924). After the end of party government in 1932, Saitō, now in opposition, remained an outspoken critic of the military-led government. In 1940, at the age of 70, he delivered an uncompromising speech in Parliament in which he savagely attacked the government over the aims of its policy in the war with China (this despite earlier colonialist leanings). He was then dismissed from the House by his fellow legislators through an overwhelming majority vote. Shortly after his dismissal all existing parties dissolved themselves for the sake of national unity, a move now seen as an integral part of Japan's preparedness to initiate the Pacific War.

The careers of these three men are thus an extended commentary on the contemporaneous metamorphosis of the Japanese state and society. If Sakai’s career reveals a deep underlying cleavage between what those in power assume and what those subject to their rule think about the role of government, those of Minobe and Saitō expose the uneasy and by no means coherent agglomeration of organising principles and supporting institutions which constituted the Japanese state. Their contribution was to probe and reveal the flaws in these arrangements of power; some of these were inherent in that structure, while others were contingent on contemporaneous political and social circumstances. In this way the three men, through their actions, reveal both the particular and general problems of national unification and democratisation in the Japanese context of their particular moment.

The book is organised as follows. Chapter 1 documents the major developments in the structure of the Meiji State, starting with the
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Charter Oath, and covering the press and assembly regulations, the Constitution, the Peace Preservation Law, and universal male suffrage. The chapter is intended to describe and characterise the new forms of authority that appeared after the Meiji Restoration. Chapters 2, 3, and 4 discuss Minobe, Sakai, and Saitō, respectively. Chapter 2 deals with legal and constitutional debates concerning the post-Restoration state, Chapter 3 with its relevant socio-economic aspects, and Chapter 4 with the chequered trajectory of party politics in imperial Japan. Each chapter can be read independently. The fifth and final chapter is a brief overview of the three subjects’ contributions to the development of the Japanese body politic.

In this book Japanese words are romanised according to the modified Hepburn system. Macrons are used to indicate long vowels, as in hōritsu and jiyū. However, macrons are omitted in the cases of well-known place and era names such as Tokyo and Osaka, Taisho and Showa, and words commonly used in English language texts. Japanese names are given in the Japanese order, i.e. the surname preceding the personal name. However, when works written in English are cited, the order natural to English is preserved. Kokkai (the Japanese national assembly) is normally translated as the Diet in English, based on the official translation of the Meiji Constitution. However, Parliament, not Diet, will be used throughout the book for semantic clarity, unless I am quoting official documents.

In preparing this work, I have been assisted by many people as mentors, colleagues, friends, librarians, and students, in particular those at the Universities of Edinburgh and Durham, and by those I met at various conferences and seminars outside those institutions. I am especially grateful to the following for their continuous support and exemplary insights: J. A. A. Stockwin, Don Starr, Ian Astley, Kweku Ampiah, Shimabukuro Jun, John Weste, John Crump, John and Margaret Halstead, Strace Wheeler, Tessa Carroll, Gina Barnes, Helen Parker, Paul du Plessis, Anne and Robert Collins, Sasamoto Kiyoe, Minami Takanori, Iwatani Jūrō, and Andō Toshihiko. Special thanks go to Angus Collins, who assisted me in revising the manuscript at innumerable times with incredible patience and clarity of mind.

Their support notwithstanding, I am solely responsible for the work as it now stands.

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CHAPTER 1

The Post-Meiji Restoration: Modernisation and the Rise of the Authoritarian State

MODERNISATION, THE NEW INDIVIDUALISM, AND DISCRETIONARY POWER

In his well-known account of “the system of irresponsibilities,” Maruyama Masao gives a provoking analysis of the problems of the modern Japanese political system. Maruyama was concerned with the rise of militarism and xenophobic nationalism in the 1930s. In his 1949 essay Maruyama analyses both the “psychological” and “institutional” problems of the political system that resulted in the rise of the militaristic state. For him the absence of accountability is the key to both types of problem.1

Maruyama links the system of irresponsibilities to the coercive powers of obligation. Obligation takes precedence over personal responsibility. The hierarchical structure in which the sense of “obligation” is the major commanding force results in a fragmented and arbitrary structure of authority. In this sense, constituent “publics” are by no means created by “informed and critical discourse by the people,” but are the creatures of “hierarchy.” In this hierarchical structure, autonomy is lost, and one becomes subject to “blind outside forces”: the casualties of such forces are objective vision and effective leadership.

Thus, in his account of Japan’s war-time leadership, Maruyama highlights the breakdown of the system, in which the Army and the Navy were constantly at odds, as within the Army were its War Minister and the General Staff Office (Sanbō Honbu). The Navy was also beset by similar problems. Clearly present here is a condition of deep institutional malaise, factional inertia and incoherence. Yet Maruyama does not con-

cern himself only with the flaws of institutions, but instead also tries to identify the source of the problems in Japanese traditions. His approach is understandable, since he is essentially concerned with norms of behaviour: obligation colludes with and exacerbates the abuses of power.

Crucially, however, while Maruyama is highly attentive to the politics of social norms, he pays scant attention to the politics of the popular will. Thus although the Meiji Restoration was by no means a popular revolution, the question of how to bring the people into the national structure was a major concern for the political leaders from the very beginning. Even so Maruyama most articulately identifies the key features of modern Japanese political conflict, the recurring clashes between those seeking concentration of power (statism) and those seeking public support (“liberalism”). In his view “sonnō jōi” (revere the emperor, expel the barbarians) and “kōgi yoron” (public debate and opinion) are the two key doctrines behind the Meiji Restoration, and their interaction shaped post-Restoration Japanese politics and society as if they were “two main themes that recur alternately in a sonata.” However, Maruyama does not fully assess the role of the people to explain the origins and evolution of the resulting tension. Instead he identifies the early Meiji leaders as promoters of “liberal elements” and assesses Japan’s descent to militarism as the gradual overtaking of the liberal tradition by “authoritarian elements” in the 1930s. He does however recognise the early Meiji leaders’ attempts to suppress the Jiyūminken Undō, the movement for popular rights, as marking the beginnings of an absolutist regime, and says that this regime initiated “the various symptoms of political disintegration.” An ineffectual Parliament then led to “the pluralism of political power,” which he calls the “original sin” of modern Japan.

On the other hand, Maruyama’s assessment of the early Meiji leaders is largely favourable, in that he sees their diverse experience, social commitment, and general leadership qualities as desirable requirements. Thus the system of irresponsibilities loomed large when “the autocratic sense of responsibility receded; and no democratic sense of responsibility arose to take its place.” Nevertheless it is difficult to assess

4. Ibid., p. 128.
Maruyama’s position without paying attention to the leaders’ perceptions of the people, how they responded to their presence, and how they attempted to exercise and justify their authority. The early Meiji leaders were both oppressors and reformers, and any attempt to explore the divisions Maruyama defines must attend to the shifting relationships between people and power.5

This study is deeply indebted to Maruyama’s work, but I will use the concept of “discretionary power” instead of “irresponsibilities” in order to emphasise systemic and institutional deficiencies. By discretionary power, I mean executive power exercised without legal constraints, although the very meaning of “legal” requires further clarification. Except for a few comments here on the origins of the concept, I will reserve exact definitions of the modes of constraint for my discussions of the three people in this study. I will, however, assume that resistance to such power itself constitutes an attempt to form a civil society.

The concept of discretionary power has much in common with ideas of the absolute state as used by Marxist historians since the 1930s to describe political conditions in post-Restoration Japan.6 Like many concepts associated with Marxist historiography, such absolutism has been criticised by later generations of historians as too rigid to describe the diverse social, political and economic aspects of the imperial period (1868–1945). Thus I prefer to use the term discretionary power as both

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inherently more flexible and therefore more helpful to describe the different aspects of non-accountable power conventionally associated with the Japanese state. Furthermore, this more descriptive and conceptually narrower term will allow us to trace more precisely changes in the forms of authority and in the people’s engagement with them, and to engage more fully with the related transformations of Japanese civil society.

Thus although my primary concern here is with individual responses to authority (and Japanese statehood), I wish at the outset to outline some of those forces which prompted, in time, a tradition of opposition to the centres of power. That tradition is rooted, in a highly visible fashion, in responses to discretionary power. For Japan’s “coerced” modernisation not only required discretionary power in government but also resulted in an institutionally fragmented government, in an ideologically authoritarian state, and a tradition of creative resistance. The implicit but continuous focus of this study is the response of the new social and civic individualism, awakened by the Meiji Restoration and by the subsequent socio-economic and political changes, to the emergence of the new Japanese state.

How, therefore, does the concept of discretionary power help us to understand the problems of Japan’s nation-building? To answer the question, English constitutional history provides us with useful insights. Thus A. V. Dicey, speaking of the English situation, defined the discretionary powers of government as “every kind of action which can legally be taken by the Crown, or by its servants, without the necessity for applying to Parliament for new statutory authority.”

The great merit of the English constitution was that it put “a legal check” on the exercise of discretionary powers, shifting power from King to Parliament. From this process emerged “the two guiding principles” of the English constitution: the sovereignty of Parliament and the rule of law. Moreover the sovereignty of Parliament was linked to that of the electorate and of the people, and thus it represented the nation. The rule of law was synonymous with the authority of the courts. Thus the two principles were fundamental to the operation of English society: emphasis on general (public) agreement and equality under the law. “If the sovereignty of

Parliament gives the form, the supremacy of the law of the land determines the substance of our constitution.”

Dicey, however, suggested several problems inherent in discretionary power by pointing out what would happen if the two principles, the supremacy of Parliament and the rule of law, were breached. One problem was that discretionary powers would undermine free government. In this respect discretionary power was potentially antagonistic to legal equality.

The rule of law, which preserves equality under law, derives from the tradition of common law. Whoever exercises power, he or she is subject to possible conflict with ordinary common law, if he or she violates it. In principle, common law does not discriminate between the holder of power and his subjects. “In England the powers of the Crown and its servants may from time to time be increased as they may also be diminished. But these powers, whatever they are, must be exercised in accordance with the ordinary common law principles which govern the relation of one Englishman to another.”

Thus legal equality works as a check on any collective action. For instance, the presence of a standing army potentially contains a tension between national independence and free government. Dicey says, “With a standing army the country could not, they feared, escape from despotism; without a standing army the country could not, they were sure, avert invasion; the maintenance of national liberty appeared to involve the sacrifice of national independence.” England solved this problem by means of the supremacy of common law. Army law was subject to common law so that the soldier (in theory) must be a citizen first and a soldier second. Conflicts of loyalty were meant to be resolved by resort-

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8. Ibid., p. 471. Dicey here expresses the basic idea of constitutionalism that the exercise of power should be constrained by prescribed normative rules. This idea was introduced to Japan at the time of the Meiji Restoration through the translation of such works as J. K. Bluntschli’s Allgemeines Staatsrecht of 1863. The first volume of the third edition of Allgemeines Staatsrecht was translated into Japanese by Katō Hirokazu and published by the Education Ministry in 1872. Part of Katō’s translation and the German original are included in Nihon Kindai Shisō Taikei (hereafter NKST), vol. 15, Honyaku no Shisō, ed. Katō Shūichi and Maruyama Masao (Tokyo: Iwanami Shoten, 1991), pp. 43–90. Dicey’s own work was translated into Japanese as early as 1889. See Dendo Shin’ichirō, “Gikai Seijika kara mita Shukensei to Tennō—Saitō Takao no Kenpōron,” Nihon Seiji Kenkyū, vol. 3, no. 2, 2006, p. 60.


10. Ibid., p. 298.
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ing to what David Dyzenhaus describes as a “regulative assumption,” a practical schema for functional and collaborative government.11

By contrast Japan took exactly the opposite course, separating the military from the larger community.12 Bureaucrats were also deliberately isolated from the public sphere. In these areas notions of general accountability were neither encouraged nor established in precedent. In these and other ways Japan’s modernisation failed to create a public arena where the people as a whole could pursue a common agenda: legal equality as a universal principle did not apply.

Dicey also emphasised that discretionary powers tend to undermine governmental legitimacy. Who, for example, authorises the collection of taxes? Who legitimately distinguishes the army from a private militia? The answer to both questions is Parliament. Parliament has the ability to transform private activities into public ones. What distinguishes the tax collector from the thief is that the former’s act is endorsed by Parliament and the latter’s is not. This mandate of Parliament derives from the concept of popular will. The will of the people is hard to define, Dicey acknowledges. Yet in his definition, Parliament as an institution, elections as a means, and the people as a principle are combined to give the concept of general acceptance a real political function. Discretionary powers without such backing are always vulnerable to the alienation of the larger society.

Thus for Dicey the exercise of discretionary powers without perceived general acceptance can erase the forms of constitutional government. Here the system of irresponsibilities formulated by Maruyama highlights how a cluster of political institutions, including that of the emperor, the military, and the bureaucrats, worked in the absence of a containing political structure. Maruyama attributes the cacophony of institutions to the dominant psychology of obligation, as we have seen, and also to the disappearance of central authority due to the retirement of the early Meiji oligarchs. Yet, as Dicey demonstrates, discretionary powers can lead to institutional problems, because they undermine

public will, which provides constitutional government with its form, legitimacy, and direction.

Dicey argues therefore that just as a political community needs rule-making power, so should this power be subjected to both practical and ideological constraints in order to mitigate abuse. And if the community is to become self-regulatory, it must be able to produce and sustain the forms of constraint. To ensure this process, freedoms of speech and assembly are essential. It is not enough that political power is limited, but it must be allowed to assume accountable form. This is the crux of Dicey’s constitutionalism.

It may appear not entirely appropriate to apply Dicey’s ideas to post-Restoration Japan, where there was no national assembly nor a legal profession that could speak independently for the rule of law. However, Dicey provides an overarching perspective that remains enduring. For a truly free government is self-regulatory by nature, and it is able to create and sustain constraints on its own behaviour. The exact forms of constraint will depend on the political, historical, and cultural conditions of the community. Yet regardless of such differences, self-regulating constraints must be created internally. The task of devising such constraints became especially pressing for the Japanese when the new forms of public power began to dominate the common life in the years after the Restoration.

Of overriding importance, however, was the perceived need for prompt modernisation. The “late comer” theme is not just an interpretation given by historians, but was also amply used by the Meiji leaders to carry out reform, and then to suppress political opposition. To catch up with the West speed was considered crucial. Yet this justification, pragmatic or otherwise, made on the assumption that the country was in a state of permanent emergency, was also responsible for the further skewing of relations between authority and the individual. “Principles” were often sacrificed to “necessity,” and “necessity” tended to be defined by those in power. But such collective self-justification also began to collide with domestic and international realities, with the emergence of a pluralistic society at home, and with nationalism in various parts of the world after World War I. As we will see, successive governments responded to the gap between “necessity” and contingency with various
compromises. Yet those compromises tended only to involve the further use of discretionary power.

Discretionary power therefore was crucial for Japanese governments to carry out drastic reform, but it was also responsible for the fatal undermining of reform. In the remainder of this chapter I will trace the process by which the various discretionary powers were created, and which, by the 1930s, led to the subversion of the ideals of the Meiji State.

THE CHARTER OATH AND THE FIVE BOARD NOTICES: PROMISE AND BETRAYAL

National unity and social progress were the key principles under which the Meiji leaders initiated radical social and political change. The participation of the people was recognised as crucial to build a new political community and was emphasised through various “egalitarian” measures. At the same time the people had to be “controlled.” Despite their “enlightened” ideas, the early Meiji leaders, without a solid power base, had to rely on various discretionary measures, which included a reinforced role for the military, arbitrary edicts, and newly impressed “national” symbols, in order to consolidate their authority. This section aims to locate the origins of these discretionary measures and to demonstrate that the conflict between national unity and free government was present from the outset.

The Meiji Restoration is inseparable from the global situation in the early nineteenth century. Growing industrial activities in major European countries, such as Britain, Russia, and France, fanned commercial ambition and technological development, particularly in navigation, and fuelled the search for markets abroad. “The state” became a major organ in the support of private enterprise.13 This nineteenth-century weltanschauung, in which nations competed with each other through trade backed by a strong military, dominated the world until the end of World War I. It was these material arrangements of power, and the concept of the state based on them, which inspired the Meiji leaders in their quest for national unity and reform.

However, the degree to which the Meiji Restoration was initiated by domestic causes as well as by international influence has been one
area of contention among historians.\textsuperscript{14} It is true that the prevailing \textit{bakufu} system was under attack from all fronts in the early nineteenth century. Farmers’ and city dwellers’ protests became more common. Each domain, as well as the Tokugawa government, was struggling to make ends meet. The fact that the early Meiji leaders came from peripheral but economically and politically self-sufficient domains, such as Satsuma, Chōshū, Hizen, and Tosa, also suggests the importance of domestic factors. It was these relatively young low-ranking samurai who, through their own experience of dealing with their domain affairs, came to understand “the wealth of society” and directed the country into an utterly different political system.

Nevertheless it was international influence, and the leaders’ understanding of the global situation, that shaped the major characteristics of the Meiji reform. The arrival of the U.S. naval squadron led by Commodore Perry in Tokyo Bay in 1853 triggered volatile and intense debate inside the country about alternative forms of government. In 1854, the Tokugawa government signed a friendship treaty with the United States, which was followed by similar treaties with Britain and Russia, ending the country’s 200 years long international isolation. The opening up of the country resulted in economic and political instabilities, and fuelled anti-foreign sentiment. Indeed, until around 1860, foreigners were often targets of attack by anti-foreign samurai. Yet those anti-foreign patriots often became pro-foreign when they witnessed at first hand the military and technical might of the West. Ōkubo Toshimichi, Kido Takayoshi, and other future Meiji leaders were all initially anti-foreign. But their contact with the West converted them to belief in co-operation. Ōkubo saw Kagoshima, the capital of his domain, bombarded by British ships in retaliation for the murder in 1863 of a British merchant by a samurai of his domain. And the following year Kido witnessed the major port city of his domain, Shimonoseki, under attack by ships from Britain, France, the United States, and Holland. Such experiences were decisive.

Contact with China also reinforced the perceived need for national unity. Takasugi Shinsaku, one of the early revolutionary samurai, who in

1863 organised samurai–farmer garrisons in his native Chōshū domain, went to Shanghai in the previous year. The Chinese city had become one of the first treaty ports after the first Opium War of 1839–1841, and Takasugi witnessed China’s “colonisation” by the West. He saw the Qing Dynasty attacked both from within and without, the domestic chaos caused by the Taiping Rebellion of 1851–1864, and the poor living conditions of indigenous Chinese exploited by the Western powers. For him national unity became of utmost importance.

These revolutionaries came to realise that the country needed a new political structure that would be independent and internally secure. Regardless of whether the Western powers did or did not have aggressive intentions, they saw the West both as a genuine threat and as a model of a new society. Hence the 15-year period of domestic unrest that followed the signing of the friendship treaties was also a period of diverse debate, albeit taking place privately, about alternative forms of government. Ideas about international law, republicanism, constitutional government, and the role of parliament, were all introduced during this period, and culminated in the Charter Oath of 1868, the first constitutional text issued by the Meiji provisional government. Thus began the search for a new society: for these leaders, “the state” (kokka) was both a political vision and a practical necessity.

Ideals, however, clashed with realities. The Meiji government not only lacked a solid power base, but had instrumental fragility. The composition of those who gathered around the emperor and ousted the Tokugawa government in the Ōsei Fukko coup d’etat on 9 December 1867 was highly diverse. They included court officials, young samurai in anti-bakufu domains, and their lords. They had varying attitudes towards modernisation and foreign influence, and included both Western-educated “reformers” and students of nativism (kokugaku) with strong anti-foreign sentiments. Yet they were united in their belief that the

15. Although some Japanese knew about the British parliamentary system through Dutch sources as early as 1789, the Chinese defeat in the Opium Wars and the increasing presence of the Western powers prompted interest in Western political systems in general. See Asai Kiyoshi, Meiji Rikken Shisōshi niokeru Igirisu Kokkai Seido no Eikyō (Tokyo:Yūshindō, 1969).
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Tokugawa government had lost credibility in the running of affairs in the face of Western threats. Their conflicts, however, soon became visible.16

Many in fact were still involved in civil war with the pro-bakufu forces, as well as engaged in their own internal wars of adjustment. Furthermore military victory could only partially legitimise their rule. Hence military victory had to be consolidated by means of new “national” symbols and decrees. The latter were important tools not only for preventing social disorder but also for discrediting their opponents. Yet even as the Meiji leaders promoted the concepts of a united nation, imperial government, and a convenient “public” so as to buttress their own authority, so also did they attempt to calm their own fears. In devising the blueprint of a new order they were also attempting to accommodate themselves to their own actions: the plethora of their public statements suggests both unease and reformist zeal.

The extraordinary number of edicts issued by the Meiji provisional government reflects the clash between ideals and “necessity,” as well as defining the tension between national unity and accountable government. In 1868 alone, the government issued 1,171 officially recorded edicts and administrative instructions.17 These pronouncements can be divided roughly into two groups; one intended to legitimise and construct the new government, and the other to maintain social order. Most important and representative of the first group is the Charter Oath, and that of the second the Five Board Notices.

The two documents were issued almost simultaneously, just four months after the Restoration. They are markedly different in character, but


18. The Charter Oath and the Five Board Notices are included in Hōrei Zensho, vol. 1 (Tokyo: Naikaku Kanpōkyoku, 1867, reprinted by Hara Shobō, 1974) as Decrees No. 156 (14 March) and No. 158 (15 March), respectively. These numbers were added by the editors of Hōrei Zensho, and are not the numbers officially assigned to the decrees, as the practice of numbering laws and edicts did not start in Japan until 1872. See Yamamuro, “Hōrei Zensho to Hōki Bunrui Taizen,” pp. 33–4.
one being of a constitutional nature and the other a brief criminal code. They were in fact intended for different audiences. The former was for the political elite, such as court officials and heads of the han domains, and was promulgated through an elaborate court ceremony. The latter was for the general public, and was issued through a traditional way of disseminating decrees to the public, erected street boards. Both reflect the Meiji leaders’ urgent need to proclaim their authority, and reveal the dilemmas they faced in legitimising their rule.

The Charter Oath is a five-article text, presented as the emperor’s pledge to the “gods.” Its first article reads: “Assemblies shall be widely convoked and all measures shall be decided upon by open discussion.”¹⁹ The article asserts a new political authority backed by “kōron” or public debate. The public in this case is a limited one, as the rigid status system of the Tokugawa period is still in place. Yet the article clearly announces a new departure for it entails the denial of the domain system, the key foundation of the Tokugawa government.²⁰

The second article asserts that “The government and the governed shall be of one mind, and the national economy and finances shall be greatly strengthened.” It emphasises the importance of economic development, reflecting the Meiji leaders’ desire to make the country not only militarily but also economically strong. It calls on “high and low” to be united to promote financial activities and the economy. The idea of Fukoku Kyōhei [Enrich the Nation, and Strengthen the Military], which will become the key slogan of modernisation, is already prominent.

¹⁹. This English translation is by Nobutaka Ike, The Beginnings of Political Democracy in Japan, (Baltimore: The Johns Hopkins University Press, 1950), p. 36. Several English translations are available, W. McLaren’s version perhaps being the best known (“Japanese Government Documents,” Transactions of the Asiatic Society of Japan, XLII–1, 1914). Yet McLaren’s translation is less clear about Article 2, in which he translates “keiron” as social order. “Keiron” is diverse in meaning, but I agree with Ike in his emphasis on the economic implication.

²⁰. This assertion may be contested, however. The Charter Oath underwent several revisions. Yuri Kimimasa of the Echizen domain wrote the first draft, which was revised by Fukuoka Takachika of the Tosa domain. Fukuoka’s draft was revised by Kido Takayoshi of the Chōshū domain and Kido’s version became the final text. Fukuoka’s draft includes the phrase “rekkō kaigi o hiraki” (an assembly of han lords shall be convoked). Robert Spaulding speculates that Kido himself left the phrase unchanged but it was replaced with “hiroku kaigi o okoshi” (assemblies shall be widely convoked) only under the influence of Iwakura Tomomi, a court noble. See Robert Spaulding, “The Intent of the Charter Oath,” in Studies in Japanese History and Politics, The University of Michigan Press, 1967, p. 7.
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Thus the Charter Oath is a radical political statement which denounces the existing system as “absurdist habit” (rōshū), and elevates the emperor to lead this “revolution.” The emperor is presented as a champion of modernisation. Thus Article 4 reads: “All absurd customs of olden times shall be abandoned, and all actions shall be based on international usage.” And Article 5: “Knowledge shall be sought for all over the world, and thereby the foundations of Imperial rule shall be strengthened.” The abiding message is the need for national unity so as to make Japan a modern state, and the reason for this is that the country is in such a parlous condition that it requires “unprecedented reform.” To carry out such reform, the spirit of national unity must be exerted, and the state the writers envisage is fairer and better because it is dictated by kōron, public debate.21

The Five Board Notices, on the other hand, are clearly repressive. They evoke the “old” morality and regulations issued by the Tokugawa regime to maintain social order. They contain seven regulations, three written on one board, and each of the remaining four on one board. The first three orders relate to the observance of the five cardinal rules of Confucianism,22 and advocate compassion for the weak and those who have lost their spouse, and outlaw murder, arson, and other criminal acts. The fourth ban is on organised political protest and on fleeing from the land. The fifth ban is on Christianity, and the seventh ban is on leaving one’s own han domain. The sixth ban on violence against foreigners complies with the country’s opening up to the rest of the world. The Five Board Notices are an expression of the Meiji leaders’ strong concern for the maintenance of social order, and they are among a number of such regulations conceived with this end.

Thus the Charter Oath and the Five Board Notices appear at odds with each other, calling for the acceptance of “universal” law on the one hand and tight domestic control on the other. Typically, the ban on the dissemination of Christianity in the Five Board Notices contradicts the

22. The five cardinal rules of Confucianism are loyalty to one’s master, close relationship between father and son, different roles for husband and wife, the importance of seniority, and trust between friends.
Charter Oath’s internationalism; it met with immediate protest from Western countries, and was lifted in a few years.

This seeming duality, with openness and oppressiveness in uneasy relation, is a major characteristic of the decrees of the Meiji provisional government and occurs in other sections of the texts as well.

Thus the ban on free movement in the Five Board Notices comes with a memorandum which encourages the people to speak up if they have a complaint to the government. This is a repetition of similar decrees issued in the previous months in the same year. Yet the pattern is the same, simultaneous endorsement of a kind of freedom of speech and a ban on free movement. The duality again reflects the Meiji leaders’ radicalism and their simultaneous need to maintain social order.

At the same time, the duality reflects their political awareness that they need to win support to legitimise their rule, as well as their private difficulties in dealing with legitimacy. They are leaders of their own domains who have organised lower-class samurai and even farmers to challenge the Tokugawa authority. They know the power of “the masses,” since they have exploited it for their revolutionary cause. Hence Article 3 of the Charter Oath gestures at participation by asserting that “civil and military officials as well as the common people shall achieve their aims, and thus the people’s minds shall not grow weary.”

Yet their attitude towards the people is ambivalent, and their encouragement of free speech is far from complete. So in the following month a censorship decree appears which makes official permission necessary for book publication. Censorship of newspapers follows almost immediately. The innovations of the Restoration have the all too familiar despotic character of revolution: enforced change is accompanied by assertive authority.

Nevertheless egalitarianism was also a key characteristic of the Meiji provisional government. In the early Meiji period state and society were often interchangeable concepts. Both represented an ideal community, independent externally and united internally. Yet in both, the people formed an indispensable part. This new vision of society, with the

23. These include Decree No. 86 (9 February) and Decree No. 137 (4 March), both in Hōrei Zensho (1868).
24. Decree No. 358 (28 Intercalary April) in Hōrei Zensho (1868).
25. Decree No. 451 (8 June) in Hōrei Zensho (1868).
Charter Oath stressing national unity based on individual commitment, suggested that all were “equal” under the emperor’s leadership in the country’s striving for modernisation. And this emphasis on a new public went beyond rhetoric, as the new government removed various status regulations that had been the mainstay of the Tokugawa regime. Thus the abolition of the domain system in 1871 was preceded by a decree to abolish the titles kugyō (court nobles) and shokō (han lords) on 14 June 1869, and by a decree to abolish the titles tai, fu, and shi (assigned to various ranks of samurai) on 2 December 1869. This in turn was followed by a decree to abolish the status of eta and himin (outcasts) on 28 August 1871. The classification between former samurai and commoners remained in the koseki system of household registers introduced in 1871, but they were now allowed to intermarry.

The removal of these barriers was not, of course, purely ideological. A centralised government required a tax-paying people, and a people who would accept national conscription. Obstacles to commercial activities had also to be removed. Households, not individuals, would replace the rigid status system as the basic unit for administration. Nevertheless, an emphasis on egalitarianism, together with the new internationalism, was the unquestionable undercurrent of Japan’s modernisation. Each egalitarian measure met with sectional resistance, and the Meiji leaders had to rely on the emperor’s newly acquired authority. They also enjoyed other advantages, such as a monopoly of technology and the ability to assemble capable personnel, so as to consolidate their power. Yet it was this emphasis on equality and their own assertion of fairness that legitimised their government. Discrimination remained, but the idea of an equal society transformed Japan and unleashed a more mobile society, nurturing such grass-roots activities as the political rights movement Jiyūminken Undō in various parts of the country.

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26. The classification was abolished in 1914.
27. Egalitarianism was also promoted by such intellectuals as Fukuzawa Yukichi. The first volume of his Gakumon no Susume became a best-seller in 1872.
28. “Parliamentarians consistently invoked kōgi yoron to justify their demands that the Meiji state establish a national assembly. ... It was the notions of representation and participation in national politics that held the widest appeal” (Kim, The Age of Visions and Arguments, p. 445). Kim uses kōron and kōgi yoron interchangeably to denote public opinion. However, kōron for public debate and kōgi yoron for public opinion should not be confused with each other, although Kim is right to bring out the overlapping meanings of the two which were effectively exploited by jiyūminken activists.
emphasis on equality is one reason why in its early years the Meiji State as a political structure was never fundamentally challenged, despite its institutional problems as seen in the Constitution. For even opposition to government constantly returned to the Charter Oath, and future governments would be criticised for betraying the promises made by the Restoration ideals.

However, the central divide in government policy was already apparent. Political leaders were aware that they needed to win public support in order to legitimise their rule. At the same time they had to suppress opposition. Their seemingly self-contradictory aims were especially discernible in the introduction of various press laws and other laws to restrict public meetings, and it is to these less open aspects of government that we will now turn.

EXTENSION OF DISCRETIONARY POWERS: PRESS AND ASSEMBLY LAWS

The tension between national unity and free government in post-Restoration Japan is nowhere more apparent than in the many measures introduced in order to regulate freedom of the press and assembly. Indeed such regulations played a central role in the “administration” of the people by successive governments in pre-war Japan. The origin of those regulations was already present from the beginning, as seen in the Five Board Notices. Yet as Japanese society became more pluralistic, the task of incorporating the people into the political system while containing dissent became more complex and strenuous.

This section seeks to demonstrate how successive governments introduced various public measures in order to quell their political opponents. And when dissent became more vocal, the language in these regulations became more inclusive, thus more discretionary. The regulations were always repressive however, and they were targeted at people who those in government saw as a major threat to their rule. At first they were designed to quell jiynmen activists seeking popular

rights. But when Japanese society became more “industrialised,” the primary targets became labour and tenant activists and socialists. Yet even these regulations could not stifle the emergence of a pluralistic society entirely. For they acknowledged the forces of “civil” society even as the authorities were driven to increased use of arbitrary executive power. At the same time the evolution of these regulations from those targeting individual opponents to those designed to prevent and contain any potential opposition reveals the inner trajectory of the Japanese state, from an authority fragile at the outset to an authority increasingly able to curb and define individual activity.

For the newly assembled government, the need to create national unity required a mechanism for disseminating policy across the community. Thus it introduced its official gazette on 20 February 1868. A decree issued shortly after described its aim as the dissemination of the government’s goals and intentions “throughout society,” including isolated rural communities and people both high and low.30 Yet information detrimental to government policy had to be controlled. Thus a censorship decree appeared in Intercalary 28 April 1868, which made official permission necessary for book publication. Newspaper censorship, as we have seen, quickly followed. This pattern, in which publication is “encouraged” while criticism of government policy is banned, is present in a number of subsequent regulations.

Representative is the first press ordinance introduced in 1869. Newspapers were then expected to play the role of a contemporary encyclopaedia, disseminating technology and new ideas. Their publication was encouraged, although prior permission was required. An article in the 1869 regulations says: “Natural disasters, prices, policy and regulations, military affairs, fires, marriages, births and deaths, arts, banquets, clothing, food, various government notices, translations from Western books, and events abroad. Everything, which is not injurious to society, should be reported.”31 At the same time, opposition must be

30. Decree 217, issued on 5 April 1868.
discouraged. Thus, “policy and regulations” in the article is followed by a parenthesised ban on “flippant criticism.” “Military affairs” has a parenthesised warning that the publisher will be punished if the newspaper carries inaccurate information and has not rectified it.

Nevertheless the government actively promoted the publication of newspapers. The *Yokohama Mainichi Shinbun*, which is considered to be the first modern-format daily published in Japan, was founded in 1870 with the support of the then governor of Kanagawa Prefecture. The government also bought copies of the newly launched newspapers to distribute them across the country.32

This delicate balance between the need for publicity and the need for control is also discernible in the *shinbunshi jörei*, new press regulations introduced in 1871. These encouraged the publication of newspapers as a means to enlighten the people. One regulation advises that newspaper articles should not be written casually and without factual evidence, but also should not be too difficult for ordinary people to understand. Other regulations ban criticising government policy, and disseminating heresies (*isetsu*) that may confuse the people.

Full control of the media, however, is clearly not possible, unless there is only one newspaper which is a government gazette. Plurality of newspapers inevitably means diversity of opinion. Thus from about 1873 on newspapers began to discuss politics more critically.33

In that same year the encouragement of publication remains present in new regulations issued on 9 October. Article 7 of these regulations ensures that newspapers can carry articles about any subject unless it is injurious to society. Yet regulations intended to ban criticism increase. Now the concept of the state (*kokka*) is crucial for the government to defend its policy against its critics. Thus Article 12 says: “Newspapers should not discredit national polity (*kokutai*), criticise principles of the...
nation (kokuritsu), and advocate laws of other countries so that enforcement of the laws of the nation (kokuhō) will not be hampered.” The article reiterates the concept of the state in newly institutional terms in order to label criticism of government unpatriotic and treasonable. Government leaders, still feeling the fragility of their authority, increasingly resorted to ideological persuasion and the language of coercion.

As we will see, this fragile co-habitation of a free press and state control was severely damaged when the Jiyūminken Undō became a real threat to the government. The Meiji government had already been in serious disarray, and after Itagaki Taisuke and other leaders resigned in 1873 over Japan’s relations with Korea in the Seikanron dispute, Kido Takayoshi, another major figure in the original formation, left office in 1874 in protest at the government’s decision to send troops to Taiwan. In 1875, they were persuaded to return. Yet a serious rift remained, this time between Kido and Itagaki about the timing of introducing Parliament.

Behind Itagaki, there were growing grass-roots calls for Parliament’s prompt introduction. In response the government issued an imperial rescript in April 1875, promising that Parliament would be introduced in the future. This promise encouraged the Jiyūminken Undō further. While Itagaki, Kido, and other government leaders were debating about a future plan, a group of local suffragist activists circulated a petition urging the government to introduce popularly elected local assemblies. Some local bureaucrats also supported the group’s plan at a meeting organised by the government (chihōkan kaigi) in June.34 Alarmed by this and the growing support for the Jiyūminken Undō, the government pushed through two new regulations intended to quell their voices, an ordinance against slander (zanbō ritsu) and new press regulations (shinbunshi jōrei), later in the month.

The zanbō ritsu and the shinbunshi jōrei were both issued by the Dajōkan, the central administrative body that existed between 1868 and 1885. A mere rhetorical ban on criticism of government policy in the previous regulations was now replaced by concrete forms of punishment under the shinbunshi jōrei. Thus the new regulations allowed the government to impose imprisonment and fines on those whose articles

“are intended to induce others to commit crimes, incite a riot and intimidate government officials” (Article 12). Similar sanctions were levied against those who “support a fall of the government or the destruction of the state” (Article 13), or who “slander administrative laws (seihō) and violate the principle of the people’s obligation to obey law” (Article 14). Of these articles, Article 14 seems most relevant to discretionary power, since it makes criticism of seihō, regulations made by government, a punishable offence.

Because their aim was to quell immediate opposition, the shinbunshi jōrei banned newspapers from carrying petitions to the government without permission from relevant ministries. The disclosure of confidential government documents, minutes of closed-door meetings, and military information was already banned. But this new ban on the publication of private requests to the government seriously undermined the role of newspapers as the major channel for debate between government and the people. And the ban was preserved in subsequent press regulations, including the Press Law (Shinbunshi Hō) of 1909.35

Active publication in pre-war Japan, however, both in newspapers and books, shows that the media were still capable of promoting individual opinion, despite these restrictive measures. Yet the loss of publicity for petitions severely tilted the relationship between government and the people in favour of the former. By contrast the government’s promise to open parliament in 1875 was a direct response to a petition which was signed by several prominent people, including Itagaki, and appeared in a newspaper.36 With the new ban, similar exchanges between government and people became difficult. Newspapers could no longer offer a forum where government and people could discuss policy on equal terms.37

In the following year, as the Jiyūminken Undō increased in force, the government took another major step to suppress opposition. To punish those who had written critical articles was now not enough. It issued

35. Article 20 of the Press Law.
36. For the role and influence of newspapers in the promotion of franchise movements, see Kim, The Age of Visions and Arguments, p. 103.
37. In parallel with the zanbō ritsu and the shinbunshi jōrei, restrictions on public servants discussing politics in newspapers and magazines were reinforced in 1875. A similar ban had existed since 1873. The new regulations adopted more inclusive language, saying that government workers should not discuss administrative and political affairs, except those reported in the Government Gazette. The ban, “kanri no seimu kiji keisai kinshi tatsu,” is reprinted in Genron to Media, p. 415.
a one-sentence ordinance allowing the Home Affairs Ministry to terminate the publication of newspapers if they were deemed to harm the safety of the nation (kokuan). By 1876 the prototype of the draconian press regulations of pre-war Japan was already in place.

Changes made to the press regulations in 1883 transformed the outlook and contents of the press regulations even further. Revised shinbunshi jōrei, which incorporated the one-sentence 1876 ordinance, reflected the growing intransigence of those in government. Furthermore the legal system was now almost established, after the introduction of the Criminal Code in 1880. Now a Home Affairs Minister, not the ministry, could terminate the publication of a newspaper. Article 14 states: “A Home Affairs Minister can ban or terminate the publication of a newspaper if it is found to contain information that damages public safety (chian) or upsets social mores (fūzoku).” Article 15 states: “Governors and other local administrative heads can order publishers to terminate their newspapers issued in the area under their jurisdiction if the papers are found carrying such information as mentioned in the preceding article. They should report the case to the Home Affairs Minister and wait for his instruction.” And Article 16 states: “After banning or terminating the publication of a newspaper, a Home Affairs Minister can confiscate the remaining copies, ban their sale, and confiscate their printing devices if the case is found serious.” Behind these articles is a government increasingly assertive, one that has secured its administrative structure and confirmed its ideology. It is a government that has transformed itself from a cautious guardian of the media into a harsh oppressor of free opinion.

This new “legalisation” of the Japanese State is also reflected in more specific and formidable qualifications for publishers. Publishers now even have to pay guarantee money to the government before publishing a newspaper or journal. Only Japanese men aged 20 or older are allowed

38. This ordinance was called “kokuan bōgai hakkin fukoku [ordinance to ban publications deemed to harm the safety of the nation],” and was issued by the Dajōkan on 5 July 1876. The ordinance was issued because the zambō ritsu and the shinbunshi jōrei were unable to stop criticism of the government in the media, although many journalists were arrested under the regulations. See Okudaira Yasuhiro, “Ken’etsu Seido,” in Kōza Nihon Kindaihō Hattatsushi (hereafter KNKH), vol. 11, ed. Ukai Nobushige et al. (Tokyo: Keisō Shobō, 1960), pp. 133–205. Okudaira asserts that this new power to terminate publication was the central means used by successive governments to police publication. The ordinance is also reprinted in Genron to Media, p. 415.
to publish, and those who are stripped of their “civil” rights (kōken) are banned altogether.

Such suppression of publication reflects the emergence of the authoritarian Meiji State, supported by what would be later called tennōsei (imperial absolutism). Thus the 1883 regulations add a ban on discrediting the imperial family. Article 36 stipulates that the government can confiscate printing devices owned by those publishers who are found violating the provisions of Chapter I of Part II of the Criminal Code. Part II is entitled “Serious and Minor Crimes Regarding the Public Weal (kōeki),” and begins with a chapter about crimes against the imperial family. Those who “harm or try to harm” the emperor, his wife, and the wives of the preceding two emperors will receive the death penalty. A blanket ban on lèse-majesté is thus introduced without clear definition of what acts constitute the crime. In the new scheme of things the emperor represents a “public,” and this “public” entails new divisions of society. Soldiers, the servants of the emperor, are exempt from punishment under the Criminal Code. Instead they are subjected to separate military laws. Murder of a prisoner committed by a public servant will be treated as physical violence, not murder. By flouting the principle of equality, and by labelling critical discussion of the imperial family a crime, such regulations now became part of the emerging absolutism.

These regulations were reinforced when the shinbunshi jōrei was revised in 1909 to become the Press Law, which regulated the publication of newspapers until the end of World War II. The law preserved most aspects of the discretionary powers accorded to a Home Affairs Minister by the previous regulations.

Nevertheless, the law also responded to the emergence of a more politically aware population as well as accommodating the rise of the Japanese Empire. Women, for example, could now openly publish a newspaper or a journal. Thus a group of women formed a literary as-
sociation Seitō (Bluestocking) and began publishing a journal, also titled Seitō, in 1911. This new tolerance obviously reflects a growing call among women for wider political freedom. And the Meiji Constitution had indeed guaranteed “liberty of speech, writing, publication, public meetings and association,” “within the limits of law” for all subjects of the country. On the other hand, the article excluded from publishing two groups whose obedience was crucial for the survival of the burgeoning Japanese Empire: soldiers, and people in the newly acquired territories. For Japan was about to annex Korea, after absorbing Taiwan in 1895. Whether or not domestic laws, including the Meiji Constitution, should be applied in those new territories remained controversial both within the government and among legal experts. Yet in those areas press freedom was not recognised. Military officers could not express their opinions in newspapers.

This situation of course is characteristic of the Japanese state and society during the Taisho period (1912–26). Then various internal civil movements gained momentum, yet this expansion of “civil” liberties also coincided with the expansion of executive power which could be exercised when those in authority felt it necessary. Thus the Press Law of 1909 includes Article 42, not in the previous press regulations, which says: “The publisher, the editor, and the printer who carry articles that discredit the imperial family and are intended to change government (seitai) or to abuse the rules of the nation (chōken) will be imprisoned for up to two years or fined up to 300 yen.” Acts that “discredit the imperial family” or “are intended to abuse the rules of the nation” are of course difficult to define. Their vagueness is harmless as long as the article is not invoked. Yet once it is invoked, vague and inclusive language can be effective in checking dissent.

Thus when Minobe Tatsukichi was accused of discrediting the imperial family through his Emperor-as-Organ theory in 1935, the Publication Law, a sister law of the Press Law, was invoked. Under its Article 19, the Home Affairs Minister banned three of his major works. A complaint was filed against him for lèse-majesté, and the Justice Ministry discussed whether to charge him for violation of Article 26

of the Publication Law, which mirrors the phrasing of Article 42 of the Press Law almost exactly.\(^4\)

By the turn of the century therefore the Japanese government was facing the persistent challenge of how to pursue “national” goals while containing political dissent. It had to recognise the demands of the people, yet at the same time it needed their obedience. Accordingly regulations aimed at restricting public meetings and political association also began to accumulate, and they have the same origin and purpose as those of the press regulations: the enforcement of arbitrary power, characterised by ambiguous language, in order to define the illegality of private activities. These regulations reflect the government’s fear, more clearly than the press regulations, that their opponents might unite to become one powerful force.

The origins of these regulations concerning public meetings and political associations may be traced back to the government’s order, issued for police personnel in 1877, to monitor and impede anti-government activities. The order again reflects the government’s concern about the growing Jiyūminken Undō movement. Thus “If he finds evidence that people have secretly gathered for forging conspiracy, or the speeches at a meeting are found harming the safety of the nation (kokuan), the policeman should stop the meeting and report the incident to his superior.”

Such fear of any collective action echoes the Five Board Notices, and is passed into the *shūkai jōrei* in 1880. Thus the regulations ban one organisation from associating with another. Now associations or meetings intended to discuss politics (seiji) require police permission. Police can attend those meetings and order them to disband if they are deemed to harm the stability of the state (Article 4). Yet government itself cannot avoid sponsoring public meetings. Therefore the regulations exempt meetings organised through *seihō*, that is, *droit administratif* “laws” enacted by the government. In this way the character of a meeting is dependent upon which law is applied and by whom.

In the 1880 ordinance, the government identified political activities as its biggest threat, and banned the following groups from joining a political organisation or attending a political meeting: incumbent and

\(^{44}\) However, the ministry decided not to charge Minobe, since his books were already banned and he had resigned from his official posts. See Miyazawa Toshiyoshi, *Tennō Kikansetsu*, vol.1 (Tokyo: Yūhikaku, 1970), pp. 241–6.
reserve members of the Army and the Navy, policemen, teachers and students, and trainees of agriculture and crafts. These people were supposed to support the government, and therefore they should not be involved in any activity that would threaten its existence.

The shūkai jōrei was tightened in 1887, as the first opening of Parliament approached. And then a new law restricting press freedom and freedom of assembly was introduced in 1890, simultaneously with the first general election. The term “the safety of the nation” (kokuan) of 1880 was changed to anei chitsujo, echoing the phrase used in the newly introduced Meiji Constitution. This and previous laws made it a norm to ban meetings or political associations suspected of harming anei chitsujo, both a priori or on-the-spot.

In 1900 the new law was amended to become the Peace Police Law, in response to perceived threats from socialists and labour and tenant activists. Its Article 17 singles out those groups. Political organisations were banned if they were considered by the government as harming “the public peace” (anei) or “the public peace and order” (anei chitsujo). Yet Article 14 baldly states that any “secret” association is also banned. Secrecy and individual autonomy are, of course, inseparable. The secrecy, or privacy, that allows free debate is the foundation for people to act together. The law thus further undermines the foundations of a freely communicating society.

Such consistent resorting to discretionary power and convenient ambiguity of language reflect the insecure legitimacy of Japanese government authority and the absence of an agreed system to solve “social problems.” The government was insecure because the mechanisms to ensure genuine popular support were missing. The introduction of a parliamentary system in 1890 was seriously inadequate, since the eligible voting population was extremely small due to strict asset-based requirements. The insecurity of legitimacy and the absence of a viable system to accommodate the demands of the masses required the government to rely on “the emperor,” “the law,” the police, and even the military to enforce its policy. By aligning politics with anti-government and anti-

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45. As a result of this ordinance, about 570 jiyninken activists, including Ozaki Yukio, Hoshi Tőru, and Nakae Chōmin, were forced to leave Tokyo.
46. See Kyūhōreishū, pp. 60–1. Article 17 was dropped when the law was revised in 1926.
social activity, the Peace Police Law further deprived the people of the chance to discuss the collective life of society.

Nevertheless even the Peace Police Law was a mixture of tolerance and control. The law for the first time allowed those opposed to a Home Minister’s decision banning their association to lodge a complaint with an administrative court. Subsequent oppression under the law proved such a safeguard illusory. Yet the law also relaxed a ban on specific groups of people from attending a public meeting. At the same time the Peace Police Law accorded almost limitless power to the police and to the Home Affairs Ministry in the defining and banning of “political” activities. These and other laws laid the groundwork for the tighter controls of the future, when those in power felt it even more necessary to oppose dissenting opinion.

THE MEIJI CONSTITUTION: IMPERIAL ABSOLUTISM AND CONSTITUTIONAL GOVERNMENT

The divided alignments of post-Restoration Japanese politics are especially apparent in the Meiji Constitution. Lorenz von Stein, one of the German advisers to the government’s constitutional writers, described the newly introduced Constitution as “a unique mixture of [theocratic] monarchism and [representative] democracy.” Thus the law of the state was promulgated by the emperor by “virtue of the supreme power” that he inherited from his ancestors. He was the head of the Army and Navy, as well as the state bureaucracy, and the right to initiate revision of the Constitution belonged only to him. Parliament would not be allowed to “interfere” in matters of the imperial family, and amendment of the Imperial House Law would not require parliamentary assent. Simultaneously the emperor exercised the rights of sovereignty “accord-

47. Article 8. See ibid., p. 60. However, the Press Law of 1909, and the Publication Law of 1893 and its revision of 1934 do not include an equivalent provision. See ibid., pp. 65–6.

48. The shūkai oyobi seisha jōrei of 1890, the immediate predecessor of the law, banned the following people from attending public meetings: incumbent members of the Army and the Navy, conscripts and reservists in service, policemen, teachers and students of public and private schools, minors, and women. The new law lifted the ban on these groups, except for minors. However, the formation of political associations was still restricted. Thus Article 5 of the law bans the aforementioned groups, non-Japanese nationals, and those whose civil rights are suspended, from joining a political association. Shinto priests, monks, and other religious practitioners are also subject to the ban (see Kyūhōrei-shū, pp. 60–1).

THE POST-MEIJI RESTORATION

ing to the provisions of the present Constitution.” Therefore “Every law requires the consent of the Imperial Diet.” And the emperor promises to “respect and protect the security of the rights and of the property” of the people, and to “secure to them the complete enjoyment of the same within the extent of the provisions of the present Constitution and of the law.” Stein saw the Constitution as a skilfully crafted compromise between imperial absolutism and representative government.

The Constitution however leaves open the question of whose decision is more authoritative. Hence the ambiguous division of authority is embodied in the parallel presence of imperial ordinance (chokurei) and law (hō). Chokurei is applied to taiken, executive power. Chokurei is issued in the name of the emperor, and its legitimacy is based on “emergency” situations. The Meiji Constitution contains a number of articles endorsing the use of chokurei as an urgent measure, including Articles 8 (emergency ordinances), 9 (police ordinances), 10 (the autonomy of the bureaucracy), 11 and 12 (autonomy of the military), and 14 (the law of siege). On the other hand, hō requires Parliament’s sanction to be valid. Thus the hō structure ensures parliamentary politics. Hō appears most frequently in the chapters “The Rights and Duties of Subjects” and “The Judicature.”

Chokurei and hō rarely appear together in an article, except in Articles 8 and 9. Yet when the articles containing chokurei and hō are collated, there emerges a blurring of the real centre of power.

Thus Article 8 allows the emperor to issue emergency ordinances to “maintain public safety or to avert public calamities” when Parliament is not sitting. Article 9 gives the emperor police ordinance power “for the maintenance of the public peace and order, and for the promotion of the welfare of the subjects.” The two articles themselves are susceptible to abuse, because they leave unclear the conditions under which such ordinances can be issued.50 Yet at least they stipulate that imperial ordinances are subject to law. Thus Article 8 requires the government to seek Parliament’s consent in the next parliamentary session, and Article 9 confirms that no ordinance can alter the existing laws.

50. Tomio Nakano indicates how such undefined powers heighten the power that may be exercised in the emperor’s name. Thus, “the powers which are not limited in their manner of exercise by the Constitution may be exercised by the emperor in any manner he pleases” (Nakano, The Ordinance Power of the Japanese Emperor [Baltimore: The Johns Hopkins University Press, 1923], p. 5).
However, the Constitution undermines such already fragile assurance of the superiority of law to imperial ordinances in other articles. Article 31 specifically says that civil rights guaranteed by the Constitution and hō can be overridden by taiken in the case of emergency. The article, which is included in Chapter II, “The Rights and Duties of Subjects,” says: “The provisions contained in the present Chapter shall not affect the exercise of the powers appertaining to the emperor in times of war or in cases of a national emergency.” The Constitution therefore not only separates hō from chokurei, but also allows the latter to undermine the former.

This contest between chokurei and hō, between imperial executive power and representative government, continued throughout Japan’s pre-war history. For example in 1897, when party politics was strengthening, Parliament revised the Press Law to eliminate a Home Affairs Minister’s right to ban publications deemed injurious to society. But the provision was restored not by Parliament but by the government through the issuance of an imperial ordinance in 1905 in the wake of the Hibiya Riots of that year. The Constitution also stipulates that the conditions and effect of siege be determined by law. But no law was ever enacted for this purpose. Instead the law of siege was proclaimed as an administrative order during the Hibiya Riots, the Kanto Earthquake of 1923, and the February 26th Incident of 1936, allowing the police to ban public meetings and publications deemed injurious to the situation (jisei). Thriving on arbitrary declarations of emergency, and with the Constitution its fertile ground, the ubiquitous presence of chokurei undermined both the sovereignty of Parliament and legal equality, the Constitution’s form and substance. The “unique mixture” of absolute imperial power and representative government was in fact an impasse of non-accommodation.

This breach of the rule of law is most obvious in two aspects of the Constitution, the separation between Parliament and Cabinet, and the inadequate constitutional guarantees of legal equality. Both aspects reflect the intentions of the original writers.

The initial drafts of the Constitution were written mainly by Itō Hirobumi, Inoue Kowashi, Itō Miyoji, and Kaneko Kentarō between 1886 and 1888. The Sūmitsuin council started to discuss the draft in June 1888. The fundamental character of the Meiji Constitution had
been determined by these four statesmen, and the role of the Sūmitsuin was “fine-tuning.”

These writers of the Constitution had studied the constitutions of various European countries, particularly the Prussian Constitution of 1850. Itô Hirobumi, Itô Miyoji, and other government officials visited Germany and other European countries between March 1882 and August 1883 to discuss the envisaged Constitution with legal experts. German scholars such as Rudolf von Gneist, Albert Mosse, and Stein were key advisers. Hermann Roesler, a German legal adviser who lived in Japan from 1878 to 1889, also wrote a draft in 1887, which is believed to have influenced the final draft before it was submitted to the Sūmitsuin council. Nevertheless by dint of much editing and revising, the Meiji Constitution as a Japanese text became “indigenous.”

An old term now given a new meaning, taiken, appears three times in it, and is rendered by an ambiguous phrase, “the powers appertaining to the emperor” (Articles 17, 31, and 67 in the official translation). It appears once in the preamble and is translated as “the rights” of sovereignty of the State. Taiken cannot be divided because it “resides” in the emperor. Yet the writers had to combine taiken with the constitutional principle that the emperor has to obey the law to which he gives sanction.


52. For the influence of German scholars, Roesler in particular, see Joseph Pittau, Political Thought in Early Meiji Japan, 1868–1889 (Cambridge, Mass.: Harvard University Press, 1967).

53. According to Inada, European constitutions that influenced the writers of the Meiji Constitution were those of Prussia (1850), Bavaria (1818), Württemberg (1819), Austria (1867), Saxony (1831), Baden (1818), as well as English, French, Dutch, Belgian, Italian, Spanish, Portuguese, Danish, and Swedish models. Among them the Prussian Constitution’s influence was most prominent. At the same time Inada asserts that Japanese classical mythico-historical texts such as Kojiki, Nihonshoki, Dai Nihonshi, and Nihon Seiki also influenced the writers. Echoing Stein’s description, Inada concludes that the Meiji Constitution was based on the “kokutai” concept and Inoue’s theocratic concept of political authority, yet was also influenced by Europe. See Inada, op. cit., vol. 2, pp. 889–912.


Taiken and the constitutional principle were therefore combined through their interpretation of representation (daigi). Constitutional government as envisaged in the Constitution is not parliamentary government, but “representative” government, in which representatives exercise taiken on behalf of the emperor. Thus Article 55 defines state ministers as representatives of the emperor, not of Parliament or of people. Itō Miyoji explains:

There are two types of constitutional government, parliamentarian and representative. In representative government, equilibrium of government is maintained by the monarch (kunshu), and in parliamentarian government by representatives [of Parliament]. The Meiji Constitution endorses representative government, but not parliamentarian government. Therefore, all sovereign rights (shuken) belong to the emperor, except cases stipulated in the Constitution, and every matter will be determined by imperial decision (chokusai).

However once proxies have been brought in to exercise taiken, the emperor is exempt from any political responsibility. Thus the Constitution spares the emperor any constitutional obligations to Parliament. Itō Miyoji in this regard emphasised the deliberate divergence of the Constitution from European models. “In Prussia and other German states,” he says, “a monarch cannot enforce ordinances unless he has made a constitutional oath [to Parliament]. The Meiji Constitution rejects such provisions.” He also says that “in constitutional government, the respective Ministers of State shall give their advice to the emperor and be responsible for running government. Only if such policy is ensured, can the public weal and the emperor’s personal irresponsibility be preserved.” Thus, in effect, the Meiji Constitution countenanced supreme political authority with little or no accountability. For theoretically no institution could check or stop executive power exercised in the name of the emperor, because it was detached from constitutional restraints through “representation,” and also by the

56. See Pittau, Political Thought in Early Meiji Japan, pp. 150–1.
58. Ibid., p. 350.
59. Ibid., p. 354, emphasis added. A more accurate translation for the Japanese phrase “funinseki ken” would be non-responsibility. Yet irresponsibility was Itō’s own choice, as the kana letters for the English word were added next to the Japanese in the original text.
absence of any constitutional oath. The defect of this construction is the opportunity it provides for the creation of discretionary powers.

Nevertheless the role of the people was at the heart of the debate about a form of constitutional government both before and after the promulgation of the Constitution in 1889. Contrasting views are most apparent in 1881 in the debate within the government between Ōkuma Shigenobu and his opponents as to whether to choose the British “king in Parliament” practice or the Prussian emphasis on the monarch’s political role as the head of the executive power.

Ōkuma asserts that a prerequisite for good government is to respect the people’s will (kokujin no yōbō), and that parliament is necessary in order to realise it. He sees the source of social stability and strength in the people’s acceptance of their government and asserts that good government needs their mandate. In this sense, Ōkuma is a loyal successor of the Meiji ideals that emphasise the combination of national strength and the enlightenment of the individual. But what sets Ōkuma apart are his ideas about the relationship between authority and the people. For him a balance can be achieved only when the people accept government, and he endorses active interchange between the two.

Thus Ōkuma insists not only on Parliament but also on accountable government. He proposes to divide government employees into two groups, professional administrators and politicians. The latter will be replaced by the people if they fail to perform satisfactorily. Ōkuma supports “continuous” changes of government responsive to public opinion.

Yet this mere assertion of British-style parliamentary politics was not acceptable to other Meiji leaders. They feared that the imperial government was still unstable and that government could not afford to “change.”

Thus if Parliament was to be introduced, any mechanism that would threaten the stability of government had to be eliminated. A Cabinet was

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60. Iwakura expresses their anxiety in the following passage: “Since the Restoration, imperial rule has not yet been fully disseminated among the people. Because of the abolition of the han domains [in 1871], the government remains the target of hatred. If the country now accepts the British party system and a government that can be replaced through a majority opinion in Parliament, it is very clear that those opposed to the government will try to win a parliamentary majority to take over the Cabinet. Some opinion leaders insist that smooth changes of Cabinet will result in the stability of the country. They are merely enchanted by the British system and ignore Japan’s reality” (Iwakura Tomomi, “Iwakura Tomomi Kenpō Tenkōryō,” in Kenpō Kōsō, p. 227).
the first and most obvious casualty of their strategy.\textsuperscript{61} The British style of joint responsibility in Cabinet was dropped because it would be more susceptible to opposition attack in Parliament, and Ōkuma was dismissed from the government later in the year. Henceforth all references to a Cabinet were expunged and state ministers became representatives of the emperor.

Such a structure was clearly fragile. Non-accountable power could be exercised by anyone or any institution in the name of the emperor. Articles 11 and 12 gave the Army and the Navy excuses to ignore decisions made by a civilian government. In 1907, the independence of military power was ensured with the issuance of gunrei (direct imperial command for the Army and the Navy) when the military and the civilian government were at loggerheads. Also Article 10, along with Article 7, gave bureaucrats significant autonomy since they were working directly under the emperor. Thus the Constitution created several autonomous authorities protected from checks and balances, because there was no constitutional directive on policy co-ordination. The powerful imperial executive power was in fact a collection of several powers, which were not accountable to anyone. In this way the Meiji Constitution became the creator of discretionary power distributed to the military, the bureaucrats, and government. And in the early twentieth century the military and the bureaucrats began to issue their orders in the name of a nineteenth-century imperial ordinance. Thus the ultimate irony of the Meiji Constitution is that the attempt of its authors to consolidate their own authority led, in time, to the emergence of competing authorities, all unchecked, all bent on their own agendas. Such developments are one more element in the genesis of dissent.

Legal equality, a key principle of constitutional government, is another casualty of the writers’ attempt to eliminate any element that

\textsuperscript{61} When the four men wrote a draft in 1887, the draft (Natsushima an) still mentioned the Cabinet’s involvement in the exercise of executive power. However, it was dropped in their 1888 draft (Niigatsu an), apparently because they had accepted Inoue Kowashi’s opinion. The elimination of articles regarding a Cabinet reflects his ideas about the emperor’s authority and administrative power. In the preface to his Otsu an draft (1887), Inoue objects to separating the prerogatives of the Cabinet and those of various administrative branches because he believes that they are all subject to the imperial prerogative (\textit{taiken}). See Inada, op. cit., vol. 2, p.69. For the Natsushima draft, see ibid., pp. 198–205. The major drafts, including the Natsushima draft and the final draft by the four protagonists, are found in \textit{Goin Bunko Eiin Meiji Kōshitsu Tenpan Seitei Honshi}, ed. Kokugakuin Daigaku Goin Bunko Kenkyūkai (Tokyo: Taisei Shuppan, 1986), pp. 575–94.
would upset government. Although it devotes its second chapter to “The Rights and Obligations of Subjects,” the Meiji Constitution nowhere mentions legal equality. In this respect too the Japanese constitution departed from its European counterparts.

But the early drafts, based on the European models, do include a passage referring to equality under law. For instance, Article 50 of the Natsushima draft says: “Japanese subjects receive equal protection of government and are equal before law, and may, according to qualifications determined in laws or ordinances, be appointed to civil or military offices equally, and may fill any other public offices.” The article survived more or less in its original form until the four authors agreed on the final draft that was submitted to the Sūmitsuin. In that draft, and then in the Meiji Constitution, the article became simply: “Japanese subjects may, according to qualifications determined in laws or ordinances, be appointed to civil or military offices equally, and may fill any other public offices.” Here, equality was no longer an unassailable principle, but was reduced to the assurance of “equal” opportunity for joining the state apparatus.

The elimination of any reference to legal equality (ほのまえの百姓) reflects deep concern among the writers that the people should not be given too many rights. The writers’ uneasiness with the rights of the people is reflected in such equivocal expressions as “within the limits of law” and “きょうご” (public). The Constitution recognises freedom of speech and assembly “within the limits of law.” Yet the role of law is unclear for ensuring those rights. Thus “きょうご” (public) appears as in “きょうごの平和治安” (the public peace and order) in Article 9 of the Constitution. The original phrase is found in the Japanese translation of the German phrase “die öffentliche Ordnung oder das Gemeinwohl” (the public order or the well-being of the community) in the Roesler draft. Yet the two concepts, public order and the commonweal, were fused into “public peace and order” in the Japanese expression, thereby excising any suggestion of what was common or shared by people who were legally equal.

Thus the Meiji Constitution, bending to the executive power, failed to ensure legal equality and a participatory community. Its ambiguous language reduced its ability to safeguard individual rights from executive excess. And along with the separation between Parliament and Cabinet, its inadequate guarantees of legal equality and individual rights posed serious handicaps for those who tried to realise constitutional government.

Nonetheless despite the dominance of executive power in the Constitution, parliamentary politics did begin to function. Already in 1898, less than ten years after the first general election, Japan’s first party-based Cabinet was established as a result of intensifying confrontation between government and Parliament. Despite their initial attempt to alienate parties from politics, Itō Hirobumi and other government leaders chose to form their own party in 1900, paving the way for the short-lived but full-fledged two-party system in pre-war Japan.

Such developments suggest that the idea of a parliamentary system was now well understood by many Japanese. The experience and knowledge that Japanese political leaders had gained during the Jiyūminken Undō, both inside and outside government, and the debate preceding the Constitution together helped their understanding of how Parliament and party politics would work. And the Constitution brought in the idea of a “legal” state, however defective it may have been. Thus the Constitution was able to maintain constitutional process, so far as there was basic understanding of constitutional government among the people who used it. Yet once that understanding was ignored or forgotten, constitutional government had little defence against discretionary powers, which were also endorsed by it. The second half of Japan’s pre-war history reveals an increasingly fragile political system, without an integrated mechanism of checks and balances, and without a shared understanding of underlying principle.

The consequences: Japanese nationalism, political extremism, and the compromised state

In the previous sections we have seen how discretionary powers were created in response to the tension between national unity and free government. Discretionary powers undermine free government, as Dicey

64. See Pittau, Political Thought in Early Meiji Japan, pp. 191–5.
The Post-Meiji Restoration claims. Yet more seriously, if national unity and free government are allowed to diverge unduly, then in principle and in practice executive power can proceed unchecked. Thus the increasingly entrenched division between the two forces is highly relevant to the rise of the militant state of the 1930s. Two factors are crucial in this development: Japan’s emergence as an imperial power, with its attendant impact on extremist politics, and the institutionalisation of the all-pervasive powers of the ‘state’ (kokka).

Thus in 1885, Fukuzawa Yukichi wrote a now famous article about Japan’s future. Loyal to the Meiji tradition of bunmei kaika (civilisation and progress), Fukuzawa advocated that Japan should strive even further to join the Western “civilised” camp, cutting off its historical and cultural ties with its Asian neighbours, China and Korea. His assertion was in tune with the growing spirit of expansionist nationalism. This assertive nationalism, described as “kokken ron” (statism) in contrast with “minken ron” (the practice of people’s rights), focuses on the expansion of national strength and prestige rather than on individual needs and freedoms. The “survival of the fittest” worldview, and the increasingly prosperous regional status of Japan, fuelled the rise of this particular nationalism. There was a widespread perception that it was not with the West but with its neighbouring countries that Japan had to compete in order to make further progress. Fukuzawa’s essay appeared amid growing hostility towards China in the wake of the Kapsin coup in Korea in 1884.65

This statist nationalism is also a product of Japan’s “coerced” modernisation. “Identity is perception,” says Liah Greenfeld in her examination of national identity: national identity must be perceived and then endorsed by the population as a meaningful characteristic of the community.66 The early Meiji leaders were aware of the need to create

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65. Fukuzawa, “Datsu-a ron,” the Jiji Shinpō, 16 March 1885. In 1884, a group led by Kim Ok Kyun who were seeking radical reform and independence from China staged a political coup (the Kapsin coup) with the support of the Japanese consulate, seizing the Korean Royal Palace. The revolt was quashed by the Palace army supported by Chinese troops. China and Japan mitigated their deteriorating bilateral relations by signing the Treaty of Tianjin (Tientsin) in the following year.

such collective consciousness. As Carol Gluck demonstrates so fully, the inculcation of collective identity was “an affair of state.”

Hence the familiar idea of external threat was found to be most effective in persuading the people to unite and to form a community. And for many Japanese the state (kokka) was the apotheosis of this new community. Even after the Western threat had receded and their sense of achievement began to prevail, this collectivist and martial identity, which was now firmly intertwined with state policy, continued to dominate the minds of the political elite and then of ordinary people. Hence the “Fukoku Kyōhei” slogan: the country ought to be an economic and military power. Not all Japanese shared this view, but the sentiment intensified each time the country won a war, which now involved the whole population.

Japan’s first major war, the Sino–Japanese War of 1894–95, which many historians see as the start of Japan’s imperialism, entailed renewed emphasis on national unity. Notions of collective destiny now had enormous appeal because they trumpeted the nation, flattered the citizenry, and epitomised “progress.” The Jiyūminken Undō had practically ended. Parliamentary opposition also temporarily ceased. At the same time Japan’s victory allowed government leaders to manipulate the nuances of Fukoku Kyōhei, and it was now firmly transmitted as national economic strength facilitated by the military. Against this background the military was able to acquire a new raison d’être, in addition to constitutional backing.

Maruyama Masao and other historians regard the late Meiji period as a period of crucial transformation in Japanese nationalism. “This new nationalism was fundamentally different from the nationalism

67. Carol Gluck, op. cit., p. 3. For fuller debate about the formation of modern Japanese national identity, see, inter alia, Tessa Morris-Suzuki, Re-inventing Japan: Time, Space, Nation (New York: M. E. Sharpe, 1998), and Doak, Placing the People.
68. See Inoue Katsu, Bakumatsu Ishin, p. 126.
70. Irokawa Daikichi says, “The national unity movement (kyokoku itchi) in the wake of the Sino–Japanese War was a turning point, as the historical mission [of the Jiyūminken Undō] as the promoter of grass-roots democracy ended. At the same time, grass-roots nationalism gradually fused with collective statism, which became a fundamental feature in the new imperialism” (Irokawa, Shinpen Meiji Seishinshi [Tokyo: Chūō Kōronsha, 1973], p. 457). Many contemporary opinion leaders, including Tokutomi Sohō, also turned to expansionist nationalism in the wake of the war.
advocated by their predecessors, such as Kuga Katsunan. The aspect of grass-roots demands for freedom and equality, which was prominent in earlier nationalism, was now replaced by authoritarian statism,” says Maruyama. Young nationalists, such as Takayama Chogyō, mythologised the emperor as absolute sovereign, denied freedom of thought, speech, and academic enquiry, and took a fully imperialistic view towards Taiwan. “Sympathy for the socially deprived, particularly for poor workers, which was also discernible in earlier nationalism, had now disappeared. Instead the Darwinian law of the jungle had become their principal view on both domestic and external affairs.”

Support for the country’s expansion continued throughout pre-war Japan, even among opponents of the government. The nationalistic trend severely undermined alternative politics. Those who advocated equality and individual freedoms now had to face the criticism that they were damaging the national principle and were thus traitors to state and society.

Thus even the Taisho period, which is associated with a wide range of democratic movements, continued to reinforce Japan’s imperial expansion. To possess a colony was now considered by many as a legitimate act. “Constitutionalism domestically, and imperialism internationally” was a common slogan for popular reform movements. The fact that the government, backed by Kenseikai, a more liberal party than Seiyūkai, served the Twenty-one Demands to China in 1915 demonstrates the deep-rooted imperialism of the Japanese establishment. Even Kenseikai’s platform included national expansion.

By now new generations of politicians had emerged, replacing the Meiji oligarchs. These included Hara Takashi, who in 1918 became the first prime minister to be chosen based on his party’s strength in Parliament. He and his successors pushed through arms reductions, prompting the Washington Naval Limitation Treaty in 1922. His finance minister, Takahashi Korekiyo, advocated the abolition of the General Staff Office (Sanbō Honbu) to curb the assertive military. Yet even they could not abandon the idea that Japan had legitimate rights in

expanding its power in Manchuria, an idea also espoused by members of the extreme right, including the fascist ideologue Kita Ikki.73

Such statist nationalism not only prevented politicians from envisaging a new platform to accommodate changing Japanese society and the growing anti-Japanese nationalism in China and Korea, but also left them exposed to the charge that they were risking the survival of the country and thus the well-being of the people when their policy was seen as too moderate, too partisan, or against expansion policy. Thus, Hara and Takahashi were among several civilian politicians assassinated by opposed fundamentalist nationalists, Hara in 1921, and Takahashi during the February 26th Incident in 1936. The motives of the assassin (or assassins) differed in each case and all were inspired by their own visionary psychology, yet these politicians were all undone by a radical idealism involving rigidly collectivist notions of nation and people which must be protected whatever the cost.

In such a climate, “liberal” politicians had to compromise. But compromise could facilitate the dissolution of constitutional government. Hence in 1925 the simultaneous endorsement of universal male suffrage and the Peace Preservation Law not only epitomised the familiar clash between collective goals and free government, but also anticipated the demise of civilian governance.

Historians often describe the simultaneous endorsement of universal male suffrage and the Peace Preservation Law as a “carrot-and-stick” procedure, an unfortunate but inevitable manoeuvre on the part of a “liberal” government. Universal male suffrage had been realised only 35 years after Parliament had been introduced, enfranchising 20 percent of the entire population of the time.74 As Matsuo Takayoshi points out, this was a sign of the government’s recognition of the growing presence of the proletariat and of pro-democracy demands, although it strategically eliminated women, soldiers, “those poor who receive either public

73. See Usui Katsumi, Chūgoku o meguru Kindai Nihon no Gaikō (Tokyo: Chikuma Shobō, 1983), p. 40. Gordon Mark Berger also says: “Despite individual exceptions, party men as a group were never principled pacifists, and during much of the 1930s, they were among the most jingoistic elements of the ruling elite” (Berger, Parties Out of Power In Japan, 1931–1941 [Princeton, N.J.: Princeton University Press, 1977], p. 354).
74. By comparison, universal suffrage (including women) was not to be introduced until 1918 in Britain. Likewise, most countries failed to introduce universal male suffrage until shortly before or after World War I. See Andrew M. Carstairs, A Short History of Electoral Systems in Western Europe (London: George Allen and Unwin, 1980).
or private support,” and those convicted of crimes, including crimes against the imperial family.75 On the other hand, the Peace Preservation Law clearly increased the government’s capacity to stifle opposition. Although the word kokutai had been used in various imperial rescripts, including the Imperial Rescript on Education in 1890, the Peace Preservation Law was the first law to use the word to openly criminalise political dissent. Aimed at preventing the dissemination of communism and anarchism in the wake of the Russian Revolutions and the establishment of the Comintern in 1919, it became a powerful weapon to eliminate any kind of dissent, including that of liberals and academics, when in 1928 it was revised by imperial ordinance to include the death penalty.

Significantly, both bills were introduced under the coalition government led by Prime Minister Katō Takaaki. Katō headed Kenseikai, the party that proclaimed itself to be the legitimate successor of the Jiyūminken Undō and the “progressive” earlier Rikken Kaishintō and Kensei Hontō. Equally ironically the party had been the main critic of the House of Peers, which its members saw as an obstacle to Parliament’s representation of “the people.”76

Undoubtedly, therefore, the simultaneous passage of universal male suffrage and the Peace Preservation Law echoes the familiar pattern in which the expansion of popular political participation is checked by a new measure. It clearly confirms that Japan was still far from transforming itself into a “civil society.” The law, which also made “denying the private property system” a punishable offence, pre-empted the legitimate formation of proletarian parties. And it stifled parliamentarianism. Thus Matsuo Takayoshi says: “The proletariat and petite bourgeoisie were disappointed by a Parliament indifferent to their benefits, and smouldered with disgust for the corrupt, existing parties. The decline of party politics and the rise of the military [in the 1930s] can be traced

76. “In fact, the Katō government never had recourse to the law, but in more zealous hands, it became an instrument for repression. This was a lack of foresight on the part of the Kenseikai leadership, not an error of deliberate commission” (Peter Duus, Party Rivalry and Political Change in Taisho Japan [Cambridge, Mass.: Harvard University Press, 1968], p. 206).
back to the way in which male universal suffrage was introduced at the expense of the political participation of the proletariat. Moreover the Peace Preservation Law also indicates how the domestic and international operations of the state were often only tenuously connected in terms of principle, thus further increasing the potential for the future disintegration of governmental control. Hence the Katō government had signed the Soviet–Japanese Basic Convention on 20 January 1925. The convention banned each signatory from sponsoring activities or financing organisations that would “endanger the order and security in any part of the territories” of the other. Yet the ban could not stop contact and exchange of opinions among individuals, as the convention also “guaranteed reciprocal freedom of movement and protection for each country’s nationals in the other’s territories.” Thus a tighter, more comprehensive control of domestic political activities became all the more necessary, prompting the government to propose the Peace Preservation Bill. Yet within the government little substantive debate had taken place as to the compatibility between diplomatic and domestic policy. Vague notions of the national interest, such as the containment of Soviet aggression and possible economic benefits, were thought persuasive enough to deflect attention from the bill’s potentially repressive power.

It seems incontestable then that the Peace Preservation Law made it easier for a beleaguered government to overcome “seditious” activities. For the invocation of “kokutai” could now shield it from criticism, with dissent rendered ever more suspect and unpatriotic. Language as well as legislation was again increasing the authoritarian grip on power. It was the civilian government’s facilitation of this process, through both strategic concession and its failure to define national interests relevant to the population as a whole, which seriously undermined the role of alternative politics in pre-war Japan.

Thus was confirmed the divided alignments of power, with one strand now represented by weak Parliament-backed government and


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the other by the military which claimed to work directly for the emperor. Accordingly, Japan signed the Pact of Paris of 1928 (a non-war international treaty), while declaring, bizarrely, that the country was exempt from the non-war clause since the supreme command of the Army and Navy belonged to the emperor under its Constitution. And when the government led by the civilian Prime Minister Hamaguchi Osachi signed the London Naval Limitation Treaty in 1930, it again had to overcome the Navy’s objection that the ratification was in violation of the supreme command of the emperor. In short, the institutional weakness of the Meiji State remained, and became a major contributor to the radicalisation and increasing arbitrariness of government policy in the 1930s, when it proved all too amenable to the forces of the new nationalism and its attendant politics.

Modernisation in Japan also meant the increasing presence of state institutions in everyday life. The country’s imperial expansion was accompanied by a growing emphasis on public morality in state education. A Shrine Office was established within the Home Affairs Ministry in 1900, the first step to establish “State Shinto.” In 1904, the government ordered schools to use its own ethics textbooks. Former texts had included such topics as “other people’s freedoms,” “social progress,” and “economic competition,” which were now replaced by the more nationalist “kenkoku” (the foundation of the nation), “kokutai no seika” (the refinement of national polity), and “chūkō itchi” (the unity of loyalty and filial piety). Government attempts to align public-spiritness with its own policies are also especially apparent in the Boshin Shōsho of 1908, an imperial address which emphasised frugality, hard-work, saving, and a moral life to stave off financial difficulties after the Russo–Japanese War and the related labour disputes and public discontent. Domestic and colonial developments, as well as the sheer pace of internal change, had made a compliant people all the more necessary: by now Japanese government was both extraordinarily unstable and deeply intrusive.

Not surprisingly then, in the face of Japan’s imposed industrialisation, partial democratisation, and colonial expansion, a variety of writ-

ers began to confront the relationship between government and the individual and between the individual and society. The High Treason Incident of 1910, in which 12 socialists and anarchists were executed for treason, had shocked many writers as a demonstration of state power.\textsuperscript{81}

The tension between the new orthodoxies and individual liberties became a theme for many of them, including Mori Ōgai (1862–1922), Natsume Sōseki (1867–1917), Tokutomi Roka (1868–1927), and Ishikawa Takuboku (1886–1912).\textsuperscript{82} Ōgai’s \textit{Kano yōni [As if]} of 1912 depicts a man who has studied in Europe who would like to write an uncompromising history of the country but fears that some power (the new “traditions”) may not allow him to do it. Sōseki’s “Watakushi no Kojinshugi [My Individualism]” of 1914 urged high-school students to pursue their own goals and personal fulfilment rather than a life dominated by state and society. Roka wrote “Muhon ron [A Theory of Treason]” shortly after the arrest of Kōtoku Shūsui, the anarchist leader who was among those executed in 1911. For him, in an obvious sally at prevailing conditions, “The best government is like a well-made hat that you will not notice wearing.”\textsuperscript{83} Particularly incisive, however, is an essay by Ishikawa Takuboku, “Jidai Heisoku no Genjō [No Way-out in Our Time]” written in 1910, when the author was 24.

This essay was written in response to an earlier essay by another writer, Uozumi Setsuro, who had urged young people to challenge the state. Takuboku shares the view that the state is a threat to individual freedom. Nevertheless he finds the real problem to be the absence of interaction between authority and individual. Thus he says:

\begin{quote}
We the Japanese youth have never confronted authoritative power [the state] and have had no occasions to recognise the state as a real enemy. … We are concerned with the state only when the state interferes in our personal interests. Once an encounter is over, we become strangers again.\textsuperscript{84}
\end{quote}

\textsuperscript{81} For further discussion of the incident, see p. 128 of this work.


For Takuboku the state is alien and remote, the promoter of a status quo fortified by “institutions” and a capitalist economy. Young people especially are powerless, their choice either detachment or uncritical acceptance of the system. But both indifference and acceptance are tacit endorsements of the prevailing conditions. Takuboku is concerned with general social problems, such as unequal educational opportunity, high unemployment among graduates, and urban poverty, and proposes a radical reappraisal of state and society. A poet himself, he is equally concerned with the inability of Japanese writers to discuss social realities with empirical vigour and sympathetic concern. Instead he finds they merely indulge in undigested “realism” or shallow “aestheticism.” Takuboku dismisses both approaches as a failure to combine action and observation, and to present human beings as autonomous social beings.

Such sentiments contrast markedly with the situation of 50 years before, when Itagaki Taisuke and others had left government, saying that they could no longer work for a polity led by the emperor. For them state power was still embryonic, engaged with implementing the structures as well as the realities of power. Now 50 years later, those structures were firmly in place, and for some, especially the young, they were a cause of increasing concern. Takuboku’s generation, born after the Jiyūminken Undō had subsided and who entered school after the promulgation of the Imperial Rescript on Education, was confronted by the enormity of state institutional power. For them their country was already an empire. The emperor’s position as head of the state and of government was secured by the Constitution. The initial stages of a modern capitalist economy were firmly established. At the same time, the state sponsored recurrent conscription, a highly meritocratic educational system, and burdensome taxation.

Takuboku proposed an end to acquiescence in a vigorous and critical assessment of the status quo. By calling for a return to first principles, Takuboku advocated a civil society where political authority was not fixed and established but a creation of critical debate among its members. His essay crudely yet eloquently anticipates the concern with individual freedoms within civil society of the new generation of social radicals. The three subjects of this study all belong to this category. All were searching for a liberal political community, where the individual could coexist with the commonweal, and where debate would not be
shunned or slandered but be recognised as a necessary part of society’s self-engagement.

However, their visions of a new political community met with a formidable obstacle, the combination of a still fragile state system that relied heavily on discretionary power, with the rise of expansionist nationalism. The two reinforced each other, when the pursuit of war became government policy. Institutional deficiency was most sharply apparent in the government’s handling of a more active citizenry. The response of the ruling elite to the emergence of the new forces was intrusive state ideology, sectional propaganda, and legislation to define and curb political freedoms. Press and assembly laws were crucial from the start. And yet as such protest movements became more common, the elite felt it necessary to rewrite the rules of political engagement. The Peace Preservation Law was a case in point. Institutional deficiency continued to undermine the growth of Japanese civil society.

On the other hand, the sense of instability created by the country’s rapid and uneven modernisation was constantly latent among the population as a whole. Scepticism about government and society’s capacity for self-rule was endemic. Armed with this mistrust of government, and their own interpretations of the Meiji Restoration as a revolution by force, nationalist groups became increasingly assertive. Accordingly, the Manchurian Incident of 1931, when Japan’s Kwantung Army began its unauthorised conquest of southern Manchuria, was a watershed in terms of the consolidation of various strands of aggressive nationalism. For now these sentiments had found a concrete focus, and radical segments of society began to take direct action. Nationalist pressure now prompted the government into further repression of liberal opinion.

In 1935 Minobe’s Emperor-as-Organ theory was publicly declared heretical by the government. As the emperor had become increasingly the symbol of national unity, so Minobe’s denial of absolute imperial sovereignty (and his defence of free speech) became more and more unacceptable to restless and importunate nationalists. Anxious for its hold on power, the government proclaimed “the sacredness” of imperial sovereignty in a public statement.

A little later, in 1937, the government published the *Kokutai no Hongi* a month before the outbreak of the Sino-Japanese War, because, the booklet explained, “It is an urgent task to clarify the national polity (*kokutai*) and inspire the national spirit.” Now the emperor embodies indisputable evidence of national existence in the past, present, and future. To obey him is to preserve the very essence of Japan’s nationhood. The Constitution is an order, and the order a fact, leaving no room for debate. This document, a product of a beleaguered party and the forces acting upon it, constructs a notional Japanese society, harmonious and orderly, a “family” with the emperor at its head, and this family is dissent-free. Dissent is now un-Japanese, incompatible with membership of the “kō,” the national body politic.

Thus discretionary measures and arbitrary social edicts, used first by the early Meiji leaders to steer reform and buttress their fragile authority, had now irretrievably damaged constitutional government. Discretionary powers now sustained an authoritarian state, as national policy was firmly pursued at the expense of egalitarian concepts and practices.

Decades earlier Dicey had implied that discretionary powers could not be used to achieve national independence and free government simultaneously. Japan had clearly failed to ensure free government. But what, we may ask, constitutes free government? What kind of free government was possible in pre-war Japan? Minobe, Sakai, and Saitō all criticise discretionary power and address the role of government with regard to the people. Scrutiny of Minobe’s legal state, of Sakai’s economic egalitarianism, and of Saitō’s parliamentarianism will allow us to locate some of the key challenges and tensions of Japan’s attempt to build a civil society.
Minobe Tatsukichi, reproduced by courtesy of the Takasago tourist centre, Hyogo Prefecture, Japan
CHAPTER 2

Minobe Tatsukichi: The Legal State and Its Obstacles

Japan’s “coerced” modernisation required and resulted in the creation of discretionary power in government. The arbitrariness of executive power was institutionalised in the Meiji Constitution in such concepts as taiken (the imperial prerogative) and chokurei (emergency ordinances). Yet the question of legitimacy—how to bring the people into the political system—remained an unmet challenge for successive Japanese governments: their coercive attempts to eliminate dissenting opinion testify to a conspicuous failure to solve an abiding question. Minobe Tatsukichi’s commitment to the legal state, Sakai Toshihiko’s vision of economic egalitarianism, and Saitō Takao’s emphasis on parliamentary government were all inimical to the exercise of such governmental authority and to the pre-war state ideology. This chapter will discuss Minobe’s constitutional theory as a critique of the political and legal structure of the pre-war Japanese polity.

As we have seen in Chapter 1, the arbitrariness of executive power was institutionalised in the Meiji Constitution and in various related laws by means of a fluidity of language and the absence of a self-regulating mechanism. The Constitution legitimised the operation of discretionary power by incorporating into the political structure such open-ended concepts as taiken, chokurei, and seifu (government) without clear rules for regulating them. It also failed to establish parliamentary control of the Cabinet and of the military, while in the press laws and laws to restrict political activities elastic phrases such as “annei chitsujo” (public peace and order) allowed those in authority to define the illegality of private activities on their own terms. Such institutional fragility was also accompanied by a high degree of emotive political manipulation. In the light of these factors the dissolution of constitutional government and of parliamentarianism in the 1930s is a consequence not only of contextual forces but of institutional flaws.
Minobe Tatsukichi steadfastly criticised the operation of such “lawless” authority through his insistence on the legal state. This chapter will examine Minobe’s thought and career in its criticisms of the discretionary powers of law and its exercise. However, although Minobe is widely regarded as the father of modern constitutional studies in Japan, his theory has also been criticised, by pre-war Marxist-trained scholars and by some of the post-war generation of political scientists, for the inadequacy of its support for parliamentarianism and the rights of the people. The chapter will therefore attempt to shed light on the Japanese society of the time through the problems Minobe encountered in asserting a legal state, but it will also attempt to assess the strengths and weaknesses of his theory.

THE LIFE ASSESSED: INITIAL PERSPECTIVES

Minobe Tatsukichi was born in 1873 in Takasago City, Hyōgo Prefecture, the second son of a doctor of Chinese medicine. Minobe studied English at a school run by an English missionary in Kobe before attending the First High School’s preparatory course in 1888. After graduating from high school, Minobe studied at the Tokyo Imperial University. He graduated from the university in 1897, and joined the Home Affairs Ministry against his initial wish to continue his studies.

In the following year, Minobe resigned from the ministry and returned to the university to study comparative legal history. Between 1899 and 1901 he studied in Europe, in England and France, but particularly in Germany. Upon his return, he began to teach comparative legislative history at the university as professor of law, a post he maintained until his retirement in 1934 at the age of 62. Thus Minobe began his career as an expert on comparative and administrative law, although he is most remembered as a constitutional scholar. However, it was not until 1920

that Minobe began to teach constitutional law at the university, when he
was appointed to a second chair in the discipline.

Although his name is inseparable from the Minobe Affair of 1935,
Minobe’s career was deeply grounded within the establishment. He
was a member of the higher civil service examination board from 1903,
and a member of the Imperial Academy from 1911. He sat on various
government committees, including one established by the Katō govern-
ment in 1922 to discuss the revision of the electoral law. By the time
of his retirement he had been promoted to “the first rank of the higher
civil service” (chokunin ittōkan). Minobe was also appointed a member
of the House of Peers in 1932, a post he had to give up three years later.
In 1903, he married a daughter of Kikuchi Dairoku, president of Tokyo
Imperial University (1898–1901) and an education minister (1901–3)
in the first Katsura Cabinet. His mentor at the university, Ikki Kitokurō,
also assumed various key government posts: Home Affairs Minister
in the Ōkuma Cabinet (1914–16), official adviser to the emperor
(1925), head of the Sūmitsuin (1934–6), and Minister of the Imperial
Household in 1936. Ikki was among a group of senior officials of the
Okada government (1934–6) who were regarded by their political op-
ponents as pro-Anglo-American, parliamentarian, and liberal, and his
political career also ended in the wake of the Minobe Affair.

By the time of his retirement, Minobe was already a celebrated
scholar. Between 1899 and 1934 he published some 45 books and 270
academic papers, excluding more informal articles that appeared in
commercial newspapers, popular intellectual magazines, and the un-
iversity’s newspaper.² Admittedly, a significant number of these were not
truly original, being translations from German or English and intended
to introduce the government structures and constitutions of other
countries to the Japanese academy. Yet he also wrote a large number of
articles about contemporary domestic issues with respect to law and
government. Here he returned repeatedly to constitutional questions,
including constitutional restrictions on taiken, the superiority of hō
(statutes) to chokurei (imperial ordinances), state ministers’ responsibil-
ity to Parliament, and the auxiliary role of the House of Peers to the
House of Representatives, even before his views triggered a fierce public

². A list of his publications between 1899 and 1934 is included in Kōhōgaku no Shomondai,
debate with Uesugi Shinkichi, who held the first chair of constitutional law at the university, in 1912. Reform of the electoral law is also a recurring theme, as are the principles of administrative law, and he attended constantly to the permissible jurisdiction of administration vis-à-vis the rights of the people. Thus Minobe frequently wrote about the abuse of police power and the necessary reform of the courts, and it is at this juncture between theory and its application that he transcended his role as arbiter and became a critic of existing practices.

This combination of theory and practice is a rare trait in Japanese academics, according to Ienaga Saburō. “Since the establishment of the modern academy in the second decade of the Meiji period, academics tended to separate ‘knowledge’ from thought, except for the enlightened early Meiji thinkers. Scholars either were preoccupied with absorbing new knowledge and technology while ignoring philosophical questions, or indulged in metaphysics devoid of empirical argument. ... Minobe’s legal theory is a rare example in which logic based on intellectual tenacity and philosophy with practical aims are combined.” Ienaga’s view is disputed, however. Many see the combination of Minobe’s logicality and his “natural law” thinking as flawed. This is because they see it as a combination of science and subjectivity, of logic and opinion, which they assume are incompatible. Thus Frank Miller says, “His [Minobe’s] format was highly systematized, giving an appearance of close logic, accented by a terse, lucid style. This appearance was somewhat deceiving, for the blueprint to which he ordered the body of constitutional and administrative law reflected his own peculiar orientation, his will to find in that body of law a harmony with constitutional principles as he understood them.” Miller even describes this combination of logical discourse and private ideology as contradictory. Yet as I hope to show in this chapter objective logic and subjective opinion are by no means incompatible and their co-existence is one of Minobe’s strengths, as Ienaga says.


In any event Minobe’s Emperor-as-Organ theory received wide attention when he published _Kenpō Kōwa_ in 1912, based on a lecture he had given a year earlier to middle-school teachers in a seminar organised by the Education Ministry. In both text and lecture Minobe articulated his constitutional theory: that the state is an independent organisation, that sovereignty resides in the state, and that the emperor exercises the will of the state as an organ of the state based on the Constitution. In this theory, the emperor no longer exercises his personal authority, but rather enjoys power entrusted to him by the state through law. This denial of the emperor’s personal rule ran directly counter to the forces of discretionary power, which stressed the political and symbolic role of the emperor in the newly formed centralised government, and their reinforcement through the Constitution.

Suzuki Yasuzō, one of the first scholars to assess Minobe’s work against the background of the country’s political and social situation, distinguishes three schools of constitutional theory that existed in Japan after the Meiji Restoration: absolute monarchism, constitutional monarchism, and popular sovereignty. But since popular sovereignty never gained full support as an academic theory, the history of constitutional theory in Japan involves a constant battle between absolute and constitutional monarchism.6

For those who supported absolute monarchism, the emperor and the country’s history were inseparable, and their fusion was enough to justify any authority exercised in his name. For them, sovereignty resided in the emperor, the Constitution was his order, and Parliament was an office run by the executive power. _Taiken_, the imperial prerogative, embodied the unlimited authority of the monarch. Iwakura Tomomi, and Inoue Kowashi, who wrote the Constitution with others, represent this school. However, it was Hozumi Yatsuka, a professor of constitutional theory at the university since 1889, who for the first time formulated an absolutist interpretation of the Constitution, based on his selective acceptance of various German theories, _kokugaku_ (nativist) learning, and a particularistic interpretation of _kokutai_, or national polity. Hozumi’s theory of _taiken_ became orthodox in the early days of the Constitution’s

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operation because its constitutional interpretation justified the operation of the *hanbatsu* plutocracy’s “transcendentalism.”

On the other hand, the school of constitutional monarchism insisted that sovereignty resided in the state, and that the monarch and the people should participate in the management of state affairs jointly through Parliament. The school’s rise and fall reflects the evolution of the state structure and the change of economic and social conditions in the country, according to Suzuki. Thus, when party politics gained strength in the 1890s, the school was given momentum by Ariga Nagao and Minobe’s mentor Ikki. Yet it was left to Minobe to consolidate the school with his Emperor-as-Organ theory.

Thus in the preface to *Kenpō Kōwa*, Minobe criticised Hozumi’s theory without naming him, saying that “Some scholars pretend to support constitutional government but in fact they advocate autocracy through exploitation of the concept of *kokutai*, while undermining the rights of the people and demanding their absolute obedience.” Here Minobe criticises Hozumi’s historicism, Japanese particularism, and the endorsement of imperial discretionary powers at the expense of popular rights. His views, says Suzuki, were “extremely liberal in principle and approach” compared with the conventional school led by Hozumi.

Along with his career itself, the vicissitudes of Minobe’s Emperor-as-Organ theory serve as a barometer of political change, and indicate shifts in the political and popular support for representative government, and of tolerance towards Japanese freedom of thought. Thus when the theory received wide attention following the Minobe–Uesugi debate of 1912, Minobe was able to say confidently that the idea of state sovereignty, even despite some governmental hostility, had been commonly accepted. Many academics also supported Minobe’s position in the debate. However by 1934 Minobe had to concede that the absolute monarchism advocated by Hozumi had become “de facto” official

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7. Ibid., pp. 177–81.
8. Ibid., pp. 192–3.
9. Ibid., p. 194.
10. The *Tokyo Nichinichi Shinbun* reported retrospectively on 17 March 1935 that Yamagata Aritomo, then chairman of the Sūmitsuin, had in 1912 demanded Minobe’s resignation from the university. His demand was blocked by Ōkuma Shigenobu and Ikki. The article is quoted by Miyazawa, *Tenno Kikansetsu Jiken*, vol. 1 (Tokyo: Yūhikaku, 1970), pp. 198–9.
theory” and that it could be found in the school texts produced by the government.\(^\text{11}\)

Minobe’s theory had gained prominence when political power was shifting to political parties from the hanbatsu plutocracy backed by the state bureaucracy and the military. In fact the Minobe–Uesugi debate is contemporary with the Taisho Political Crisis, an event often associated with the beginning of the Taisho democratic movement. In early 1913, the Katsura Cabinet, which the public saw as colluding with the military in supporting its fiscal demands, faced violent mass demonstrations in Tokyo, Osaka, and other cities. The Cabinet’s attempt to stay in power by issuing an imperial instruction after Parliament had adopted a vote of no confidence against it failed, and with thinning support even among the senior leaders it was forced to resign.

By contrast, the demise of Minobe’s theory twenty years later echoes Japan’s increasing international isolation and attempts by the military to buttress its activities after the Manchurian Incident of 1931. By then confrontation between the civilian government and the military was already intense. We have seen how in 1930, for example, Prime Minister Hamaguchi Osachi had had to overcome the Navy’s opposition when his government signed the London Naval Limitation Treaty. The Navy claimed that the government had violated the supreme command of the Army and the Navy, which belonged to the emperor. Minobe was a chief adviser to the government on this matter. Nevertheless the Manchurian Incident led to Japan’s withdrawal from the League of Nations a year and a half later, to tighter coercive pressure at home, and to the growing influence on policy making of the military and of bureaucrats calling for radical reform of government.\(^\text{12}\)

\(^\text{11}\) Minobe, *Nihon Kenpō no Kihonshugi* (Tokyo: Nihon Hyōronsha, 1934), p. 11. In 1934 Suzuki Yasuzō also observed that Minobe’s *Kenpō Satsuyō* had been criticised as a “sophism intended to change kokutai.” “After the death of Uesugi, the historical school had disappeared from the academy. However, the recent political climate has brought it back, and it is challenging constitutionalism. … The country’s constitutional studies have come to a grinding halt” (Suzuki, “Nihon Kenpōgaku no Seitan to Hatten,” p. 193).

\(^\text{12}\) Both groups now began to formulate their own policies. The Army published a pamphlet “Kokubō no Hongi to sono Kyōka no Teishō” on 1 October 1934, which one historian describes as the Army’s first attempt to take over government fully through a policy proposal. See Ōuchi Tsutomo, *Nihon no Rekishi*, vol. 24, *Fusazōmu e no Michi* (Tokyo: Chūō Kōronsha, 1967), p. 377. The so-called “new” bureaucrats also began to become more vocal after the Manchurian Incident.
Thus in 1935, at a pivotal moment, Minobe’s theory was criticised in the House of Peers as incompatible with the country’s national polity, *kokutai*. Elements of the military, military reservists, and extreme nationalists joined hands to demand Minobe’s dismissal. Under pressure, the government declared the theory “heretical” and banned three of Minobe’s major works on the Constitution. After some resistance, Minobe resigned from the house. The affair is widely regarded as marking the end of constitutional government in pre-war Japan.\(^{13}\)

Nevertheless after he had withdrawn from most of his public posts, Minobe continued his legal studies privately, particularly in administrative law and the examination of legal precedent. What Ienaga Saburō calls his indispensable book on the electoral process, *Senkyo Bassoku no Kenkyū* [A Study of Sanctions for Violations of Electoral Law], was written during this period. Minobe also participated in private constitutional studies,\(^{14}\) and after the war he advised the government when it tried to revise the Constitution under pressure from the Supreme Command for the Allied Powers. Minobe defended the monarchy and opposed any move that would hold the emperor responsible for his involvement in the war and would lead to his abdication. Still a highly contentious figure, Minobe died in 1948.

Although Minobe’s position in defending the Constitution and Parliament has been firmly established, assessments of his work are mixed. This is partly because of the difficulty in assessing pre-war Japanese liberalism as a whole.

Broadly speaking two main approaches have been taken to assess Minobe’s theory historically. One attempts to use the theory to explain the metamorphosis of the country’s constitutional and political institutions. These works focus on the Minobe–Uesugi debate of 1912, and the Minobe Affair of 1935, as clear yardsticks of the alternating strength

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14. The study group was organised by Count Itō Harumasa in 1941. Leading constitutional experts, including Minobe, Sasaki Sōichi, and Miyazawa Toshiyoshi, joined the group. See Emura Eiichi, “Bakumatsu Meiji Zenki no Kenpō Kōsō,” in *Kenpō Kōsō*, pp. 490–2.
and demise of constitutional principles and parliamentarianism. Most previous work belongs to this category.

The other approach emphasises intrinsically liberal values in Minobe's theory and attempts to understand it as a defence of civil liberties against intrusive state power. Of course the two approaches often overlap, yet comprehensive studies of Minobe's thought in the second category are relatively few. Ienaga Saburō's study of 1964 remains an exception, yet it is this approach that informs what follows.

Among the earliest works that see Minobe as a promoter and defender of civil liberties is Ukai Nobushige's essay of 1948. Ukai, a legal scholar and one of Minobe's pupils, describes Japan's modern history as a conflict between statism and citizens' demands for liberties, and sees Minobe's theory as an attempt to bring "the concept of liberty into the authoritarian and absolutist state created by the Meiji Constitution." Ukai singles out the following areas of Minobe's work as manifestations of his unflinching liberalism: his call for restrictions on taiken, his support for civil liberties, and his emphasis on the need for a curtailing of the discretionary powers of the administration. Such perspectives continue to be fundamental.15

Ukai's views were developed by Isomura Tetsu, a specialist in civil law (minpō), who followed the Kōza-ha Marxist interpretation of the Meiji Restoration. For him the Meiji Restoration was a revolution "from above," which resulted in the reinforcement of traditional feudalistic absolutism combined with industrial capitalism. He too assumed that the growing prominence of the school of constitutionalism, to which Minobe belonged, was in response to changes in Japanese society. However, rather than attributing the rise of Minobe's theory to the growing political assertiveness of the capitalist bourgeois class, Isomura allies Minobe with a group of legal scholars who began to emphasise civil liberties during the Taisho democratic movement.16 Isomura sees Minobe not as a bourgeois apologist but as a promoter of civil rights.

16. Isomura refers to the school as "shimin hōgaku" (studies of law for citizens), with Minobe's younger colleague Suehiro Izutarō as one of its leading figures, and describes Minobe's theory as an attempt to establish civil liberties through interpretation of law and its application. "Shimin Hōgaku" (part II), KNKH, vol. 9, pp. 161–94.
Hence, in this view, the progress of a capitalist economy after World War I prompted workers and tenant farmers to assert their rights in the economic sphere. This new assertiveness challenged the “traditional” social order based on the patriarchal family, the informal yet rigid status system, and the traditional communal mentality, on which Hozumi’s absolutism had relied. Thus, during the Taisho democratic movement, absolutist capitalist authority was challenged “from below.” Such a force demanded a civil social order in which the legitimacy of political authority would be recognised only by law. Minobe’s contribution, along with that of other shimin hōgaku scholars, was to try to establish a legal basis for the relationship between state and people, rather than simply to accept the master–servant relationship which had underpinned Meiji absolutism. For Isomura, Minobe’s organ theory attempted “to detach state authority from the unquantifiable, patriarchal, and personal control of the emperor and to define it as an independent, self-complete process.”17 In his view Minobe’s theoretical work laid the groundwork for the transformation of Japan into a civil society by proclaiming the autonomy of the law and by asserting a legal check on the exercise of political power.

In his Minobe Tatsukichi no Shisōshiteki Kenkyū of 1964, Ienaga Saburō develops Isomura’s claim that Minobe’s legal theory promoted a self-regulating political system. Ienaga too finds the essence of Minobe’s theory to lie in his assertion that no political power is limitless, in direct antithesis to Hozumi’s and Uesugi’s imperial absolutism. Substantive restriction should come from Parliament and also from institutional reform. Thus Ienaga emphasises Minobe’s criticisms of the abuse of discretionary power in such areas as inadequate attention to due process, insufficient protection of freedoms of speech and thought, and the treatment of suspects in the criminal justice system. Minobe was one of the very few legal experts who recognised the right to resist illegal police action, at a time when an orthodox view in the academy was that the police could charge people with obstruction of their “public” duties even if the duties were not necessarily legal.18

In fact, says Ienaga, as the exercise of discretionary power became more apparent, Minobe’s criticisms had gone straight to the heart of the

17. Ibid., p. 182.
18. Ienaga, Minobe Tatsukichi no Shisōshiteki Kenkyū, p. 178.
workings of government. Thus he had criticised the Peace Preservation Law of 1925, its revision of 1928, and then the increasingly assertive military. In October 1934, against the background of the accelerating fragmentation of state authority, the Army had published its first independent policy statement, seeking the public’s direct support for the reinforcement of the country’s military capability. Minobe, in an essay he wrote shortly after the publication of the pamphlet, criticised the document’s totalitarian implications, saying that the country’s post-Restoration history demonstrated that what made the country strong was individual creativity, not military power, and that demanding the people’s slavish subjugation was tantamount to destroying the country’s constitutional arrangements.

Again, in January 1935, shortly before he was censured for reaffirming his theory, Minobe criticised the treatment by government prosecutors of the suspects in the Teijin Incident, including their arrests without concrete evidence, detention without adequate legal grounds, and forced confessions. Ienaga, by highlighting these and other incidents in the life of a man of clear principle, concludes that central to Minobe’s criticism of “illegal” political power is a firm if sometimes inflexible liberal creed, to which he may have been drawn under the influence of traditions of civil liberty expressed by Locke and articulated in the bills of rights of the United States and France.

Nevertheless even as Minobe’s reputation as a defender of constitutionalism, parliamentarianism, and civil liberties now appears to have been established, he is still subject to criticism as an advocate of state law and as a defender of the emperor. Here Minobe is associated with the “undemocratic” aspects of the Meiji Constitution, for he adhered to the constitutional monarchy under the Constitution, and opposed its revision.

20. Minobe, “Rikugunshō happyō no Kokubōron o yomu,” Chūō Kōron, vol. 49, no. 12, November 1934, pp. 125–32. Minobe calls the publication an “undisciplined, irresponsible” action based on the military’s private will. He also points out its propagandistic nature, as in the proposed replacement of the country’s official name “Empire” with “Imperial State.”
21. Richard Mitchell says the case “more than any event during the turbulent 1930s ... focused public attention on violations of suspects’ procedural rights” (Mitchell, Janus-Faced Justice: Political Criminals in Imperial Japan [Honolulu: University of Hawai‘i Press, 1992], p. 121). For more information on the Teijin Incident, see Mitchell, Justice in Japan: The Notorious Teijin Scandal (Honolulu: University of Hawai‘i Press, 2002), and p. 248–9 of this work.
22. Ienaga, Minobe Tatsukichi no Shisōshiteki Kenkyū, p. 199.
sion after World War II. Both issues remain contentious, and Isomura and Ienaga address them at some length.

Isomura asserts that Minobe continued to support the emperor’s “ethical” role, and thus justified the preservation of *kokutai* in the ethical realm. He claims that such a sentiment reflects Minobe’s failure to envisage a social order for a fully autonomous people. In his view, “Transformation of the relationship between the state and the people into one based on a material order by eliminating relationships of subjugation such as imposed obedience must coincide with the establishment of a personal ethics.” The theory that regards the state as a legal person falls short of carrying out this task, since its attempt to overcome the *patrimonium* of absolutism is restricted to the legal system: it does not lead to the concept of a community as one consisting of “autonomous, conscious individuals.” In this sense, Minobe’s thought is incomplete. However, says Isomura, such limitations were perhaps inevitable, as Minobe tried to “rationalise” the existing structure of power under pressures coming from the emperor system, and the general value system that supported it. “Minobe’s limitations reflect a general failure of thought in Japanese society in its modernisation process,” according to Isomura.

This judgement, that Minobe was “a liberal interpreter of the Meiji Constitution” but only in terms of the limited social and political conditions of the time, has, I think, several problems. For present within it is the Marxist view that individual thought and action are reflections of the economic and political conditions of society. However, such views tend to subsume the individual within a reductive and all-encompassing construct of society, as if one’s thought is always and only an expression of external conditions. Since Japanese imperial absolutism is seen

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23. Isomura, op. cit., p. 185. Isomura quotes Minobe as follows: “*Kokutai* should be maintained based on ethical and spiritual relationships between the benevolent emperor and the loyal people” (Minobe, “Teikoku no Kokutai to Teikoku Kenpō,” in *Saikin Kenpōron: Uesugi Hakase tai Minobe Hakase*, ed. Hoshijima Jirō [Tokyo: Jitsugyō no nihonsha, 1913], p. 320).


25. Thus, for Suzuki, “[T]he rise and fall of an ideology or theory about a country’s constitution is ultimately determined by the country’s objective economic and social conditions of the time” (Suzuki, op. cit., p. 192). This view, reflecting the Köza-ha school of Japanese Marxism, remains influential not only in the assessment of Minobe’s work but of pre-war Japanese society as a whole.
as feudalistic and capitalistic, such critics attribute the weaknesses of Minobe's thought to these supposedly determining characteristics of Japanese society.

An immediate problem with this approach is that it underestimates the role of the individual within the processes of social change. The problem is reflected in the common assessment of modern Japanese thought as if the individual is incapable of creative criticism of the time. However, individuals are not mere passive recipients of social or political values. One prominent British Marxist sees “the whole” not as a predetermined structure of its parts, but as a fluid product of complex interactions between them. Hence the citizenry actively participate in the creation of the common life, in society and in history. And if we discard “elements of persistence, adjustment, unconscious assimilation, active resistance, [and] alternative effort,” we may not be able to understand history as “lived experience.” Thus it is extremely important to recognise the elements of creative criticism in Minobe’s thought in order to understand both him and his period.

Conversely a limitation of the relevant Japanese historiography is its excessive emphasis on the idea of personal failure. Isomura seems to assume that a civil society is realised only if its members become sufficiently autonomous and individualistic. Such a view, though important, again takes our attention away from more central questions about the sources of social change. For while personal consciousness is clearly a key factor in social change, it cannot be divorced from perceptions of, and interactions with, the limiting structures of society. Excessive emphasis on personal failure or “inner ethics” overestimates the powers of dissenting individuals while at the same time underestimating the role of enabling and disabling institutions.

Thus if we wish to discover why a more complete civil society failed to emerge in pre-war Japan, we must begin by asking whether its putative members had enough opportunities to form such a society. In Chapter 1, we observed how severely such opportunities were curtailed by government. An enquiry into these circumstances, it seems to me, should anchor and inform any discussion of collective or individual traits. Minobe’s role emerges most clearly in terms of his attitudes towards the available institutions, imperfect though these may have been.

Previous criticism of Minobe’s supposed “emperor worship” is also, I think, unpersuasive. As Matsumoto Sannosuke demonstrates, organ theories had a double function in the formation of community, as did the role of the emperor. For the formation of a political community always requires some form of central power, regardless of whether the power is absolute or not. Crucial here is whether there is an acceptable balance between that power and the members of the community and how this balance should be achieved. Minobe’s theory should therefore be assessed more in terms of his overriding concern for questions of civil liberty and legal equality, rather than of any imputed emperor worship or feudal mentality. For his efforts, as Isomura says, were always to incorporate the emperor into a newly accountable political structure, and this is far more important than any question of imperial investment.

However, along with emperor worship, Ienaga sees Minobe’s emphasis on the role of the state as a further weakness, preventing him from developing a theory truly suitable for a civil society. For him, Minobe’s excessive reliance on the concept of the state is both backward and dangerous, because such a state could easily become oppressive. “The contradictions of capitalism,” he says, “cannot be solved by merely strengthening state control without increasing the role of the proletariat, particularly when state power is directly or indirectly controlled by capitalists. Rather such a state may transform itself quite easily into a fascist state that swaps the legal state for a ‘cultural’ state. In fact, from the Manchurian Incident onwards, the Japanese state was heading towards the destruction of constitutional politics through the gradual strengthening of state control. Minobe’s insistence on increased state control appears to be in line with such a fascist orientation, and thus with the advocacy of the reform of the state structure supported by the right wing, the military, and those who advocated state socialism.”

This view remains controversial, and poses difficult questions about lines of demarcation between totalitarian and representative governments. The extent to which Minobe’s emphasis on the role of the state

29. Ienaga, Minobe Tatsukichi no Shisōshiteki Kenkyū, p. 92.
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actually exacerbated the forces he sought to contain will in fact form one of the themes of what follows. However, even as this study will remain indebted to Marxist perspectives and be concerned with social, political, and economic conditions, it will also attempt to assess Minobe’s theory by avoiding as much as possible such blunt-edged instruments as “feudalism,” “backward traditions,” and “the role of the proletariat.” This does not mean to dismiss such concepts entirely (for their history remains part of the subject), but rather to try to understand Japanese liberalism, and its limitations, within the framework of personalised encounters with the existing political structure, cultural norms, and the play of new and inherited values. Assessments of Minobe’s vision of the state will be made within this perspective.

Fundamental then, for many historians and political scientists interested in this period, including those of the Marxist Kōza-ha school, are questions about the inner trajectory of the Japanese state from its inception (the Meiji Restoration) to the emergence of the totalitarian, militant state of the 1930s. Their shared concern, which was first addressed most vigorously by the immediate post-war Japanese historians and political scientists, including Maruyama Masao, is with ideas of change, continuity, genesis, and possible resolution.

Since my own concern is with the evolution of civil society in Japan, this study will assume such perspectives, not only in government but also in the relationship between authority and the individual. I will present Minobe’s theory as an attempt to shift from absolutism to constitutional government, and to conceive in a Japanese context, and within the shifting perspectives of an individual life, the elements of a civil society. Drawing upon previous work by amongst others Eguchi Keiichi and Masuda Tomoko, I shall reassess Minobe’s theory in terms of the tension between imperial absolutism and free government that lies within it.30

Ideological resistance to Minobe's legal state was most famously articulated by Uesugi in an exchange on the Emperor-as-Organ theory in 1912. In their debate, the most striking difference between the two men is in their views of how social order should be achieved. For Minobe, “Individuals have their own purposes in life. One of the most important ethical requirements of constitutional government is to respect the people as individuals and free them from enslavement.” For him, public consent is crucial for political power to be legitimate, regardless of whether it is obtained through Parliament or recognised in “common law.” On the other hand, for Uesugi, the individual depends on society and the state. “Without the state, we would not be able to assume our vocations whereby we can demonstrate our distinctive abilities. …One’s own activity neither reflects one’s sole power nor belongs to oneself alone.” Thus Uesugi urges people to fulfil their prescribed social roles, thereby maintaining the basic fabric of society, while Minobe emphasises social and individual freedom.

The debate of 1912 occurred at a time of fundamental change in the political structure and in people’s attitudes towards authority. Political parties had moved to take over executive power, and Minobe articulated political principles in tune with a more assertive public. Thus it was no coincidence that Minobe, then a professor of law at Tokyo Imperial University, delivered his lecture on the Organ theory in 1911, just a year before the Taisho Political Crisis, when politicians in the opposition, businessmen against military spending, journalists, and ordinary citizens unhappy about government policies joined forces in demanding the resignation of the Prime Minister Katsura Tarō whom they saw as merely representing the vested interests of the old oligarchy and the military. Under their pressure, Katsura stepped down less than two months after assuming the post. Minobe spoke for these forces when he scrutinised the legitimacy of political authority, and challenged

31. Minobe, Kenpō Satsuyō, p. 152.
33. The editors of the 11-volume KNKH series published from 1958 to 1967 divide the pre-war period into four phases from the viewpoint of legal history: transition (1868–89), formation (1890–1914), readjustment (1915–31), and collapse (1932–45). The Minobe–Uesugi debate took place at the start of the readjustment period.
“traditional” concepts of authority and social order. Uesugi responded with his staunch loyalty to emperor-centred national unity.34

In fact, Uesugi’s ideas are an amalgamation of German statism and Japanese “indigenous” traditions, such as kokugaku (nativism), Shinto, neo-Confucianism, and role obligation or meibunron, just as Hozumi synthesises Mito Ideology (his family-state concept derived from Aizawa Yasushi), kokugaku, and ideas drawn from the neo-Confucian mainstream (“ethical and political orders are one”), and from German legal positivism, particularly that of Laband.35 When Uesugi says that law is a single complete system from which an individual rule is deduced, he is echoing the Germanic constitutionalism that underlies Japanese administrative law. In this thinking, law and political authority are fused, and law is regarded as “a rational expression of political authority.” His view of the state has both Platonic and Hegelian elements, and these Western concepts fit comfortably with his traditional view of loyalty based on imperial absolutism and meibunron.

For Uesugi, the ideal state is led by the emperor, who is benevolent, and the subjects obey his orders. Such a community is harmonious. The right to rule results from the sovereign’s declaration. Such emperor-centred national unity tolerates neither heresy nor individual freedom. Uesugi says, “The subjects owe comprehensive obedience to the rights of sovereignty (tōchiken). These obligations are absolute, unconditional and unlimited. They are inherent in the existence of the subject.”36 In his discourse, government, society, and people are fused into the state. As members of the state, the people possess the status of the subjugated (fukujū). Thus he dismisses the idea of popular sovereignty altogether, saying that the Japanese polity (kokutai) began with the assumption of rule by the emperor’s ancestors. This negation of popular sovereignty


should be seen as part of Japan’s unique experience, setting the country apart from all other monarchies.37

For Uesugi, an ideal state exists in unity between the emperor and the people, and no obstacle should be placed between them.38 In this hierarchical structure, not only individuals but also government is subjected to kokutai. “When kokutai changes, a country will disappear. Change of seitai (government) is merely a matter of convenience, determined by considerations of loss and benefit depending on the social and political circumstance of the time (jisei).”39 In his definition, kokutai, the national essence, transcends government.

Accordingly Uesugi criticises both the hanbatsu clique and the existing political parties, since they are trespassing on this unity. His view anticipates Kita Ikki’s call for drastic reform of the country’s polity, including the termination of party politics, which was promoted by young military officers in their attempted coups in the 1930s. And it anticipates the totalitarian notions of the Taisei Yokusan Undō [New National Unity Movement] and the Kokutai no Hongi in the late years of that decade. Uesugi’s thought reveals the resilient core ideas of emperor-centred national unity: the denial of popular sovereignty, the emphasis on obedience, the rejection of “heresy,” particularism (the emphasis on kokutai), anti-parliamentarianism, and anti-liberalism.

In this emphasis on ideas of national unity, ethnic pride, and antipathy to Parliament, Uesugi’s views have much in common with those that underlie European fascism. And yet his view of a national unity based on the people’s total subjugation to the emperor contrasts with the emphasis on the role of a dominating party by his European counterparts.40 In Japanese totalitarian thinking, party leadership is less important than the emperor’s absolute authority and his subjects’ unswerving loyalty to him. It is these indigenous totalitarian tendencies which most clearly clash with Minobe’s ideas of the legal state.

To better appreciate Uesugi’s imperial absolutism and his ideas of social order, we need to examine more closely the genesis of modern

37. Ibid., p. 267.
38. Ibid., p. 285.
39. Ibid., p. 250.
Japanese statehood as the Japanese elite envisaged it. For in doing so we will understand more clearly the forces Minobe chose to engage. Two issues are relevant here. One is how the political elite dealt with the dual structure of political authority, the emperor and the shogun, before the Restoration, and how their historicism affected the Meiji political structure. The other is how it responded to what it saw as the two looming “national” crises, the threat of the West and the domestic weakness of the country, in the early nineteenth century. The two are essential to the formation of the idea of national unity, and to the traditional ideas Minobe sought to contest.

Ideologically then the Meiji Restoration has its antecedents in the dual structure of traditional political authority, emperor and shogun. Indeed it was Tokugawa Mitsukuni, the seventeenth-century lord of the Mito domain and a grandson of Tokugawa Ieyasu, who initiated the compilation of the *Dai Nihonshi* [*History of Great Japan*], a comprehensive account of Japanese history starting from the country’s origins and the legendary Emperor Jinmu. Through the project, the imperial family emerged as a moral ideal that represented the country’s existence and continuity, thus transcending political events. Yet the Mito scholars’ articulation of the dual structure, in which an emperor was defined as the real head of state and the shogun as his “regent,” also portrayed the *bakufu* government as a temporary authority and thus made it vulnerable to replacement when calls for national unity grew. Thus, by around 1860, the project, which had begun in 1657 and was still in progress, had helped foment Japanese nationalism, synthesising neo-Confucianism, Shinto, and *kokugaku* into the powerful ideology of “sonnō jōi.” Restoration nationalism was a product of such interaction, and no group was more responsible for its articulation than the Mito scholars.

Nevertheless Mito historiography’s emphasis on the imperial line and its treatment of the dual structure of political authority had a lasting

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influence on Japanese thinking on government. Most relevantly it is echoed in the Meiji Constitution in the parallel presence of imperial orders (chokurei) and laws (hō). Yet the problem is not the parallel presence itself, but the tendency, both ideological and institutional, for the emperor to represent higher authority than government. Implicit in Minobe’s objections to Uesugi’s absolute legal state is the transgressive potential of unaccountable power that remained such a problematic aspect of Japanese government right until the end of World War II. And Uesugi’s meibunron is in the direct line of Mito thought and bias.

Two scholars in particular, Fujita Yūkoku (1774–1826) and his disciple Aizawa Yasushi (1782–1863), were most important in the formation of the Mito ideology. Fujita and Aizawa both belonged to the late Mito school, and each headed the Mito Historiographical Institute (Shōkōkan), which was responsible for compiling the Dai Nihonshi. Both had an acute sense of crisis within late Tokugawa society, sensing financial depletion, the slackening of samurai morale, and low agricultural productivity accompanied by natural disasters and famines. Nascent imperial absolutism and meibunron were their response to what they saw as “evidence of social disintegration.” How to maintain social cohesion became a major concern for both of them, and the imperial family emerged as a source of natural order and social unity. Thus Fujita affirms in the Seimeiron [On the Rectification of Names] of 1791,

> If the shogunate reveres the imperial house, all the feudal lords will respect the shogunate. If the feudal lords respect the shogunate, the ministers and officials will honor the feudal lords. In this way high and low will give support to each other, and the entire country will be in accord. What qualities enable the shogunate to unite the country? Above, [it is] its reverent attitude toward the emperor, and below, its protective treatment of the feudal lords. Its rule, however, is nothing more than the exercise of the emperor’s sovereignty.

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43. However, the attitude of treating the emperor as an absolute and sacred monarch can be traced back to Yamazaki Ansai (1618–1682), the founder of “Confucianised Shinto” (Suika Shinto). See Koschmann, The Mito Ideology, pp. 8, 10, and Herman Ooms, Tokugawa Ideology (Princeton, N. J.: Princeton University Press, 1985), pp. 218–9, 248.

44. See Koschmann, op. cit., pp. 29–34.

For Fujita, although he is by no means a fanatic imperialist, the emperor is an established authority immune to censure. He emphasises “prescribed” social hierarchy in order to promote social and political reform without upsetting the status quo. For him the emperor is associated with “a changeless, natural order,” and this order is sacred. Emphasis on social order is necessary to avoid “the Chinese Confucian tradition of legitimate dynastic overthrow (ekisei kakumei).”

Thus Fujita emphasises the maintenance of names and status (meibun) for pragmatic purposes. “How essential it is in a state [tenka kokka] that names and status distinctions [meibun] be correct and rigid. They must be as unchanging as Heaven-and-Earth itself! In the beginning there was Heaven-and-Earth, and then the ruler and his subjects. Sovereign and subject set the precedent for high and low in the social order. Once high and low were distinguished, there was a base for rites and ceremonies.” Fujita’s primary concern is to reform the domain, far from ousting the bakufu. Thus meibun represents a “natural” order, which must be restored.

According to Bitō Masahide, meibunron is a Japanese offshoot of Chinese neo-Confucianism. The Zhu Xi (or Chu Hsi) school of Confucianism, generally called neo-Confucianism, was founded by Zhu Xi (1130–1200) in Song Dynasty China (960–1279). He built his philosophy on two contrasting concepts, li (ri in Japanese) and qi (ki in Japanese). The former means “principle” or “reason,” and the latter “ether” or “material force.” Zhu emphasised the role of principle, which determines the way in which a material exists. A rationalism that respects principle is one important character of neo-Confucianism. Nevertheless, its dichotomous world view, subjecting every object and material to li, principle, encouraged rigid formalism. It tended to undermine human feelings, which were labelled a distraction in realising one’s li. Such “rationalism” suited the rulers of the time, and the new Confucianism became official teaching in China in the fifteenth century, and spread to its neighbours in East Asia, including Korea and Japan.

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46. Koschmann, op. cit., p. 41.
47. Ibid., p. 43.
Although the Zhu Xi school of Confucianism was introduced into Japan in the thirteenth century, it only began to truly affect Japanese understanding of the social order and one's place in it during the Tokugawa period. Yet even as it underwent drastic transformation in Japan over time, it is most clearly identifiable in meibunron, the doctrine that urged individuals to honour their social position (mei) and role (bun).\[49\] In the Chinese tradition, mei (name) is aligned with ideas and ideals, and jitsu with reality and the material. However, such a dichotomous view was transformed in Japan. Now the name was no longer associated with ideals, but with external norms one was supposed to obey. In this view, reality (jitsu) is demoted to anything that would threaten those norms. Instead of the neo-Confucian emphasis on the need to subjugate reality by means of the ideal (thereby ensuring the Mandate of Heaven) social norms are now made paramount. Thus, according to Bitō,

Neo-Confucianism endorses a moral training that emphasises observation and action in each case, and also the need to find a universal principle that encompasses those individual cases. In contrast, meibunron, advocated by [Fujita] Yūkoku and others, puts more emphasis on the diversity of roles that individuals play in society and the differentiation of moral obligations (dōtokuteki saimu) attached to those roles. ... It is more concerned with the conditions of different roles, bun, than with the universality of li (principle or reason).\[50\]

In this way the two views clearly differ in their approach to individual and society: for where Neo-Confucianism emphasises the quest for harmony between principle and individual performance, meibunron emphasises hierarchy, one's place in the social system.\[51\]

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51. As Bitō himself admits, this is a very simplistic view of Japanese neo-Confucian thinking.

Various Confucian scholars were attracted to the rationalism of the Zhu Xi school, including Nakae Tōju and Arai Hakuseki. In the eighteenth century, emphasis on the formalism of the doctrine declined, and more pragmatic thinkers emerged, such as Itō Jinsai (1627–1705) and Ogyū Sorai (1666–1728). For Sorai’s criticism of neo-Confucianism and his view of objective social order, see Maruyama, “Soraigaku ni okeru Senkai,” Nihon Seiji Shisōshi Kenkyū (Tokyo: Tokyo Daigaku Shuppankai, 1952, reprinted 1989), pp. 208–22. The influence of the Wang Yang-ming school, which was anti-scholastic, emphasizing the union of thought and action, is also recognisable in the thought of pre-Restoration
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It is these ideas of the social order based on one’s bun as articulated in Fujita’s meibunron that are shared by Uesugi, and then assimilated into the Kokutai no Hongi to justify the official propaganda of national mobilisation. However, this does not mean that Uesugi was an uncritical follower of Fujita’s thought, for he too interpreted meibunron to justify his monistic views. Thus for Uesugi, national prestige is of paramount importance and the individual should strive to develop the national spirit in a very competitive world. Such an expansionist position is either absent or only implicit in Fujita’s thought.

Uesugi’s absolutism, and by the same token Minobe’s constitutionalism, also have their antecedents in the sense of malaise and inadequacy perceived by such later Mito scholars as Aizawa Yasushi, whose Shinron was written in response to the promulgation of the “Order to repel foreign ships” (Ikokusen uchiharai rei) in 1825. Aizawa too contributed to the calculated “elevation” of the reigning emperor as the embodiment of moral goodness, and the symbol of national unity. As with Fujita, Aizawa’s concern was how to reform politics and society without upsetting the existing social order. Yet because Aizawa’s Shinron was written 34 years after Fujita’s Seimeiron, his emphasis on national crisis was more acute. Combining neo-Confucianism, the Confucianised Shinto developed by Yamazaki Ansai, and kokugaku, Aizawa emphasised filial piety and loyalty as fundamental to social order. His ideal order is presided over by the emperor, because the emperor is a direct descendant of Amaterasu Ōmikami. The “unbroken” blood connection is the justification for the emperor’s legitimacy as the sole person capable of making the people be “of one mind.” For him the emperor is the fundamental concept in a pragmatic theory of national unity.

52. For Uesugi’s nationalistic views, see Miller, Minobe Tatsukichi, p. 34.
53. Although ostensibly written solely for the inspiration and enlightenment of his teacher Fujita Yukoku and his lord Tokugawa Narinobu (1797–1829), the book-length document soon ‘leaked out’ and was widely disseminated in various versions by samurai activists” (Koschmann, op. cit., p. 56). An English translation of Aizawa’s Shinron, translated as The New Theses, is included in Bob Tadashi Wakabayashi, Anti-Foreignism and Western Learning in Early-Modern Japan (Cambridge, Mass.: Harvard University Press, 1986).
Inadvertently Aizawa therefore weakens the moral foundations of the Tokugawa bakufu. Yet more importantly, because of his concern with social cohesion, he is particularly intolerant of anything that can be said to threaten the unity of the state.\textsuperscript{55} Thus he advocated rejecting foreigners (jōi), endorsing the country’s 200-year-old policy of seclusion. It is this intransigence that passes into Uesugi.

Nevertheless some ideas central to Aizawa and Fujita were unpalatable to Uesugi. Thus in Aizawa’s theorisation of the emperor’s superiority, “the popular will” is essential. He says, “It is not by intimidating the people, and forcing them into obedience for one dynasty at a time, that an imperial sovereign is able to pacify the four seas, govern in peace for extended periods, and preserve the realm in perfect tranquillity. His only bulwark is that the people should be of one mind, love their ruler, and harbor no desire to separate themselves from him.”\textsuperscript{56} From this emphasis on “the people,” he advocates a new relationship between authority and the populace. Thus he says, “To make the people ignorant and the soldiers weak may be a clever plan from the point of view of politics. But where there is benefit, there is also damage, so that strategy must now be reformed.”\textsuperscript{57} Victor Koschmann remarks of this that Aizawa here “explicitly advocates a flexible practicality as the best policy in a world of incessant change.”\textsuperscript{58} And as Herschel Webb points out, the emperor was not yet linked to any concrete state power.\textsuperscript{59}

Thus it is extremely important to remember that the meibунron associated with Meiji neo-Confucianism differed from that of Fujita and Aizawa in intention and emphasis. For traditional thought was not only invoked but reinterpreted by those who were then in government and used expediently as an instrument. Certainly Fujita anticipates

\textsuperscript{55}. In Koschmann’s view, Aizawa characterises social problems in two ways: problems that occur with the passing of time, and problems caused by heresy. The first are inevitable, but the second must be contained. And for Aizawa religion “must serve the cause of unity and obedience to duly constituted authority” (ibid., p. 62). Wakabayashi, meanwhile, asserts that Aizawa’s usage of kokutai implied the fusion of religion and government to create spiritual unity not only between ruler and ruled but also among the subjects themselves, a departure from customary usage which had emphasised “the nation’s honour” or “dynastic prestige” (\textit{Anti-foreignism and Western Learning}, p. 13).
\textsuperscript{56}. Quoted by Koschmann, ibid., p. 67.
\textsuperscript{57}. Quoted by Koschmann, ibid., p. 79.
\textsuperscript{58}. Ibid., p. 79.
\textsuperscript{59}. Webb, op. cit., pp. 177, 189.
Uesugi’s views of a hierarchical social order, in which high and low are connected through “reverence,” “respect,” and “honour.” Yet at the same time, Fujita’s question “What qualities enable the shogunate to unite the country?” echoes Minobe’s “Why do we have to obey the State?” — a question he in turn had learned from Jellinek but nevertheless made his own. Thus meibunron polemic in the late Tokugawa and early Meiji periods grapples with questions of legitimate political authority, from which both major principles of the Meiji Restoration, “kōgi yoron” (public debate and opinion) and “sonnō” (revere the emperor), derive. But if the divided trajectories of later political debate are implicit in it, it does not project the later triumph of absolutism.

Thus if the Meiji Restoration was carried out in the name of the emperor, he by no means represented absolute authority. Rather he symbolised a moral authority less partial and thus more legitimate than that of the Tokugawa government. In this way the Charter Oath projects an image of the emperor as the moral and symbolic leader of the country’s quest for modernisation. Even the Boshin Shōsha of 1908 preserves this practice, portraying the emperor as one who spearheads the country’s advancement based on the co-operation of his subjects. In the Kokutai no Hongi of 1937, however, the emperor no longer asks the people for support, and is excused from explaining his reign. His authority is absolute and legitimate, historically and culturally, and linked firmly with the idea of the state. Sometime between the Boshin Shōsha and the Kokutai no Hongi, a radical metamorphosis of the emperor’s political role had taken place. With the demise of party politics, the emperor had emerged as the head of the monolithic state, where politics and morality were fused to produce a formidable discourse for public mobilisation. Also impugned was the very idea of personal freedom.

In a rapidly changing society, where ideas that natural law could provide were constantly challenged, it is easy to see why many Japanese, including Hozumi and Uesugi, were attracted to such a synthetic view of

the emperor.\textsuperscript{62} The pervasive portrayal of a country in constant danger, frequently reinforced by government policy statements, including imperial rescripts, had transformed the emperor into the living embodiment of a permanent and necessary order.\textsuperscript{63} The myth flourished at a time when the Constitution’s flawed arrangements lent themselves to the purposes of reactionary opinion.

However, beneath the veneer of Uesugi’s elevation of the emperor’s absolute status, there seems to lie an acute mistrust of personal moral judgement. For Uesugi, it is outside the individual’s prerogative to judge what is right or wrong. Moral judgement must transcend the individual, and must be absolute. In a society where one’s socio-political status is largely determined by birth, the traditional political thought of the elite may not encourage independent judgement. Yet without a strong sense of personal autonomy and the habit of envisaging a state system based on individual freedom, it would be next to impossible to recognise the need for the limitation of political power, a main tenet of the constitutionalism Minobe defended so adamantly. Thus, Uesugi, as with the Kokutai no Hongi, conclusively repudiated critical and independent thinking: “If one ponders over what is right or wrong, one is [excessively] preoccupied with finiteness and relativism.” Instead, one should rely on the infinite and the Almighty, “abandon the self and obey the emperor’s decision wholeheartedly.” By so doing one will reach “perfect peace.”\textsuperscript{64} Thus, self-negation leads to absolute obedience to the highest authority, the emperor, and such obedience ensures one’s emotional and physical security. Uesugi, it would seem, sought his own Leviathan in the emperor. And in this quest for an absolute authority to guarantee one’s “peace of mind,”\textsuperscript{65} for, in effect, a new religion of the state, there

\begin{itemize}
\item \textsuperscript{62} Thus Bernard S. Silberman speculates that during this period the erosion of ideas of natural law—which meant “the Confucian paradigm of the natural order” for many Japanese—was primarily due to the Meiji leaders’ introduction of the idea of “Imperial will” as the new organising principle, and also to industrialisation which prompted “a secular, contractual conception of economic relationships” (Silberman, “The Crisis of Secularism,” in Japan in Crisis, ed. Silberman and H. D. Harootunian, pp. 440, 443).
\item \textsuperscript{64} Uesugi, quoted by Nagao Ryūichi, Nihon Kenpō Shisōshi (Tokyo: Kōdansha, 1996), pp. 120–1.
\item \textsuperscript{65} Ibid., p. 121.
\end{itemize}
lies a clear continuity between *meibunron* tradition, Uesugi’s political thought, and totalitarian dogmatics.

Minobe’s defence of the claims of the legal state and of constitutional government was thus both provoked and undermined by the emperor’s shifting role, by the government’s constant resort to the rhetoric of national crisis, and by the accommodatory aspects of traditional political thought. Nevertheless, throughout his career, he sought to appraise both policy and institutions in the light of his own vision of national well-being and the rights of the individual. For him no state system was viable unless it ensured personal freedom. Thus, if Uesugi’s reinterpretation of *meibunron* marks a shift in the evolution of public discourse on Japanese statehood, a shift from neo-Confucian justification of social and political change to rigid endorsement of political conformity, so by the mid-1930s, when such a discourse had been thoroughly mobilised in the name of *kokutai*, Minobe’s liberal views suddenly found themselves serving as defining principles for this new intrusive nationalism, but only through their negation.

**FROM ORGANICIST THEORIES TO CONSTITUTIONALISM: THE DENIAL OF ABSOLUTE POWER**

The essence of Minobe’s constitutional theory is that no political power is absolute and limitless. This claim forms the foundation of his conceptualisation of the legal state. At the same time Minobe’s constitutional views are often associated with the German concept of *Staatslehre*, translated as *kokkagaku* (the theory of the state), which has been criticised as a defence of statism by post-war political scientists.66 Notions of *Staatslehre*, organicist and holistic, became part of the mainstream of legal and political thought in Japan after the promulgation of the Meiji Constitution. The prevailing interpretation of organicist theories is that they were devised to defend monarchical authority.67 Proclaiming the supremacy of the state, they played an “undemocratic” role in defending

66. See Miller, *Minobe Tatsukichi*, p. 14. Miller asserts that Minobe’s constitutional views “emerged from and in large part remained within the limits of the official political science of the Imperial University, a political science which in Rōyama’s words, ‘neither saw with its own eyes, nor stood on its own feet. Rather it depended on *Staatslehre.*’ It was not an independent science but an auxiliary of the state bureaucracy in administration and legislation.”

the monarch against the increasingly assertive bourgeoisie in political and legal debate in Germany.

However, organicist theories vary in emphasis, and those concerned with the protection of individual rights are closer to constitutionalism. Furthermore modern natural law elements are discernible in some theories. Minobe's theory is organicist, and yet natural and common law thinking is recognisable in his vision of constitutional government. This section aims to clarify Minobe's constitutional views, and to show how far he departed from his predecessors and colleagues in his interpretation of organicist theory.

Organicist theories of the state reflect two prevailing concerns of Europe after the French Revolution: an emphasis on unity, and a search for new social principles in an increasingly secular world. Recent social change is implicit in the theories' emphasis on the whole, which is more than a collection of individuals, and on the role of law. Romantic utopianism, new forms of nationalism, and the idea of social “progress” (triggered by the Industrial Revolution and the development of science) also entered into theories of the state. The plethora of theory reflects the breadth of debate about the relationship between authority and the individual at a time of fundamental change in society.

Theories of the state were pursued most vigorously in German states from the late eighteenth century, when national unity and nation-building became prime concerns of many intellectuals, including legal experts. In time they were developed into a vast body of knowledge as Staatslehre, which the Japanese enthusiastically tried to master. In 1887, a society for promoting study of the theory of the state (kokkagakkai) was established within the Tokyo Imperial University. The prime minister, Itō Hirobumi, was among its founding members. Political science and law were studied as part of Staatslehre.

Of the organicist theories introduced into Japan through Staatslehre, the schools of historical law and of legal positivism were most influen-

68. There are two main schools of natural law, classical and modern. Classical doctrine sees it as a law of nature, “universal and immutable.” The modern emphasis, developed by such thinkers as Grotius, Locke, and Rousseau, stresses the natural rights that one is entitled to defend. Although both are concerned to define the nature of justice that is common to all, natural law as used hereafter refers to the modern theory. For the relevant distinctions, see, for instance, J. W. Harris, Legal Philosophies (London: Butterworths, 1980), pp. 6–21.
Japanese scholars, including Minobe and his opponents Hozumi and Uesugi, all learned the idea of national sovereignty from these two schools. Nevertheless, Minobe’s organicist theory markedly differs from the theories advocated by his opponents. Minobe’s position becomes clearer if we distinguish between the different organicist viewpoints.

Friedrich Savigny (1779–1861) is often described as the founder of the historical school. Reflecting the emerging German national consciousness in response to the wars against Napoleonic France, Savigny challenged the hegemony of natural law, with its emphasis on rationalism, universalism, and individualism. He saw law as historical and peculiar to a people, so that law is “discovered” not “made.” Thus he tried to find “an organic principle” in law through the examination of history.

On the other hand, the legal positivism established by such scholars as C. F. von Gerber (1823–1911) and Paul Laband (1838–1918) provided Japanese legal experts with the concepts of state and constitution. Sovereignty (shuken) and the legal person (hōjin) are two key concepts developed by the German positivists that entered into Japanese legal discourse. Here the state is defined as a legal person, to which sovereignty is attributed. This formulation shifts the source of supreme political authority from a monarch or a group of people to a quasi-metaphysical state. For Laband, quoted by Richard Minear, “The legal personality of the state consists in the fact that the state has its own rights of rule for the fulfilment of its tasks and duties.” Accordingly “The will of the state is distinct from the will of its members,” and “It is not the sum of their

69. See Minear, Japanese Tradition and Western Law, p. 35.
70. For Savigny “All law is originally formed in the manner in which … customary law is said to have been formed: i.e., that it is first developed by custom and popular faith, next by jurisprudence, —everywhere, therefore, by internal silently-operating powers, not by the arbitrary will of a law-giver” (quoted by Minear, ibid., pp. 36–7).
71. Nevertheless when the Japanese began to write their own civil code in 1870, it was the French code that they turned to. The government had invited the French legal expert Gustave Emile Boissonade de Fontarabie, in 1873, for consultation on the code. Boissonade stayed in Japan until 1895 and taught French law and Roman law at the Justice Ministry, the Dajōkan, and other government institutions. Notions of the legal person, social rights, and the distinction between public law and private (civil) law thus entered into Japanese legal discourse from the French. Yet for Minobe’s generation the German system, which shared the Roman law tradition with the French, was most influential.
wills, but a will independent of them.” Thus sovereignty is no longer a matter of personal authority, but of an “indivisible” entity.72

Questions remained, however, as to how the rights of the metaphysical state could be defined vis-à-vis the traditional concept of the rights of the monarch and the rights of the individual. And it was not until the late nineteenth century that a new generation of European legal scholars began to discuss “the needs and demands of social forces” in the theory of the state. Most prominent of all those who then developed the theory of individual rights based on positivist tradition was Georg Jellinek (1851–1911), and it was to Jellinek, as we will see, that Minobe eventually turned. Most significantly, as Minear points out, “Laband was concerned primarily with the formal law; it remained for Jellinek to broaden the focus of law again to permit serious consideration of the social forces Laband placed outside the law.”73

Nevertheless, although German theories started to dominate studies of law and political science in Japan around 1890, the first organicist theory introduced into Japan was not positivist but strongly rooted in the tradition of natural law, emphasising reason and individualism. Thus in 1872 Katō Hiroyuki (1836–1916) translated Bluntschli’s Allgemeines Staatsrecht [The Theory of the State]. Bluntschli too emphasised “the cohesion of the nation.” And using the common metaphor of a living creature he theorised that “in the State spirit and body, will and active organs, are necessarily bound together in one life. The one national spirit, which is something different from the average sum of the contemporary spirit of all citizens, is the spirit of the State; the one national will, which is different from the average will of the multitude, is the will of the State.”74 Bluntschli’s fusion of collective vitality and national unity was in tune with what was already enshrined in the Charter Oath. For it offered the Meiji leaders and intellectuals a utopian vision of the state and society where collective and personal aspirations complemented each other.

72. Minear, op. cit., pp. 43–4. Minear summarises Laband’s legal positivism as follows: (1) a definition of law as sovereign command, (2) an absolute dependence on reason for the creation of a science of law, (3) the separation of law from ethics, (4) the positing of a personality for the state, and (5) a denial of fundamental liberties except as specifically guaranteed by law (rights by reflex). See ibid., pp. 40–9.

73. Minear, Japanese Tradition and Western Law, pp. 48–9.

However, Bluntschli’s organicist theory was founded on a delicate balance between collectivism and individualism. And when he says that the state has “an external growth” he anticipates the arrival of imperialism. At the same time individual freedom is central to his theory. For him the state is “an arbitrary work of individual freedom.”75 “[The] modern mind does not begin with the state, but with the individual.”76

Thus Bluntschli criticises the German historical school for mythologising the state at the expense of individual rights. He criticises Hegel: “Even Hegel in his theory of Law (Rechtslehre) paid more regard to the historical formation of states than the earlier theories of natural law. He supposed indeed that he found in the history of the world a dialectical process of reason. The ‘existing’ appeared to him ‘rational’. His theory especially glorified the Prussian state, as it then existed, still absolute although governed in a spirit of public duty. He defended the power of the monarchy, and did not care for the advance of constitutional freedom.”77 These criticisms will find their echo in Minobe’s criticisms of Hozumi and Uesugi.

Bluntschli also endorsed the power of law to link the common life and the state. Thus the constitution is “the articulation of the body politic.”78 “Man has his rights as an individual, private law is sharply distinguished from public law, and is rather recognised than created by the State, rather protected than commanded. ... The sovereignty of the State is constitutionally limited.”79 Thus Bluntschli’s organicist and constitutional theories champion the rights of the individual and endorse the philosophy of natural law. Katō’s translation of 1872 became a best-seller.80

In this way, the earlier organicist theories some Japanese came to know were accompanied by the concept of inalienable rights, which was promoted by the so-called enlightened (keimō) thinkers, including

75. “The State indeed is not a product of nature, and therefore it is not a natural organism; it is indirectly the work of man” (ibid., p. 19).
76. Ibid., p. 65. Even the absolutist Hobbes and the radical Rousseau are in agreement in this respect, according to Bluntschli.
77. Ibid., p. 73.
78. Ibid., p. 20.
79. Ibid., p. 59.
Nishi Amane, Fukuzawa Yukichi, and Katō, through their activities at such private societies as Meirokusha. Inalienable rights were a prominent concept in the bunmei kaika (civilisation and enlightenment) movement, and were then taken up by jiyūminken activists in their confrontation with the government.

Along with the touchstone of progress, these organicist theories were highly influential for post-Restoration Japanese political leaders and intellectuals in shaping their views of the state as a new political community. In their frantic efforts to introduce Western legal and economic systems, they needed a suitable theory to envisage a new “objective” social order. However, as consolidation of state power proceeded through the introduction of various state institutions, including that of the legal system, the initial impact of the organicist theories shifted from inalienable rights to ideas of national unity. Thus Katō publicly recanted his previous adherence to the idea of inalienable rights in 1881. In a crucial development, the organicist theories were now co-opted so as to strengthen the role of the emperor and to justify bureaucratic control of state affairs.

Ishida Takeshi attributes this transformation to the initial absence of an absolute state and the weak sense of civil liberties in Japan. Since most Japanese had not recognised political authority as an “apparat” until the Restoration, the concept of civil liberties was not fully developed. Yet in a society without a strong emphasis on civil liberties, organicist theories were now placed at the service of an authoritarian state, neither absolutist nor constitutional and with the true centres of power obscured behind the presence of the emperor.

81. The degree to which these Meiji thinkers understood or misunderstood the concept of inalienable rights is discussed by Richard H. Minear, “Nishi Amane and the Reception of Western Law in Japan,” Monumenta Nipponica, vol. 28, no. 2, 1973, pp. 151–75; Bob Tadashi Wakabayashi, “Katō Hiroyuki and Confucian Natural Rights, 1861–1870,” Harvard Journal of Asiatic Studies, vol. 44, no. 2 (Dec.1984), pp. 469–492; and Douglas R. Howland, Translating the West, passim. These scholars agree that the Meiji thinkers understood the concept within an inherited Confucian framework and thus construed it in ways that diverge from the formations of Hobbes, Locke, and Rousseau.

82. For Katō’s tenkō, see Matsumoto Sannosuke, “Katō Hiroyuki,” Shisō no Kagaku, May 1962, pp. 34–9; Howland, Translating the West, pp. 176–7; and Wakabayashi, “Katō Hiroyuki and Confucian Natural Rights, 1861–1870,” p. 491. Matsumoto Ken‘ichi also claims that contemporary criticisms of Katō’s theory intensified around this time, which forced him to capitulate. See Matsumoto, Hyōden Saitō Takao (Tokyo: Tōyōkeizai Shimpōsha, 2002), pp. 146–57.


78
Minobe's persistent denial of absolute power, however, demonstrates the lasting influence on him of the organicist theories that emphasised inalienable rights as in Bluntschli. His Emperor-as-Organ theory is an outgrowth of such earlier organicist influence, modified to take into account the presence of the emperor.\textsuperscript{84}

Yet it must be said also that Minobe had his predecessors in embracing German-origin “organicist” theories. Most influential of all was his mentor Ikki Kitokurō (1867–1944). Ikki also believed that sovereignty resided in the state, not in the emperor, as Hozumi claimed. However, Minobe and Ikki differed in their attitudes towards law. Minobe argued that civil liberties could not be violated unless sanctioned by law, while Ikki insisted that the people could not refuse orders unless the law allowed it. Their difference in emphasis stems from their different views of political authority defined as “the sovereignty of the state.” Ikki argues that “the subjects can refuse a state order which is not sanctioned by law, only if the state recognises that this is a case in which legal justification is necessary to order the subjects to act in a certain way.”\textsuperscript{85} More importantly, however, he does not accept the principle that only law allows the state to issue an order to the people.

Clearly here Ikki aligns himself with the “unchecked” power of the state and underwrites that power. For him, sovereignty is a corollary of state authority. He endorses the shift in the centre of power from emperor to state, but he does not question the legitimacy of political power in relation to the people. For Minobe, however, the basic component of society is the people, and law is necessary to protect their liberties. And he assumes that state power is not limitless and sacrosanct but subject to legal restrictions as well as practical restraints.\textsuperscript{86} Here Minobe departs from his mentor in his attempt to restrict the operation of political authority.

Minobe's scepticism about absolute state power had been present from the very beginning of his professional career and is present in his

\textsuperscript{84} The bibliography of Minobe’s \textit{Nihon Kenpō} of 1921 includes Bluntschli (\textit{Lehre vom modernen Staat} of 1886), Dicey (\textit{Introduction to the Study of the Law of Constitution}, seventh edition, 1908), and H. J. Laski (\textit{Studies in the Problem of Sovereignty} of 1917, and \textit{Authority in the Modern State} of 1918), as well as Georg Jellinek (\textit{Gesetz und Verordnung} of 1887, \textit{Allgemeine Staatslehre} of 1900, and \textit{System der subjektiven öffentlichen Rechte} of 1905).

\textsuperscript{85} Quoted by Ienaga, \textit{Minobe Tatsukichi no Shisōshiteki Kenkyū}, p. 14.

\textsuperscript{86} Ibid., p. 218.
first academic paper published in 1899. At that time the question of how to distinguish laws (hō) and ordinances (meirei) had become a subject of academic debate soon after the promulgation of the Constitution. Echoing legal positivism, Ikki had claimed that laws and ordinances are both enacted by the state, but that laws have higher authority because they can be amended or abolished only by other laws.\(^{87}\)

Although Minobe confirms the superiority of law to ordinance, he dissents from Ikki’s explanation, saying that the Constitution operates in a contrary fashion.\(^{88}\) The Constitution, he says, is itself an ordinance implemented without sanction of Parliament. He quotes Article 74: “No modification of the Imperial House Law shall be required to be submitted to the deliberation of the Imperial Diet.” Thus ordinances, not laws, are responsible for revising the relevant law. Furthermore the House of Peers is also regulated by ordinances and not by laws, for Article 34 says, “The House of Peers shall, in accordance with the Ordinance concerning the House of Peers, be composed of the members of the Imperial Family, of the orders of nobility, and of those persons who have been nominated there by the Emperor.” In Minobe’s view such lingering manifestations of imperial power expose the limitations of both Ikki’s analysis and of present political arrangements.

Characteristically Minobe attempts to ground the difference between laws and ordinances in constitutionalism. In an absolute monarchy, he says, there will be no difference between laws and ordinances, because both are enacted by the sovereign (kunshu) or his officers. The law’s superiority on the other hand derives from the introduction of Parliament. “Differences between laws and ordinances become effective only under constitutional government.” This assertion would inevitably lead to the fundamental question of who held ultimate authority, a government which could invoke the emperor’s authority, or Parliament. Although Minobe’s position at this time was by no means fully developed, this essay is undeniably important. For it acts as a prelude to his later concern for the priority of law, and the importance of individual “rights.”

88. Ibid., p. 44.
The first expression of Minobe’s Emperor-as-Organ theory occurs in another early article which he published in 1903 after three years of study in Germany. Here for the first time he asserted that sovereignty resided in the state and the monarch was an organ of the state. Yet Minobe’s essay already reveals his constitutional stance. The influence of legal positivism is clear, which he must have assimilated while in Germany, and he comfortably deals with such concepts as the legal person and the rights of the individual, as well as with German metaphysical philosophy. Minobe dissents from Hozumi’s claim that sovereignty resides in the emperor in person, saying that such a claim merely concerns physical reality alone, but legal studies require logical persuasion. He also rejects Hozumi’s particularism, saying that the state as a concept has characteristics applicable to any country, including Japan. And he advocates a flexible interpretation of written laws so that the aim of constitutional studies is always to explain legal principle.

These two early articles anticipate Minobe’s life-long concern with the legitimacy of both law and state. Regarding the former he appears to have sought “universal” principles, somewhat close to natural law. With respect to the state he sought a viable mechanism for national unity. Linking the two themes is the ever-present question of the relationship between state and the individual, and he sought a solution through his adherence to Parliament.

In 1904, he published two linked essays intended to criticise Laband’s legal positivism. Minobe is much more confident here than in his 1899 article in asserting that the superiority of law derives from the authority of Parliament. Thus the “Parliamentary sanction of a law has a legal power completely different from that of a decision by a group of scholars. This is because the former, as the organ of legislative power, agrees to give the decision a binding power.” Furthermore, “In a

89. Minobe, “Kunshu no Kokuhōjō no Chii,” Hōgaku Shirin, vol. 50, November 1903, pp. 1–6. Identifying this article as one of the earliest statements of the theory, Miller says, “He [Minobe] set forth briefly and dogmatically elements of a theory which was to become the crux of a thirty-year academic and political struggle” (Miller, Minobe Tatsukichi, p. 27).

90. The organ theory Minobe adhered to was not new to the Japanese academy, however. In 1889 Ariga Nagao had already claimed that the emperor, as one of the organs of the state, had to comply with the Constitution in exercising his authority. For the Ariga–Hozumi debate in 1889, see Suzuki Yasuzō, “Nihon Kenpōgaku no Seitan to Hatten,” pp. 184–5. Minobe’s Emperor-as-Organ theory has been frequently discussed. But see, for example, Najita, Japan: The Intellectual Foundations, p. 110, and Barshay, State and Intellectual in Imperial Japan, p. 41.
constitutional monarchy, state sovereignty (kokken) is not exercised by the monarch alone. Organs independent of the monarch take part in the operation of state power. It is mistaken logic to assume that state power is indivisible, and can be exercised by the monarch alone.”91

Here Minobe departs from the earlier German positivists (such as Laband) and moves closer to the terms of Anglo-American constitutionalism. For he accepts, with Dicey, that power exercised without parliamentary sanction is not legitimate. Yet strong attachment to Parliament as a containing political principle is also deeply personal to him. When he, Sakai, and Saitō grew up, the Jiyūminka Undō was still strong, and the opening of Parliament was the ultimate goal for national liberation within the movement. The promulgation of the Constitution and the eventual opening of Parliament were part of their immediate experience. Consciously or unconsciously Minobe was a parliamentarian first before becoming a constitutional expert.

Minobe’s attachment to Parliament had made him acutely sensitive to any claim that endorsed the operation of unrestrained power. Yet central to Minobe’s constitutional theory is not the state but law. For him law springs from the life of society (shakai seikatsu), not the state, which is an artificial organisation. In this sense law precedes the state. Hence “... social life is a prerequisite for the establishment of law. Yet law does not presuppose the establishment of the state, at least theoretically. Law is necessary as long as social life takes place, even without the state. The prerequisite for the existence of law is the life of society, but not the state.”92

Thus Minobe accepts the premises of natural law to assert that law is paramount. Yet because the state cannot exist without law, he claims that the state’s action must be controlled by law. This claim is a direct corollary of the state-self-control theory formulated by Jellinek.93 Natural law and Jellinek’s state-self-control theory together prompt Minobe to

92. Minobe, Nihon Kenpō, p. 46.
93. Minobe cites Jhering as the first person who pointed out that all laws restrict the organs of the state. Yet, in his view, Jellinek developed the theory further, saying that if its organs are controlled by laws, the state also should be so controlled (see ibid., p.55).
claim that one aim of a constitution is to restrict state power (kokken). In the process he criticises Hobbes, Rousseau, and Hozumi for endorsing absolute power: Hobbes for supporting a monarchy’s absolute power based on contract theory, Rousseau for his assertion that the general will which underlies legislative power is limitless, and Hozumi for saying that state power transcends a constitution, and cannot be controlled by it.94

In more recent years Jellinek’s state-self-control theory has been criticised by legal experts such as Hans Kelsen (1881–1973) as self-contradictory.95 How is it possible for the state to impose law and at the same time be controlled by it? Minobe defends the theory, saying that “the will to obey self-imposed rules” does exist, for instance, in international law and private contracts, in which there is no supreme law imposer.96

At the same time, Minobe holds that the state and the people can be treated as two equal legal persons. The concepts of the legal person, which Minobe learned from legal positivism, and of individual rights, which Minobe absorbed from Jellinek’s work, contribute to the claim. However, it was only at the end of his career that Minobe was able to explain definitively why the state, the highest authority, had to obey its own rule.

Minobe answered this question unequivocally in Nihon Kenpō no Kihonshugi, published in 1934, just six months before the outbreak of the Minobe Affair. Here he advances beyond the metaphysical state as the highest authority, and simply states a key self-regulating principle of constitutionalism, the rule of law: no one is above the law, and those who make it also have to obey it.

As Ienaga has pointed out, Minobe in this regard seems to change his opinions very little. His basic constitutional points remain more or less the same throughout his works. What shifts do exist are more of articulation and emphasis rather than of any fundamental change in thought. Thus in Nihon Kenpō no Kihonshugi he asserts that even if it was imposed

94. Ibid., pp. 219–20.
96. Here Minobe’s analogy seems not entirely convincing, because what motivates nations or individuals to obey international law or private contracts is mutual consent between the parties. In the state-self-control theory, mutual consent is irrelevant, unless the concept of the people is introduced, because there are no equal parties involved.
by the government, the introduction of the Meiji Constitution brought in a legal “revolution.” Adhering to the main principle of *Staatslehre*, he reiterates that *pouvoir constituant* (authority to write a constitution) and *pouvoir constitué* (authority created by a constitution) are one and the same. Yet, instead of using this assertion to endorse state power, Minobe anchors that power to law. For once a constitution has been introduced, no state power transcends it. And once the law is interwoven with such essential principles and institutions as inalienable rights and a functioning Parliament, it creates a formidable counterbalance to the state in his theory.

At this point therefore Minobe has clearly moved towards English constitutionalism as articulated by Locke and later by Dicey. For “All state laws can maintain their validity only because those who have enacted the laws recognise that they too have to comply with them.”97 His previous adherence to the state is less ardently expressed, but the state remains the highest authority. For Minobe state power (*kokken*) is externally independent and internally supreme. However, it is not absolute, in that it is subject to self-restriction, practical restraints, and international and domestic laws. Thus, in his definition, “supreme” and “absolute” are two different concepts.98 It is Minobe’s rejection of absolute authority which his opponents saw as a major threat to their vision of national unity.

Thus in its fullest and most timely development Minobe’s constitutional theory celebrated the rule of law at a time of increasing danger from arbitrary power. The appeal to law was itself deeply subversive, just as much as the denial of unchecked power. For in the context of the 1930s, constitutionalism’s self-regulating mechanism, the rule of law, was increasingly incompatible with the totalitarian system that many began to believe necessary for the survival of the state. Thus Minobe’s theory was criticised at precisely the time of its greatest political relevance: in retrospect his ostracism seems a clear sign of his importance. Dissent had been imposed on him by historical events, but also by the flawed constitutional arrangements he had long scrutinised.

At the same time Minobe’s rejection of absolutism is closely connected to philosophical and practical questions about legal norms. Why

and how do people come to obey the law as the embodiment of norms of behaviour? How should such norms be determined? With these and other questions, Minobe probed the self-regulating mechanisms of constitutionalism. Accordingly, in our next section, we will discuss one aspect of Minobe’s theory conducive to norm creation, common law.

MINOBE AND THE ENDORSEMENT OF COMMON LAW
Minobe’s adherence to social consciousness (shakai ishiki) and his rejection of the absolute state led him to adopt a more flexible interpretation of legal norms than Rechtsstaat orthodoxies. In the latter, law is expected to provide “functional” rationality, regularity, and predictability. Thus administrative law became central to the Rechtsstaat, and Japan vigorously followed suit. In this system, legal norms were held to be deductive from prescribed general norms. Minobe by contrast was inclined to seek a more “empirical” rationality, despite being a leading authority on administrative law. This aspect of his theory and its significance can be examined in his endorsement of common law.

As we will see, and despite his alignment with British legal tradition, Minobe’s concept of common or customary law is not entirely equivalent to English common law. Nevertheless it is based on the idea of “equal, private persons,” whose public lives are regulated by law. In Japan such a concept was inimical to the hierarchical view of state power as envisaged in the Constitution and supported by those opposed to parliamentarism. It was also antagonistic to reactionary and traditional ideas about social order and obligation. This section will therefore concentrate on the centrality of common and natural law thinking to Minobe’s ostracised views.

In the narrowest sense, common law is a system of court-based principles developed through individual rulings based on the reinterpretation of previous decisions. It is a system of norm creation by induction rather than by deduction from general rules. Aware that Japan does not have the tradition of well-established common-law courts, Minobe is clearly not referring to the exact system of English common law when he mentions customary law. Rather his usage is a translation from the German Gewohnheitsrecht, meaning customary norms of practice and behaviour accepted as rules. On the other hand, Minobe’s concept of customary

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law shares some key constitutional principles with common law, notably law as a set of malleable norms responsive to changing realities, and law as a counterbalance to politics. Minobe’s defence of freedom of speech and his objection to the operations of absolute authority should always be understood in terms of this view both of the broader political community and of constitutionalism. Constitutionalism, however, has a different character if we contrast the Anglo-American tradition with that of the European continent. In the Anglo-American tradition, common law embodies “constitutional” ideas, while on the continent, under the strong influence of Roman law, constitutions tend to defer to traditions of absolute power.

Harvey Wheeler explains the evolution of common law in England with regard to natural law and constitutionalism. Citing anthropological studies, Wheeler claims that “natural law” is common to any primitive society. Communities would evolve shared assumptions and “universal” principles concerning what was just and wrong. In primitive “courts” these hypotheses about norms of behaviour would be examined in particular cases against evidence. Through the process of collation between principles and evidence, new “prescriptive norms” would emerge, based

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100. For Minobe’s criticism of the Press and Publication Laws, see Mitchell, Censorship in Imperial Japan, pp. 216–18.

on which new cases would be examined. Yet principles are only effective if they are capable of accommodating reality and evidence. Thus common law denies the presence of fixed, absolute norms, and instead insists on a self-regulating mechanism based on interaction between “natural” principles and reality.  

This “natural law” principle in common law can also be effective in checking the operations of political power. Despite John Austin’s emphasis on legal sovereignty, the “monolithic” state is a historical rarity, according to Wheeler. Thus in medieval England the dualistic tradition was founded linking the king’s absolute authority with the voice of “the people.” “There the popular aspect of monarchy was assimilated into what is sometimes called the folk spirit, but more often the common law; for the common law was thought of as the common possession of the entire people. This dualistic Anglican tradition became institutionalised in a series of conflicts between various English kings and their chief barons.” The Magna Carta of 1215 is the product of such a conflict. “Gradually, over many centuries, this form of baronial civil disobedience became institutionalised in Parliament through impeachment proceedings against errant ministers of the crown. This in turn led to the emergence of the working principles of the British constitution: the king acts only on the advice of his ministers; the ministers of the king’s cabinet are responsible to Parliament for acts done in the name of the crown; and a cabinet must resign if it loses the confidence of Parliament. In a sense then the British contribution to constitutionalism is the institutionalisation of civil disobedience.” Thus Wheeler asserts that the common law tradition played a key role in the development of British constitutionalism, which he defines as the tacit sponsor of creative dissent.

Such procedures prompt of course fundamental questions about the legitimacy of law, for in what does the final authority of the law consist? In Japan, given the dominant role that seihō (administrative law) played in the formation of the centralised government after the Restoration,
such questions occurred to Minobe repeatedly. Yet in almost every case his final resort was to invoke the principles and tradition of “common” law.

Thus shortly after his return from study overseas, Minobe wrote in 1904 two important articles about sanctions within the law. And in the following passage he echoes Bluntschi’s constitutional view that the people’s assent is indispensable for a law to be effective, and boldly challenges administrative law:

Laws are effective only as regulations. I cannot believe, however, that even as regulations laws are effective just because they are written down. The ultimate reason why laws have power rests in the awareness of the people (kokumin no jikaku). Laws are effective because they are obeyed. If people do not obey, a law cannot be said to have legal power even if it has been enacted by the state (kokka).

Matsuo Takayoshi quotes this passage to assert that by 1905 Minobe had envisaged a British-style constitutional monarchy for Japan and established the framework of his constitutional theory, “a chain of control with the people on top.” In this chain, the people control Parliament through elections, Parliament controls cabinet ministers through dismissal, and cabinet ministers control the emperor through their right to refuse “all laws, Imperial Ordinances and Imperial Rescripts of whatever kind, that relate to the affairs of State.” Article 55 of the Meiji Constitution requires a counter-signature by state ministers to authorise those documents. Thus Matsuo concludes that Minobe had come quite early to deny the emperor’s monopoly of sovereign power by endorsing popular sovereignty.

Minobe also moves to endorse interpretative changes in the law. For “if the people’s awareness changes according to social change, the effectiveness of a law will change even if its articles remain the same.” In this way law may be said to belong to the people, not to the state.

106. Minobe, “Hōritsu no saika ni tsuite” and “Futatabi Hōritsu no saika ni tsuite,” in Kenpō oyobi Kenseishi Kenkyū, pp. 129–71. The phrase “hōritsu no saika” appears in Article 6 of the Meiji Constitution as follows: “The Emperor gives sanction to laws, and orders them to be promulgated and executed.” These two essays contain almost all the arguments that Minobe would develop as his Emperor-as-Organ theory.


In the above passages Jellinek’s influence on Minobe is very strong. For around this time Minobe was tirelessly translating Jellinek’s works into Japanese, including his *Verfassungsänderung und Verfassungswandlung* [*Constitutional Revision and Change*]. These texts also show the influence of a new branch of legal studies in Germany, Rechtssoziologie (the sociology of law), which can be traced back to Savigny and affected the later generations of German legal scholars including Jellinek. Savigny’s interpretation of law as rules inherent in a community can be described as a conservative response to the growing demands of the bourgeoisie for codification of the law in order to protect their interests against the arbitrary rule of government. However, his claim that “law belongs to society” is clearly subversive in the face of the ever-increasing use of statutes. Thus when Eugen Ehrlich (1862–1922) later advocated “lebendes Recht” (living law), it too was directed against “the compulsive norm of the state,” and was thus strongly anti-statist. Ehrlich’s emphasis on “lebendes Recht” again reflects the persistent resistance to the expanding role of government (the state) in many countries in the late nineteenth century. Thus in a country where “law” was thought essential to create centralised government, Minobe’s attachment to the law of society and the law of the people inevitably led him into confrontation with the law of the state. As with Ehrlich this was especially so with respect to the legitimacy of legal statutes.

Statutes are regulations and rules written by either government or Parliament, although constitutional government requires that any statute needs the sanction of Parliament. Statutes differ from common law, in which various rules grow “organically” through interpretations by judges and lawyers of previous decisions. They are laws intended to deal with the

110. “With the great codifications of civil law a system of norms was developed securing a private sphere in the strict sense, a sphere in which private people pursued their affairs with one another free from impositions by estate and state, at least in tendency. These codifications guaranteed the institution of private property and, in connection with it, the basic freedoms of contract, of trade, and of inheritance” (Jürgen Habermas, *The Structural Transformation of the Public Sphere*, p. 75).

111. “The similarity of Ehrlich’s to Savigny’s approach lies in his emphasis on the ‘living law of people,’ based on social behaviour rather than the compulsive norm of the state. Norms observed by the people, whether in matters of religious habits, family life, or commercial relations, are law, even if they are never recognised or formulated by the norm of the state” (Wolfgang Friedmann, *Law in a Changing Society*, 2nd edn. [Harmondsworth, England: Penguin Books, 1972], p. 20).
population as a whole, while common law is responsible for cases between two individuals but extended to all applicable cases.

This recognition that there are two types of law, one concerning the relationship between the state and the people and the other between individuals, was keenly felt by legal experts such as Jellinek. In the countries where the tradition ofcontinental law was strong, including France and Germany, the separation between “public” and “private” laws became prominent. This separation, which is traced back to “ius publicum” and “ius privatum” in Roman law, also passed into the Japanese legal system. So in Japan, “public” laws were intensely exploited as administrative law, because it was felt necessary to insist on the role of government vis-à-vis the people amid government’s expanding role both domestically and internationally. In such a climate, in the eyes of those responsible for devising its structures, the state (as the ultimate maker of law) was an accomplished fact, and any serious enquiry into the legitimacy of statutes tended to be ignored. Typically the Meiji Constitution was promulgated arbitrarily, by the emperor, “in virtue of the supreme power” that he inherited from his ancestors.

Temperamentally and professionally Minobe revolted against this trend, although he was already a prominent member of the legal establishment. Thus in 1908, he argued that laws stipulated by the state may not be so authoritative as we assume. And as an alternative to statutes, he proposed the claims of customary law. Thus “… the conventional opinion is that customary law is less effective than statutes, customary law cannot alter statutes, and statutes cannot be altered unless by another statute.” Yet Minobe has long doubted such a view, for “laws introduced by the state do not have such power. Statutes have legal authority not simply because they are the expression of the will of the state but also because they have various forces behind them that give them legal authority.”

As examples of such forces, Minobe cites the common law as practised in England, and natural law based on rationalism and a sense of justice. In English common law history, the interpretation of the law has often been changed: some laws have ceased to be effective because changed social conditions rendered interpretative change necessary or

112. Minobe, “Kenpō no Kaisei to Kenpō no Hensen,” in Jellinek’s Verfassungsänderung und Verfassungswandlung. (Tokyo: Nihon Hyōronsha, 1946), pp. 188–9. First published, by the same publisher, in 1929, the article is a transcript of a public lecture Minobe gave in March 1908 based on Jellinek’s Verfassungsänderung und Verfassungswandlung.
the existing laws no longer valid. Hence, for Minobe, it is “superficial” to say that the law is “almighty.”\footnote{ibid., p. 191.}

Again in an article he wrote in 1909, Minobe cited customary law and the law of reason (\textit{rihō}) as “non-statute” law. Customary law had two sources, social customs and case law. English legal history once more provides highly convincing evidence that case law can indeed become general law: the state, says Minobe, must always be willing to adapt to the accumulated wisdom of its own institutions.\footnote{Minobe, “Hiseiteihō shōron,” \textit{Hōgakukyōkai Zasshi}, vol. 27, no. 2, February 1909, p. 184.}

Minobe would later incorporate his adherence to customary law and his suspicion of statutes into his major claim that there is no such thing as absolute power. Thus in \textit{Nihon Kenpō no Kihonshugi} of 1934, he articulates more clearly than ever before the “natural” forces that restrict the exercise of state power. These are the customary law that develops naturally in society, and the law of justice, international forms of these, and the restrictions that the state imposes on itself.\footnote{Minobe, \textit{Nihon Kenpō no Kihonshugi}, p. 31.} Thus Minobe’s assertion that state power must be legally controlled is reinforced by his insistence on the autonomy of law in society.

Minobe’s attempts to retain concepts of “society” at the centre of his legal theory are also reflected in his criticism of legal positivism and in his call for flexible legal interpretation. In a paper of 1930 he criticises Kelsen for treating law as a science of pure logic and for eliminating psychological, social, and political factors from jurisprudence.\footnote{Minobe, “Keruzen Kyōju no Kokuhō oyobi Kokusaihō Riron no Hihyō” (1), (2), and (3), \textit{Kokkagakkai Zasshi}, vol. 44, no. 8, 1930, pp. 1177–212, no. 9, pp. 1375–406, and no. 10, pp. 1532–50.} Kelsen had assumed that laws are imposed rules. He proposed to deal with laws as a system of norms against which “reality may be measured.” For him, national unity is possible only through a concrete mechanism such as law. Therefore law must be interpreted as logically as possible, and for this reason Kelsen opposes an interpretative approach towards law.\footnote{See Ukai Nobushige, “Uīngakuha [Vienna school of Constitutional Theory],” KNKH, vol. 7, 1959, pp. 130–40.}
Minobe’s objection to Kelsen’s legal positivism is based on two of his main concerns. One is the superiority of law to the state. The other is the legitimisation of law, which Minobe thought Kelsen’s theory unable to provide. For Minobe, law consists of two parts, “is” (sein), its essence, and “ought” (sollen), specific rules. Minobe criticises Kelsen for neglecting “is,” since “ought” alone cannot explain why people have to obey. Hence, for Minobe, society is capable of sustaining “is” in law as evolving concepts of “is” are transformed into the equally temporal directives of “ought.”

Thus Minobe claims that the so-called “is” elements of law derive in fact from social consciousness (shakai ishiki) or social psychology (shakai shinri), which are capable of changing “ought.” For him social consciousness consists of three elements: the people’s willingness to obey, custom, and a socially derived sense of justice. And social consciousness changes as society changes. Thus to assert the valid legal role of social forces, Minobe again invokes English common law, where “Human rationality and sense of justice are forces that change and modify customary law and statutes.” There “If customary law contradicts a sense of justice, a small group of people may begin to complain about the contradiction. Their claim may be accepted as a court ruling, government may begin to treat it as a norm, and this new norm may be gradually accepted in society. This may lead to the revision of existing laws or their change because of a court’s ruling or in actual administrative treatment.” In this way Minobe advocates a system of flexible norm creation, which he assumes is achievable through common or social law.

Social consciousness is therefore the embodied concept of Minobe’s constitutionalism, his recognition that values, if they are to be shared by the people, must result from the interaction of fact and idea. Hence the norms that bind the people spring from social reality, not from legal reality as Kelsen proposes.

Social consciousness (shakai ishiki) also underlies Minobe’s assertion that the people are the final arbiters of legal authority. Thus, in this same essay, Minobe attempts to justify a contract theory by again invoking social factors. In his definition, such a contract is not based on agreement between the state and the people, but nevertheless a contractual pledge is recognised by social consciousness. Thus “If ‘natural law’

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is understood properly, it [social consciousness] can be called a kind of natural law, which restricts the state directly regardless of the will of the state.”119 Here Minobe departs from Jellinek’s state-self-control theory, saying that constraints on the state come not only from the rules that it imposes on itself in the form of statutes and international law but also from customary and “natural” law.120

In this way the mitigating power of social agencies becomes central to Minobe’s constitutional thinking, reflecting not only the influence of Jellinek but also his own inclination towards natural and common law. At the same time, Minobe’s insistence on social factors exposed deep ideological divisions over the role of law in a society which many Japanese had begun to regard as highly defective. For Minobe’s insistence on common and natural law was unpalatable not only to those who favoured bureaucratic control, but also to those who identified with a Marxist view of class struggle.

Thus common law thinking, central to Minobe’s vision of free government, sharply contrasts with the “positive” law advocated by his opponents. What links the emperor-centred nationalism of Uesugi and the Japanese Marxist view of an ideal society is their common insistence on fixed norms, and that society should strive to achieve them. Minobe’s view, entailing the denial of fixed norms and calling for a mechanism for norm creation, is unacceptable to both. For the nationalists, it is too flexible, allowing for continuous and disruptive change. For the “Marxists,” Minobe’s theory is a compromise, failing to assert the creation of new norms by the working class. However, for Minobe, their joint insistence on fixed norms hinders the growth of a civil society precisely because they see norms as prescriptive. Such solutions do not allow for the development of a self-regulating mechanism of society, in which freedom of speech is a crucial component. For Minobe the potential emergence of new norms, unimpeded by state or party, remains paramount.

120. Minobe says: “It is regrettable that Jellinek emphasises state power overmuch, and fails to recognise fully that the law of reason (rihō) also restricts the state” (ibid., pp. 1542–3). Ienaga attributes Minobe’s empirical and “scientific” approach to his historical consciousness, and sees Minobe’s distinctively liberal thinking in his predilections both for natural law and for historical consciousness. See Ienaga, op. cit., p. 156. More recently, however, Nagao Ryūichi ascribes the combination of empiricism and idealism in Minobe’s work to “the myth that values can exist in empirical reality” (Nagao, Nihon Kenpō Shisōshi, p. 173).
Central to the debate is the role of law in a highly unequal society. And Minobe himself recognised the economic, social, and political defects of the country in another key essay of 1930. “Unfortunately,” he says, “nobody can deny that the entire domestic situation is far from sound. Economically, the distribution of wealth is extremely uneven, and the plight of the farming communities and the misery of unskilled workers appear endless.”

Such perceptions inevitably raised questions about the role of law in society. Should law play a more positive role to “rectify” society’s flaws? Thus Ukai Nobushige points out that Kelsen’s “pure theory of law” had really aimed at protecting a minority from the encroachment of authority. Kelsen had dismissed the idea of social consent, asking whether such a notion could be effective or even created in a society where its members were subject to coercion. Yet his work reveals how the concept of justice differs so often from the concept of law. For “Law is said to represent justice conceptually. But close examination shows that law merely represents a concept of justice held by the ruling group, and differs from other concepts of justice held by other groups.”

In Ukai’s view, Minobe’s social consciousness, when exposed to similar scrutiny, also appears ineffectual for directing society towards “better” and “fairer” arrangements.

The Marxist commentator Kuroda Ryōichi also criticises the school of liberal interpretation, with which Minobe is closely associated, for compromising on capitalist representative government. For him, “The school insists on ‘living law’ or ‘norms based on social consciousness,’ which are in fact not consciousness of the whole population, but consciousness of the ruling class.” Developing such views, Frank Miller also asserts that Minobe’s grasp of society is incomplete. “His [Minobe’s] ideas of law and state, here and elsewhere, are tenuously anchored to ‘reality’ in the form of ‘society.’ But this society comprised a shadowy substance imperfectly displayed in his recognition of the existence of society apart from the state, in his reliance on social psychology in


the definition of law, and in his inclusion of the ‘rational conscience of society’ among the sources of law.” However, whatever we may feel about the partiality of his views, Minobe’s reliance on the “shadowy substance” of society is partly to be explained by his understanding of the judicial system. For Minobe did not recognise the judicial review of statutes. Caught within a conflict of principle, between his recognition of statutes’ legal status and their susceptibility to abuse, he gives what is perhaps inordinate weight to society’s self-corrections in order to proclaim and preserve the law’s autonomy. Here Minobe shares the same predicament as his mentor Jellinek who had to invoke the sociological idea of legitimate power in order to provide a theory of ‘constitutional populism’ in the absence of a fully institutionalised democratic form.

We have to admit though that despite his frequent challenging of a pernicious situation, Minobe’s view of judicial power expressed in Chikujō Kenpō Seigi is not entirely coherent. For his strong opposition to any judicial review of statutes tends to undermine his defence of judicial power against the encroachments of executive power. Judicial power in this regard might be thought to have its own kind of intransigence. However, in his defence of the independence of judicial power, we can still recognise his characteristic adherence to the self-regulating mechanisms of the law. Accordingly “Marxist” or “positivist” criticism of Minobe as a bourgeois apologist cannot fully invalidate his enquiry into the law’s legitimacy. For his was still a strategy for envisaging a civil society where “autonomous people” could conduct the common life.

Minobe’s adherence to the ideals of common law justice is therefore supported by his clear awareness of what constitutes legitimate political power. He repeatedly asserts that the legitimacy of statutes derives from the people’s recognition that they are made by members of Parliament.

125. See Christoph Möllers, “‘We are (afraid of) the people’: Constituent Power in German Constitutionalism,” in The Paradox of Constitutionalism, ed. Loughlin and Walker, p. 90.
127. This stance is clearly discernible in Minobe’s defence of the jury system that Japan introduced in 1923. See Minobe, Chikujō Kenpō Seigi, p. 587.
who are legitimately recognised as “law-makers.” In this argument, Minobe is concerned not only with the essence of statutory laws but also with correct procedure. Principle is not enough to ensure legitimacy. Appropriate form, which he believes is provided by Parliament, is just as important. Here the assent of the people is again central to his understanding of legitimacy. Minobe’s views, constituting a strong defence of the legal state, are therefore again subversive of “taiken” ambitions, where power is based on expediency and repudiates appropriate form.

Nevertheless historians are divided over Minobe’s adherence to parliamentarianism after the May 15th Incident in 1932, when Prime Minister Inukai and other government leaders were assassinated by young officers who criticised them for ignoring the plight of ordinary people. At that time Minobe reluctantly welcomed the formation of a national unity Cabinet led by Admiral Saitō Makoto. From then on, for some historians, his support for party politics waned.

For Ienaga, “It is undeniable that Minobe became pessimistic about the future of parliamentary politics after the Manchurian Incident in 1931.”128 Banno Junji thinks that after the formation of the Saitō Cabinet Minobe became close to “Tōsei-ha” military officers and bureaucrats calling for reform, joining the study groups established by them. Minobe then began to call for the establishment of a national council to debate national policies, thereby undermining parliamentary politics. Banno adds: “Minobe did not support party government consistently. He was conservative and had a tendency to support rightwing thought. He openly opposed the attempt by Seiyūkai to form a Cabinet because in his view the party was more concerned with private interests than politics.”129 Thus Banno asserts that Minobe is one of the intellectuals who supported the further weakening of constitutional government, providing theoretical assurance for a shift from the national unity Cabinet to a government of “constitutional autocracy.”130

The charge deserves careful scrutiny, for it clearly proposes a kind of breach. Yet as Ienaga points out, Minobe’s views of national unity were markedly different from those who called for national unity under

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130. See Masuda, Tennōsei to Kokka, p. 244.
the emperor’s leadership. Ienaga identifies three distinctive differences between Minobe and the mainstream when both called for stronger state control: Minobe’s sympathy towards socialism (although he never fully accepted socialism or communism), his suspicion of fascism, and his critique of militarism. Such contrasts are essential if we are to distinguish Minobe’s continuing vision from the forces that supported totalitarianism.

So, just one month before his ostracism, in an act of deliberate defiance, Minobe returned to his old theme of the limitations of statism. Now he warned against xenophobic nationalism and the militarism that would damage society and endanger the country’s survival. Gratuitous identification with the state was anathema, according to Minobe, for one is a member of society and of a family, and also an individual with one’s own personality, before one is a member of the state. Excessive nationalism simply divides the public mind (*minshin*). “Uncontained nationalist sentiments create a minority who blindly follow their emotions or pretend to be following them, and they tend to label people who oppose their beliefs as criminal and unpatriotic, and silence them, even by resorting to violence. I assume that this is one reason why we have heard so much in recent years about the restriction of freedoms of speech.”

In this important passage, Minobe criticises not only those extreme nationalists who have proclaimed the absolute importance of national policy even at the expense of society and constitutional process, but also the government that has tried to silence dissent. Here his strong opposition to arbitrary state power is backed by an unequivocal adherence to open debate. Clearly, for him, national unity entails a society where the individual can maintain his political freedom and personal autonomy. If national affairs require a (temporary) cessation of parliamentary politics, then more than ever should state power be held to account. Thus even if Minobe’s call for a national unity government is judged a grave mistake, such a judgement does not contradict his adherence to open and accountable government. For here, even within his possible political miscalculation, his commitment to principle remains clear. Minobe did not capitulate but continued in the spirit of his own enquiry.

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It now remains to discuss Minobe’s views of political rights and representation, two key components of civil liberties. Here his inclination to support customary law and an autonomous mechanism of society complements his equally strong views on the proper role of statutes. In these areas also Minobe’s heterodox liberalism once again informs his critique of Japanese politics and society.

MINOBE’S CONCEPTS OF RIGHTS AND THE PUBLIC SPHERE: DEFINITIONS AND RESISTANCE

In a pamphlet he wrote in English in 1872 aimed at explaining religious freedom in Japan, Mori Arinori, a key reformer and future education minister, claimed that the Japanese enjoyed no real concept of freedom of conscience. This interpretation of the Japanese understanding of freedom of thought has been more or less accepted by subsequent scholarship. Thus the failure of the Japanese to create a civil society is often attributed to their weak sense of autonomy, of “individuality,” and of personal rights. This section will deal only indirectly with the question of whether or not this claim is justifiable, but through examining Minobe’s enquiry into public and private rights, I hope to present an alternative view that within Japanese discourse ideas of freedom or rights were nonetheless implicit in a consciously deployed language of contemporary assertion and resistance.

In post-Restoration Japan, there is no better word than “kō” (meaning the public, or the population as a whole) to record this process. At this time the word appears often in new combined forms such as “kōron” (public debate), “kōhō” (public law), and “kōeki” (public interest). The word has two contrasting nuances, implying what is common and shared on the one hand, and self-less and self-abnegating on the other, and these contend during the period.

135. In this regard, Kim’s distinction between ideology and discourse is extremely useful. See Kim, The Age of Visions and Arguments, pp. 13–14.
136. Cf. Mary Elizabeth Berry who notes that “At least from the seventh century in Japan, the ‘public’ was a synonym for the good. Denoting just rulers and a harmonious collectivity, it embraced all relations vital to social life—the relations of family and governance, property and economic exchange. The public was the locus of interdependence and value” (Berry,
Thus “kōron” appears in the Charter Oath of 1868, representing the key principle of the Restoration, public debate. “Kōron” was used widely by later generations seeking broader public participation in the political decision-making process. At the same time, for Shintoists, who became administrators of the new government, “kō” meant absolute authority, which was just, transcendent, and embodied in the person of the emperor. As Japan became an imperial power and political leaders began to feel the strains of a pluralistic society, “kō” increasingly came to imply the surrender of one’s private life for the sake of the nation.

The linguistic malleability of “kō” and its strategic usage are clearly related to the metamorphosis of the Meiji state. Relevantly, Ishida Takeshi points out the eventual interchangeability of the concepts of state and of people. In his view the two concepts were clearly distinguished in the first half of the Meiji period. Yet the distinction began to blur in the late Meiji period with active promotion of the idea of the state as a metaphorical family. During the Taisho period, the concepts separated again, only to fuse once more in the 1930s. Ishida notes that the notion of a public based on the amalgamation of people and state tends to encroach on people’s private lives, and he provides a Foucauldian analysis: “If the state and the people are understood as interchangeable, the state will be perceived not as an artificially created structure but as ‘naturally given.’” In this formulation, “The state leaves no room for choice or change. Also it defies any limit on its definition and functions, and creates the tendency for state power to intervene in private lives.”

With increasing bureaucratic control and people’s identification with the state, ideas of the public tended to be identified with the state itself. In such a “public” sphere, the private inhabits a compromised realm of highly vulnerable personal freedom. Thus the state’s encroachment on the public domain, enacted and epitomised by language, may be said to align itself with the rise of totalitarian forces in the 1930s.

“Public Life in Authoritarian Japan,” Daedalus, vol. 127, no. 3, Early Modernities, Summer 1998, p. 154). In contrast, assumed elements of disorder, such as “powerful emotion and physical passion, moral confusion and senselessness,” were confined to the “private” (ibid., p. 154).

137. Ishida Takeshi, “Kuni to wa nani ka,” in Nihon no Seiji to Kotoba, vol. 1 (Tokyo: Tokyo Daigaku Shuppankai, 1989), p. 158. Andrew Barshay also defines the “public” sphere in pre-war Japan as “a vast area of social thought and practice concerned with the national life, one that fed and transcended official and purely private life” (Barshay, State and Intellectual in Imperial Japan, p. xiii).
Nevertheless, *kōron*, and with it the contending concept of individual “rights,” is also central to Japanese political thought, and was enthusiastically promoted by the early Meiji reformers and then by *jiyūminken* activists seeking the establishment of Parliament. In fact, the introduction of such concepts of private law as rights, contract, and the legal person not only reflected the new political discourse but drastically transformed the economic and social arrangements of the country. Such incorporation was initially pragmatic, as the Meiji leaders recognised that to introduce Western law was central to the country’s modernisation: amongst other things it was a political necessity in order to terminate the “unequal” treaties that Japan had signed with the Western powers before the Restoration. The implantation was often checked, however, and a draft civil code based on the French Code was abandoned in 1892 after “traditionalists” opposed its provisions dealing with the family as too libertarian and detrimental to “indigenous” social values. So, in 1896, provisions dealing with material assets survived relatively unscathed, but in 1898 provisions regarding the family were drastically rewritten so as to grant overwhelming power to the head of a household. Yet concepts of individual rights and of the legal person who assumes both rights and obligations, and of contract between two legal persons, nevertheless took deep root in Japan. Minobe’s thought in this area exists at the conjunction of increasingly intrusive notions of the public sphere with resilient and resistant notions of individual rights and the legal person. In this way “public” law became central to Minobe’s thought as part of his exploration of the role of the state and its relationship with private liberties.

The pre-war Japanese Civil Code, in which rights are dealt with, bears the distinctive influence of the French and German codes, and thus of the Roman law tradition. Roman law distinguished between law applicable to the citizens of Rome, *jus civile*, and law applicable to the rest, *jus gentium*. Under this distinction, rights and a capacity for rights were also distinguished. Everyone might have a capacity for rights, but in order to exercise them one had to be a Roman citizen.

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138. Both *kenri* (rights) and *gimu* (obligations), as Douglas Howland establishes, had become part of Japanese vocabulary well before 1890. See Howland, *Translating the West*, pp. 126–9, and also Katō, “Meiji Shoki no Honyaku,” in *Honyaku no Shisō*, p. 363.

This distinction between rights and a capacity for rights also entered into the Japanese Civil Code. For instance, minors, wives, and mentally disabled people were deemed legally incapable of exercising their rights under the code. Minobe follows this tradition, when he says that the principle of legal equality introduced after the Meiji Restoration is equality of capacity, not bona fide equal rights. Thus everyone can assume a public post as a citizen of the state (Staatsbürger), but only if one has obtained appropriate qualifications. Yet this in turn is a significant departure from the samurai era when social status was hereditary, and access to the avenues of state and han authority exclusive.

At the same time Minobe recognises natural rights, such as property rights, that even the Constitution cannot restrict, and asserts that in any conflict between individual rights and the common good a compromise must be found between them. Hence, as we have seen, “The most important ethical requirement of constitutional politics is to respect the people as individuals. ... To achieve this goal, present-day state law guarantees individual freedom and security of property. Individuals possess rights so that freedom and property cannot be taken away as long as such individual rights do not damage the safety of society and other people’s benefits.”

Thus Minobe uses the word for rights (kenri) in two ways, one based on the Roman law tradition, rights deriving from membership, and the other, “inalienable” rights to be defended from interference. The first usage is more prominent in his major works on the interpretation of the Meiji Constitution. However, it is the second usage that sustained his enquiry into the legitimacy of power.

Minobe owes to Jellinek the relevant conceptualisation. He is attracted to the German scholar’s thought precisely because he explains rights as a claim on one’s freedom, a concept conceived in opposition to the incursions of state power. Shortly after he returned from Germany in 1901, Minobe translated and published all of Jellinek’s works related to the concepts of rights and the public sphere: an outline of System der subjektiven öffentlichen Rechte [The System of Public Rights] in 1903, Das Recht der Minoritäten [The Rights of Minorities] in 1904, a chapter of his

141. Minobe, Kenpō Satsuyō, p. 152.
Allgemeine Staatslehre entitled “Die geschichtlichen Haupttypen des Staates [Major Historical Types of the State]” in 1904, and Die Erklärung der Menschen- und Bürgerrechte [The Analysis of Bills of Rights] in 1906.\textsuperscript{142}

Jellinek’s emphasis on rights reflects his concern for the protection of private lives in a highly centralised political structure, and also his awareness of the emergence of the “masses.” He assumes that the individual, and thus his freedom, preceded the creation of state power. In fact, he says, integrated state power is a relatively modern phenomenon, in contrast to the less impeded play of interests he finds in previous centuries. Hence the idea of rights emerges in response to the growth of a centralised state and the pressures of mass society.

In this way concepts of individual and social rights, and also written constitutions, are alike legacies of the multipolarity of power and the recognition that, in some areas, individuals should be deferred to even by state power. The state empowers itself with at least the nominal aim of the protection of individual freedom.

For Jellinek individual freedom is the necessary ground of civil society. Thus in The Rights of Minorities he criticises the “tyranny” of majority opinion created by Parliament or expressed through public opinion. His pamphlet was written against the background of what he calls the “ever widening process of democratisation” and the “collectivistic tendency in the framing of human society” in the late nineteenth century. Hence, as with de Tocqueville, he highlights the importance of protecting minority opinion. For Jellinek, social freedom must be protected from absolute power, whatever form it may take.\textsuperscript{143}

At the same time, for him, the state is a metaphysical community, and yet a concrete reality of life within which people have to learn how to live. He too assumes the state’s essential force. Membership of society comes with obligations, and conflicts between those obligations and one’s private life are inevitable. Thus Jellinek divides rights into two types, public and private. Public rights, öffentliche Rechte, are rights that individuals possess as a member of the state, and which they can invoke in their dealings with the state. Private rights are inherent in every person

\textsuperscript{142} Jellinek published the System der subjektiven öffentlichen Rechte in 1892, the Das Recht der Minoritäten in 1891, the Die Erklärung der Menschen- und Bürgerrechte in 1895, and the Allgemeine Staatslehre in 1900.

and operate on two parties equally. Yet as Jellinek himself acknowledges, public and private rights trespass on each other because sometimes the state acts as the ruler and sometimes as a private person. Nevertheless Jellinek’s assertion of public and private rights is his recognition that one’s private life must be protected from the “rights” of the common community through negotiation.

From Jellinek and his intellectual forebears Minobe inherited this tension between collective well-being and the rights of the individual. For him rights proclaim the assertion of the will for the sake of one’s benefits. Obligations are restraints on one’s will for the sake of others’ benefits. In this formulation, rights and obligations can be mutually compatible, since the benefits of individuals and of the state are to some extent reciprocal. Thus one’s public rights can contain an element of obligation, according to Minobe. At the same time, he is inclined to assert the inalienable in “public” rights, and criticises the automatic separation between private and public. “Strictly speaking, every right should not be violated in an unlawful way. ... Every private right has elements of public right. That is to say, individuals have the right to demand that the state not interfere in the exercise of their private rights.” This led Minobe to the problem of how to assert inalienable rights in the absence of constitutional guarantees.

Highly relevant here is that the Constitution does indeed include both a bill of rights, Chapter 2, and the independent police ordinance power of government, Article 9. Yet the article grants the emperor the power to issue ordinances necessary “for the maintenance of the public peace and order, and for the promotion of the welfare of the subjects,” as well as for implementation of laws, independently of Parliament. And although the article stipulates that no ordinance can alter the existing laws, the embryonic stage of statutory law makes the relationship between laws and ordinances subject to varying interpretations.

144. Minobe’s definition here is based on that of Jellinek. Combining definitions of rights by Hegel (one’s will) and Rudolf von Jhering (one’s benefits), Jellinek says that rights are one’s profits that are legally protected because law recognises one’s will. See Minobe’s translation of Jellinek’s System der subjektiven öffentlichen Rechte, “ierinekku shi Kōkenron no Gaiyō,” in Kenpō oyobi Kenpōshi Kenkyū, p. 643. The translation originally appeared in Hōgaku Shinpō, vol. 13, 1903.

Some of Minobe’s younger contemporaries, albeit only a few, pointed out the incompatibility of Article 9 and the bill of rights. For independent police ordinance power was the residue of an absolutist state, epitomising the arbitrary executive power attributed to a monarch, according to Nakano Tomio.146 However, in Europe the progress of the idea of civil liberties after the French Revolution had gradually subjected such power to civil control, which meant statutory regulations. Legislative power emerged as a new power strong enough to challenge monarchical executive power. With this shift in emphasis, the meaning of law also changed. Law no longer meant ordinances imposed by a ruler, but statutes enacted by Parliament.147 Thus in European constitutional history, bills of rights had eliminated the operation of arbitrary executive powers, at least theoretically.148

Article 9 of the Meiji Constitution is an exception in this respect. Nakano speculated that the framers of the Constitution, who consulted the Germanist theory of Stahl, Gneist, Stein, and Giron, nevertheless “did not have any clear conception of legislative and police power.” Thus he concluded that Article 9 had no real significance, and so could be ignored, saying that the bill of rights listed in Chapter 2 could not be curtailed by police ordinances as Article 9 stipulates.149

Yet Article 9 gave Minobe genuine difficulty in assimilating it to his stance. He knew that constitutional principles entailed the protection of civil liberties from arbitrary executive power, but he was also concerned with viable statehood. Thus, following Jellinek, he insists that no individual shall be controlled by the state except in a lawful way. For him the bill of rights of Chapter 2 offers an exemplary list, but only the more significant rights are specified. Therefore he asserts that law is necessary if any civil right which may not be included in Chapter 2 is to be curtailed. However, instead of dismissing Article 9 as incompatible with constitutional principles, he accepts Article 9 as a constitutional “excep-

146. Nakano asserts that “In the early period of European constitutional history European Governments, especially German Governments, used in practice to issue police ordinances without any express constitutional or statutory authorization” (Nakano, The Ordinance Power of the Japanese Emperor, pp. 99–100).
147. Ibid., p. 100.
148. Even the newer constitutions written under the strong influence of the German constitutional system, including those of Denmark, Russia, Roumania, and Turkey, did not include “an independent police ordinance.” See ibid., pp. 100–1.
149. Ibid., p. 110.
tion.” In a trade-off with principle, Minobe concludes that independent police ordinance power can override the bill of rights in exceptional circumstances.

Here Minobe contravenes the mainstream legal opinion of his time which asserts that citizens can claim only the rights listed in Chapter 2, and that Article 9 cannot intervene in the rights listed in the chapter. Yet Nakano, seemingly sympathetic to Minobe, while agreeing that rights are inherent and that restriction of them requires legal sanction, asserts that such an interpretation is valid only under constitutions in which the executive is not vested with independent ordinance power. Therefore to apply Jellinek’s theory inflexibly to a constitution where executive power is given such a large degree of discretion, is untenable. At the same time Nakano criticises Minobe for inconsistently providing a theory that accommodates government practice.150

However, Minobe’s view of the relationship between the bill of rights and Article 9 was subject to change. Modifications are especially discernible in his growing dissatisfaction with police power. Thus in an essay of 1907 he is keen to endorse the “positive” function of the police in order to “promote the welfare of the people.”151 Here promotion of the welfare of the people has nothing to do with the infringement of civil liberties, and the police should therefore be allowed to issue ordinances for this purpose.

Minobe here is concerned with two things. He is dissatisfied with the common opinion that ordinances can be used to curtail rights outside Chapter 2. But he also wants to explain common practices legally. For him, the Meiji Constitution is an accomplished fact, and it is unthinkable to disregard some articles as “unconstitutional,” as Nakano will do fifteen years later. In time Minobe became more aware of the defects of the Constitution and began to suggest changes. However, in 1907, his concern was still with how to explain government practices within the Constitution rather with changes to it.

Here we need to remember that Minobe’s main principle is still that civil liberties cannot be curtailed by any ordinance, and Article 9 is the

150. Ibid., p. 106.
151. Minobe, “Rippōken to Meireiken to no Genkai o ronzu,” Hōgakukyōkai Zasshi, vol. 25, nos. 5, 6, and 8, 1907. The article is included in Kenpō oyobi Kenpōshi Kenkyū.
only exception.\textsuperscript{152} He wants to emphasise the exceptionality of Article 9 in order to assert that ordinances cannot override civil rights which may not be included in Chapter 2. At the same time he is inclined to support a “positive state.”

Clearly therefore Minobe’s early view reflects the then far-reaching role accredited to the police to run and regulate society. In this essay, he regards the police not as the oppressors of free government but as the “supervisors” of drastic social and economic change. He cites eleven areas where regulations might be rendered unconstitutional unless interpretation allows Article 9 to override the bill of rights: oil provision, bakeries and sweet potato roasting factories, \textit{kankōba} markets, electricity, \textit{yose} entertainment places, theatres, exhibition venues, entertainment halls, cemeteries and burials, and \textit{nagaya} public housing construction.\textsuperscript{153} Here we sense the emergence of a society busy with active commerce, industrialisation, mass culture, and urbanisation. The police’s role stretches even to the administration of social services, such as housing and burial practices. Obviously an urban society had existed long before the Meiji Restoration, and various regulations were deemed necessary to restrict people’s every-day lives. Yet such systematic and regulatory control of a mass population is new.

Hence like the evolution of the press laws, the establishment and evolution of the police reflects the metamorphosis of forms of government. Thus shortly after the Restoration, each \textit{han} domain had remained responsible for maintaining the social order of its respective region. Yet when the Justice Ministry was established in 1871, police authority was concentrated there, and then transferred to the Home Affairs Ministry in 1874.\textsuperscript{154} Through various decrees, the police force became that part of the administration responsible for supervising shops and other public operations, even public health. It also extended its functions so as

\textsuperscript{152} Minobe is aware that this article is peculiar to the Meiji Constitution, and no similar articles are found in the Belgian and Prussian constitutions, two of its major models.

\textsuperscript{153} Minobe, “Rippōken to Meireiken tono Genkai o ronzu,” in \textit{Kenpō oyobi Kenpōshi Kenkyū}, pp. 8–9.

\textsuperscript{154} In October 1871 police units were created modelled after the British police system, first in Tokyo and then in various parts of the country. Police forces became more centralised after police authority was transferred to the Home Affairs Ministry in 1874, based on Kawaji Toshiyoshi’s report on police provision in France and Prussia. See Ōe Shinoo, “1880–1900 Nendai no Nippon: Teikoku Kenpō Taisei,” in \textit{Iwanami Kōza Nihon Tsūshi}, vol. 17, \textit{Kindai} 2 (Tokyo: Iwanami Shoten, 1994), p. 14.
to suppress political dissent during the Jiyūminken movement. Police stations began to be set up in all municipalities in 1888. This variform function, both administrative and social, was reinforced by the rise of labour disputes and socialist movements after the Sino-Japanese War of 1894–5. Tokkō, a special branch of the police responsible for political activities, was created in Tokyo and Osaka after the High Treason Incident of 1910, and then introduced in other parts of the country in 1928 when the first general election took place after the introduction of universal male suffrage. In this way the police, as well as administering commercial and social activities, increased their role as a “safety-net” so as to contain public discontent.155

Initially then Minobe seems to accept the role of the police as “administrators and supervisors” of commercial, industrial, and social activities. For instance, he does not seem to be concerned with the Gyōsei Shikkōhō (Administrative Enabling Law) enacted in 1900, which allowed the police to detain people without a warrant issued by a court to counter the disturbance of public safety (kōan).156 In effect however Minobe’s belief in a positive state and his recognition of the “social” role of the police had caused him to underestimate the discretionary nature of independent police ordinances, for these were the same forces that would eventually undermine the concept of law and of civil liberties, and of which he himself would later become a victim.

However, in an essay of 1913, Minobe significantly modified his wholehearted endorsement of police action for the promotion of the welfare of the people.157 Here he concentrated instead on the abuse of police power. Now he is much more circumspect about the power enjoyed by the police, questioning whether it would always be employed for benign and supervisory purposes. Active here are a variety of factors: Minobe’s involvement in the Goken Undō (the movement defending

155. For some Meiji leaders, such as Iwakura Tomomi, the police were expected to play a similar role to the military so as to maintain domestic order under the leadership of the emperor. Ōe Shinoo quotes Iwakura in 1882: “Supported by the Navy, the Army and keishi (police) that are the recipients of the emperor’s benevolence and are supposed to play an important role for kokka (the state), [the government] must be able to face the people strictly (shitani nozomi) and impress them deeply (senritsu)” (see ibid., p.14).


the Constitution) in the Taisho Political Crisis of 1913, his increased exposure to academic debate about the role of the police in Germany and other constitutional European countries,\(^{158}\) and his recognition that as Japanese society had become more pluralistic it was impossible to move a diverse range of individuals in any one direction.

Here too he asserts contentiously that while a trend may be injurious to society in the short term, it may nevertheless advance the common good. And he recognises that individual needs sometimes may take precedence over that good and yet still advance it. Such views will later sustain his criticism of the press laws. Now, asserting that it is not the police but politics that co-ordinates the conflicting interests of society, he reverses his previous claims:

It is an obligation for the people not to create problems serious enough to damage the social and public peace (shakai kōkyō no chitsujo) as long as they take part in social life (shakai seikatsu) together. Therefore it is an obligation for the state as a guardian of the public good to use its power to stop people from harming their own society. ... On the other hand, it cannot be said that the state has a compulsory obligation to force people to act in a certain way so as to promote social progress and facilitate general welfare. Social progress can be made only by individual efforts. Individuals have social and ethical obligations to contribute to social progress, according to their own talent and ability. However, talent and ability vary from person to person. It is not appropriate to use law in order to force the people to act in certain ways.\(^{159}\)

Thus Minobe effectively dismisses his previous claim that police power can be imposed on the people in order to promote their welfare. The jurisdiction of the police should be restricted to the removal of “problems” (shōgai) in society. From Minobe’s perspective, society is now a self-sustaining, self-regulating public sphere that defies the state’s intervention. In his later view, police coercion was now often prone to abuse.

The conflict between constitutional principles and practical needs remains in Minobe’s thought, however. And the tension is everywhere apparent, in Kenpō Satsuyō, Chikujō Kenpō Seigi, and Nihon Gyōseihō, as well as Nihon Kenpō no Kihonshugi. Yet in Chikujō Kenpō Seigi of 1927, Minobe’s adherence to the “positive” role of the police is further

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158. Ibid., pp. 102–3.
weakened. He now refers to Article 9 as “an extreme exception to constitutional principles,” and says “The intention of the article is vague, which is regrettable. It is difficult to interpret it accurately.”

In Gyōseihō of 1940, published after the Minobe Affair, Minobe entirely drops his adherence to the police’s “positive” role. Thus if Article 9 seems to allow three types of police ordinances (aimed respectively to enforce the existing laws, maintain public peace and order, and to promote “the welfare of the subjects”), then this third type of ordinance is incompatible with the nature of the relevant legislation. Here Minobe becomes more acutely aware than ever of the potential clash between civil liberties and the powers granted to the police in the name of the emperor. Police powers should not be exercised freely, and their discretionary use must be legally restricted. Clearly distinguishing between state and society, with the latter having its own working mechanism, Minobe urges that such powers should not be used to implement government policy and that the essential purpose of the police is to contain the lapses of society.

Furthermore, the police must not violate individual privacy, unless one’s behaviour directly damages the public peace. And any pre-emptive restriction of freedom must always be in keeping with the social cost of inaction. Hence the police should always maintain “a sound, common sense of society,” and obey due process of law.

Frank Miller, however, notes that “For Minobe, as for Jellinek, the distinction between the juristic and the social or political aspect of the state was a matter of analytic technique rather than an absolute. … The sociology upon which he founded his jurisprudence was itself a purely conceptual system, unconcerned with empirical investigation. … He could attack Kelsen for failure to recognise the nature of law as ‘social reality’ and the nature of jurisprudence as a social science, but he himself failed to grasp the reality of the social phenomena underlying constitutional systems.”

I agree with Miller that Minobe at times fails to fully assimilate existing problems in society: his mixed attitude towards Article 9 is one such example. Yet Minobe’s theory should always be understood as an

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160. Minobe, Chikujō Kenpō Seigi, p. 228.
162. Minobe discusses the restrictions in Nihon Gyōseihō, vol. 2, pp. 70–9.
attempt to establish a viable space for individual rights, made against the backdrop of an extremely inchoate legal system. In this sense, Marxist criticism of Minobe’s stance as “incompletely democratic,” or Miller’s charge of empirical deficiency, seem only partly convincing. For such criticisms slight the genuine efforts made by Minobe not only to define the public sphere, but to negotiate the divisions of society. Limits exist yet the real strength of his work remains the claim that “no power is beyond the law,” behind which lies the belief that the people have rights which the state cannot revoke. Minobe’s concept of rights is therefore central to his life-long effort to define a politically viable public sphere which will encompass national unity and free government. The shifts in his views of police power are sustained by this enquiry. Similar efforts are observable in his view of representation (daihyo), where he directs his attention to actual political arrangements. In the next and last section of this chapter we will therefore deal with Minobe’s ideas of valid political representation.

MINOBE’S IDEAS OF POLITICAL REPRESENTATION

One way to approach Minobe’s position on representation is to probe once more his inheritance from Jellinek. Thus in his Nihon Kenpō, Minobe explores the general theory of law and the state based on the methodology provided by his mentor. Nevertheless he departs from Jellinek at several points, and the relationship between the state and its organs is one such example.

Minobe criticises Jellinek for claiming that the relationship between the state and its organs differs from the legal relationship between a person and his proxy. According to Jellinek, the state and its organs are indivisibly united with each other. The one is indispensable for the other’s existence, and the “personality” of the state emerges through its organs. In this sense, the state–organ relationship differs from any kind of representation, in which representative and represented remain separated. This view was commonly accepted, but Minobe disagrees.

164. Cf. Miller: “Minobe’s statement of the purpose of the juristic method as clarification of the relationship between law and the objective and subjective phenomena constituting the concrete life of the state was true to the spirit of the Allgemeine Staatslehre [Jellinek’s major work]” (Minobe Tatsukichi, p. 46).

“Despite the common view, I believe it is fair to assume that the organisation–organ relationship and the proxy arrangement are basically the same. The only difference is that under normal circumstances, organs exist within the organisation and constitute it, while a proxy always exists outside the person whom the proxy represents.”\textsuperscript{166}

Minobe distinguishes representation (\textit{daihyō}) from “presentation” (\textit{hyōgen}).\textsuperscript{167} Some scholars, such as Gierke in Germany and Kakehi in Japan, had asserted that organs neither represented the organisation nor could be a substitute for it, because they merely transmitted the personality of the organisation. Thus organs were presentations or depictions (\textit{Darstellen}) of the organisation, but did not represent it. Minobe disagrees. People who constitute the organs of an organisation may be called its representatives, because their will is recognised as the will of the organisation.

Such representation has long existed in Japan, according to Minobe. In traditional Japanese usage, such people are called \textit{sōdai}, and they act as members of their respective organisations on behalf of the whole.\textsuperscript{168} Thus Article 53 of the Civil Code says that a director represents a corporate body with regard to its administration, while Article 87 of the municipality law stipulates that a mayor represents his city.

Accordingly Minobe dismisses the concept of presentation in his interpretation of the relationship between the state and its organs, and defines state organs as political representatives of the state. If this formulation is applied to his Emperor-as-Organ theory, the emperor is the country’s constitutional representative.

Minobe’s organ theory is thus not an attempt to justify the unity of the state, but an attempt to define appropriate political representation by giving organs their own separate identities. Hence the expression

\textsuperscript{166} Minobe, \textit{Nihon Kenpō}, p. 85.
\textsuperscript{167} The Japanese word “\textit{daihyō}” is a translation of representation in English, according to the \textit{Kaitai Zōhō Tetsugaku Jii} (1884). The word soon appeared in legislation, including the Municipality Law (\textit{shisei oyobi chōsonsei}) of 1889 and the Civil Code.
hyōgen (presentation) is not acceptable for Minobe, because it would damage the independence of those organs. \(169\)

For Minobe, the idea of representation is crucial, and recurs in his thought. This is partly because his approach is functionalist. Administrative functions and their relationships must be explained in concrete and specific terms. Only “representation,” not “presentation,” is adequate to do this. Putting aside social and historical definitions of the state, Minobe preferred to concentrate on the state’s pragmatic purpose. Hence the state is “represented” by its organs, including the emperor. Minobe defines both state and organs as legal persons, and proposes a relationship between them of representation rather than confluence as advocated by Gierke and Jellinek. \(170\)

More importantly, Minobe’s concept of representative government is closely related to his interest in the legitimisation of power that involves the will of the people (\(\text{min’i}\)). He is interested in the process by which individual opinions are “transformed” into the will of an organisation, and assumes that law and Parliament are central to this process. Thus the Emperor-as-Organ theory implies that the emperor’s political functions are legitimate only when he exercises them according to law, and law is intrinsically linked to Parliament. In his 1905 essay Minobe already argues that Parliament must represent the people and indicates that legitimate authority must have the people’s mandate. Thus, for Matsuo Takayoshi, Minobe was the first person in the country to clarify the legal relationship between people and Parliament. \(171\)

This linkage between legitimacy and popular participation remained the cornerstone of Minobe’s liberalism, setting him apart from the mainstream legal experts of the time both rigidly conservative (such as

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Hozumi) and positivist. Furthermore, by recognising subjective judgment as a valid contribution to law making, Minobe did indeed become more attentive to shifting social values than many of his contemporaries. For such attitudes sustained his enquiry into the validity of the political system, including the electoral system, and also enabled him to modify his opinions about other democratic values such as legal equality.

Yet his defence of the Hibiya Riots of 1905 reveals how central was the will of the people to his understanding of legitimate power. Minobe asserts that the riots were triggered by the government’s inability to maintain the trust of the people. For the basis of constitutional government is to respect the will of the people, and the people should be given enough opportunities to express their opinions. Public opinion may be erroneous, and politicians may have to refute it. However, if a ruler uses his power to oppress opinion just because it is antagonistic to his own, that is tantamount to abuse of power and will weaken the foundation of constitutional government. Minobe interprets the riots as the people’s protests against the abuse of government power, and he even goes so far as to see a resemblance between the immediate local disturbance and historical events such as the French Revolution, the American War of Independence, and the conflict between the king and the barons that resulted in the Magna Carta.

Minobe’s emphasis on the will of the people in constitutional government was also reflected in his support for the expansion of the franchise and the introduction of proportional representation, when universal male suffrage began to receive broad public attention in the 1910s. Although his interest in electoral systems dates back to the

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172. Both conservatives and positivists, including Marxists, rejected the claim that parliamentary representation is a legal concept: the former did so in order to discredit Parliament, while for the latter Parliament was incapable of representing the genuine opinion of the people. A positivist criticism of Minobe’s concept of popular representation is made by Miyazawa Toshiyoshi, “Kokumin Daihyō no Gainen,” in Kōhōgaku no Shomondai, vol. 2, ed. Miyazawa, pp. 253–6.

173. Thus Minobe resorts to a “common sense” understanding of democracy and says: “Representation is an abstract concept. ... Yet all legal concepts are abstract and subjective. ... All legal issues depend on how you conceive them, something far removed from their being discussed always objectively” (Minobe, “Gikai wa Kokumin no Daihyōkikan nari,” in Kenpō oyobi Kenpōshi Kenkyū, p. 287).

earliest days of his career, he now began to formulate his views of the national electoral system in response to the nation-wide movement.175

Minobe’s support for an extended suffrage does not necessarily stem from a belief in equality but from a growing conviction that Japanese society was moving inevitably towards democracy. Thus he was opposed to universal suffrage in 1911, when the lower house passed the bill, saying that it was not compatible with social conditions. The major change came in 1919, after he had witnessed the Russian Revolutions, the collapse of the German Empire, the global trend for democracy, and the growing democratic demands at home. He now saw that such a trend was irreversible.

Hence the universal suffrage movement was “a natural consequence of the enlightenment and dissemination of culture, and of global communication. The era when people blindly followed others’ rule is already over. These days people are not satisfied without autonomous rule. Professional politicians still deal with practical matters. However, they can run government only because they have the mandate of the people, and it is a prerequisite of modern politics that the people must possess the right to oversee their action.”176 Minobe proposed that men aged 25 years or older who have completed compulsory education, make an independent living, and have lived in one district for at least six months should be eligible for voting and elections. Thus he criticises


Prime Minister Hara’s electoral reform for it excluded factory workers entirely from the right to vote.\(^{177}\)

In addition, Minobe not only supported the elimination of tax-based eligibility but also campaigned to extend the electorate so as to include students, heads of noble households, teachers at primary schools, Shinto priests, and Buddhist monks. He was also a member of a 25-member committee appointed by the government to discuss electoral reform. And in a meeting of the committee held in 1923, he was one of only five members who supported giving voting rights to women.\(^{178}\)

Minobe’s view of political representation, however, had its own limitations. This is partly because of his limited acceptance of legal equality. His definition of the “public” sphere remained restricted to “qualified citizens” of the state. At times also Minobe seems unreceptive to the role of organised labour in bringing about social change. Hence Ienaga criticises Minobe’s view of tenant disputes for its failure to recognise that such actions of solidarity by the proletariat were also part of the creation of a new society. Minobe on the other hand justifies police intervention in resolving such disputes by saying that they directly affect the social order. Ienaga is therefore led to criticise him for contradicting his own assertions on the rights of workers.\(^{179}\) Banno Junji also criticises Minobe for disregarding political equality. Yet Minobe notes: “The general trend of modern politics is to eliminate the privilege of certain classes. Thus, if we restrict eligibility requirements and give the right to vote to a certain group of people, it will be tantamount to the creation of a new class. Therefore, restrictive elections are not acceptable.”\(^{180}\) The article, however, held back from banishing restrictions entirely, prompting Banno’s reservations.\(^{181}\)

Nevertheless for Minobe Japanese history after the Restoration was a series of upheavals, testimony to the discontent of a people who had no chance to take part in politics and which could lead to armed protest.

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177. Ibid., p. 380.

178. Minobe was one of only two committee members who supported suffrage for women aged 25 or older, the same age restriction for men. The other three insisted on the age of 30 and a requirement of compulsory education. See Matsuo Takayoshi, *Futsūsenkyo Seido Seiritsushi*, p. 377.

179. Ienaga, op. cit., p. 70.


The suffrage must be extended to preserve constitutional government, since otherwise social discontent would be uncontrollable. “It is not theory but social change that prompts the expansion of the suffrage.” Thus while it is true that his support for the expansion of the franchise is in part motivated by his awareness of the growing influence of the working class, he seems to have been less concerned with the expansion of workers’ rights than with the well-being of society: equipoise rather than strict equality often seems to inspire him.

In 1920 and 1921 however Minobe wrote two articles advocating proportional representation. As usual, he was in tune with global trends, as the system had already been introduced in Belgium, Switzerland, Italy, France, and Germany. Yet his real focus was the nature of a Japanese democratic political system.

Minobe’s support for proportional representation had again resulted from his understanding that democratic demands were now an unstoppable force after World War I. Recent events and sacrifices had intensified the demand for wider political participation. Yet democracy, he felt, did not depend on whether or not a country was a monarchy or a republic, but on the state’s reduction of its own coercive power, and on its willingness to encourage broad public participation in politics. Social change had also increased the importance of association and therefore people should be given the right to assemble for political purposes. Ample disclosure of the political decision-making process, and also if necessary resort to referenda, were key features of democratic government. So in this important article of 1918, Minobe committed himself wholeheartedly to representative government (those elected by the people, sōdai, can engage in political affairs), to a genuinely radical, if partial, expansion of the right to vote, to a bicameral system of government so as to prevent the concentration of power, and to responsible and parliamentary cabinet government.

Minobe defended representative government, based on parliament, at a time when trust in parliament was declining globally. As Carl Schmitt

183. Minobe never accepted popular sovereignty, however. He objects to using the word “minshushugi” for democracy because he says it connotes popular sovereignty and is against Japan’s monarchical system. See Minobe, ‘Kindaiseiji no Minshuteki Keikō,’ in Jiji Kenpō Mondai Hihan, pp. 402–5. The article initially appeared in Tōyō, June 1918 special issue.
pointed out in *The Crisis of Parliamentary Democracy*, published in 1923, parliament as an institution might not be able to discuss complex issues effectively, since party politics subordinated the national interest to party concerns. Yet Minobe defended Parliament, saying that the problem was not intrinsic, although Parliament in Japan had yet to become an institution fully capable of representing the will of the people. Thus, “There is no such thing as the will of the people *per se* that Parliament represents. But people’s mistrust of Parliament does not derive from this; rather it results from Parliament’s inability to overcome the interests of the capitalist class and listen to the proletariat.”

Sectionalism, as well as partisan pressure, were alike the enemies of constitutional politics. For Minobe, however, implementing the will of the people (*min’i*) was a project just as fraught as that of initiating representative government. For as economic difficulties grew, public distrust of government was directly converted to criticism of political parties, which were seen to be socially indifferent and to exploit the public for the benefit of the business community. This created a dilemma for political parties, as well as for the newly enfranchised public (women excluded), because reform required inspirational force, and the parties were incapable of creating the necessary momentum. Thus, by the mid-1930s, parliamentary politics was characterised both by a lack of leadership and by a lack of commitment, signalling a political vacuum to be exploited, which it was by the military. Many of Minobe’s proposals in the inter-war period were a means of addressing the prevailing malaise.

Thus he argued that if proportional representation was introduced, election campaigns would be less expensive. But more importantly the method would encourage public debate about issues, not about personalities and ties, for the people would vote for a party, not for a person. “Under the present system, people tend to vote for the person rather than for the party. It is quite common that people vote for candidates who have connections with their relatives or acquaintances without knowing to which party they belong. This is meaningless, and does not comply with the purposes of constitutional government.”


186. Minobe, “Senkyōhō no Kaisei,” in *Jiji Kenpō Mondai Hihan*, p. 354. Here Minobe differs from Yoshino Sakuzō; both are critical of secrecy in government policy making, but Yoshino emphasises the importance of personality in candidates for representative government.
In 1937, after he had been forced to step down as a member of the House of Peers, Minobe published Senkyo Bassoku no Kenkyû [A Study of Sanctions for Violations of Electoral Law], in which he criticised the stringent election rules for the House of Representatives. His criticism is consistent not only with his life-long concern with the role of law in politics and society, but also with his views of representative government. For if a law is remote from the common sense of the people, it will lose their trust. And an excessively strict law alienates people from elections, and thus from politics in general.187

In this culminating statement, Minobe claims that participation in election campaigns is the inviolable right of the people.188 He focuses on 1934 when an election law for the House of Representatives was revised to tighten the restrictions on campaigns. The revision of the law was prompted by a confrontation between political parties and the bureaucracy. A nation-wide movement to eliminate corrupt electioneering had taken place under the name of “the campaign to clean up elections” (senkyo shukusei undô), organised by the staff of the Home Affairs Ministry. Before the revision, the law made no provision for pre-election campaigns,189 although only those who were officially authorised, such as candidates themselves, or heads and members of campaign teams, were allowed to engage in campaigning, except for the making of public speeches and contributions to recommendation leaflets. However, the revised law now banned all election campaigning before one’s candidacy was reported to the authority. For Minobe the ban put serious obstacles in the way of public communication. The people, he says, should be allowed to take part in campaigns even if they are not authorised campaigners. At present the law bans even door-to-door campaigning. Thus, “Elections are matters that belong to the people themselves. They are responsible for making their own judgements as to who is the most suitable candidate. In order to make a right decision, they need to listen to as many candidates as possible. In constitutional government it must be their ensured right to discuss politics.”190

188. Ibid., p. 38.
189. Official election campaigns would start after candidates reported their candidacy to the authority.
190. Ibid., p. 49.
Minobe then criticises previous rulings by the Supreme Court which interpret the law so strictly that individual freedom is severely hampered. For “Forcing a detached neutrality onto all voters ... will result in their indifference to elections. It will damage constitutional government severely.” Minobe staunchly assumes that constitutional government results from public debate, and therefore the people are entitled to discuss their own affairs. Once again he clearly challenges authority’s attempt to undermine behaviour which in his view was both legitimate and politically necessary.

It is perspectives such as these which had sustained Minobe’s enquiry into representation, and also his life-long search for an acceptable balance between state power and individual liberties. Minobe held to his position at a time when various new practices and institutions were being introduced to reshape the whole structure of the legal and political system, when the entire structure of constitutional government was in danger of being overwhelmed. In this way Minobe’s views of political representation constitute one more facet of his attempt to promote a civil society, a society where rational authority is created by its members through open debate. Minobe’s enquiries helped to make law and the autonomous individual essential constituents of Japanese political engagement.
Sakai Toshihiko, reproduced by courtesy of the NPO-Archive of the Labour Movement, Tokyo
CHAPTER 3


In order to restrict and regulate discretionary power, Minobe Tatsukichi promoted the creation of rational authority through legal debate. His adherence to Jellinek’s state-self-control theory, his insistence on social rather than administrative law, and his idea of organs as representative bodies were all meant to further that aim. However, such proceedings constitute, by their very nature, only a limited confrontation with a society undergoing rapid industrialisation and with an unfolding and unsatisfactory political system. By way of contrast therefore we will now examine Sakai Toshihiko’s active socialist critique of that system and his complementary vision of a civil society.

Although his name is frequently linked with major events in the history of socialism and communism in pre-war Japan, Sakai’s role is often described as merely supportive of more prominent activists such as Kōtoku Shūsui (1871–1911) and Ōsugi Sakae (1885–1923). Both Kōtoku and Ōsugi were strong exponents of radical thought, and their writings and personal charisma are believed to have been major influences in determining the general course of the Japanese socialist movement. However, Sakai’s unfaltering commitment, despite personal experience of harsh government oppression, offers a rare example of consistency among the socialists and communists of his time, for many turned either to anarchism or in the 1920s and 1930s embraced nationalistic and imperialistic positions.

In addition Sakai’s political commitment drew him repeatedly to the plight of the marginalised, and to the conditions of women, agricultural workers, and the burakumin. Typically his last major involvement was with the operation of a farmers’ school in his hometown in Kyushu. Sakai’s vision of a classless society was expressed in a lifetime of political activism.
John Crump, defining socialism in contradistinction to the main features of capitalism, speaks of “a society where production is for the direct satisfaction of human needs without the mediation of a process of buying and selling or exchange, where the means of production are commonly owned and democratically controlled, where there are neither social classes, the state, nor money.” He concludes, provocatively, that “socialism—either as a body of thought or as an active political movement—has barely existed” in Japan, “at any period.”

Now if we interpret socialism as a set of radical prescriptive ideological principles, Sakai’s socialism may appear eclectic and conceptually loose. Furthermore his political alliances were not dogmatically fixed but were essentially fluid. Nevertheless the shapes of society and government that Sakai strove to achieve are a record of continuous intellectual probing and engagement. Products of an intense and sustained dialogue with self, as well as society, they do indeed testify to “a body of thought” in as much as they derive from some of the seminal writings of international socialism, as well as from Sakai’s sense of the relevance of socialist ideals to his country’s needs and possible future. Japanese socialism was never an entirely coherent movement (as Crump demonstrates), but in Sakai’s case ideology was always a spur to action, even as historical forces meant that such action was rarely successful.

As we will see Sakai came to embrace socialism after a long period of self-scrutiny. The pivotal moment occurred for him in 1904 when he encountered the dialectical materialism of Marx and Engels. Through their influence, Sakai’s own intuitive materialism was sharpened and expanded.

At the same time, harsh political experience constantly upheld ideology. For as with many other socialists of his era, Sakai experienced the full weight of “state power” which could deem his activities and opinions criminal and punish him accordingly. Thus it was the High Treason Incident of 1910, in which Sakai’s closest collaborator and friend Kōtoku was executed, along with eleven others whom the government deemed anarchists, that developed his thought most fully. For now his thought focused increasingly on totalitarian power, the power that could overwhelm the individual in the name of the whole, be it state, so-

Sakai Toshihiko: industrialisation, hierarchy and socialism

For Sakai, socialism sought both individual freedom and communal solidarity, and socialism’s negotiation between individual freedom and the common good he took for granted. Initially a private hermeneutic enquiry into the relationships between self and society, his socialism increasingly became an attempt to envisage a new public sphere in response to what he saw as the defective political, economic, and social arrangements of his time. To better perceive this interaction between thought and society, I will now provide a brief overview of the principal episodes of his life as they impinge on his socialism.

THE MAN AND HIS TIME

Sakai Toshihiko was born in 1870 as the third son of a former low-ranking samurai in Toyotsu, Fukuoka Prefecture. He therefore belongs to what Katō Shūichi calls the 1868 generation, born in the twenty years around the Meiji Restoration, from 1860 to 1880. This generation experienced at first hand the violent transition from the old order to the new. Intense interests in politics and ascendancy ambition were common to them, setting them apart from those who came after and before: “The generation that grew up through this period was interested in the direction taken in the development of Meiji society as a whole and the historical significance of the violent social changes. These social changes took the form, firstly, of what was known as ‘civilization and enlightenment’ and a trial and error ‘modernization’ on western models.” Sakai’s desire to learn, admiration for the West as a source of new knowledge, intense interest in society and politics, and a sceptical view of government stayed with him throughout his life. After this generation, the status of society


as “the fundamental and all-embracing subject” waned, with increasing regimentation of state structure and social life, according to Katō.4

Sakai was also a product of the new social mobility, and the new ascendency society described by Maruyama Masao.5 Here a large number of young people, many of whom were second, third, and fourth sons with no heavy obligations to their families, had to find their own ways of making a living. They were part of a new “non-propertied class” with a strong motivation for self-improvement. Sakai was himself free from family obligations, and he gravitated to Tokyo as the centre of learning and opportunity. There, wanting to become a politician and a writer, he entered the prestigious First High School, yet dropped out because of truancy. Cut off from the normal routes to prominence, the only professions available to him were as writer, teacher, or newspaper reporter. Thus, from 1889 to 1897, he moved from one newspaper to another, writing novels occasionally. This is his “romantic” period, when Sakai portrays himself as a “sentimental royalist.”6

Sakai then found himself among the marginalised groups, the declining former samurai class, and the drop-outs. Peripheral identity, in his case fusing with a combination of strong personal ambition and a sense of uprooted inadequacy, seems to have contributed to his inability ever to identify with collective notions of “state” and “public” as dictated by the government.7 Sakai’s outsider status clearly helped him to maintain his independent position as a socialist critic of government and society.

Sakai was initiated into socialism when he joined the Yorozuchōhō, a popular daily published by the journalist and novelist Kuroiwa Ruikō, in July 1899. There he met many reformist journalists, including Kōtoku, Uchimura Kanzō, and Kawakami Kiyoshi. Under their influence, Sakai began to be politicised. In May 1901, a group of six men, Abe Isoo, Katayama Sen, Kinoshita Naoe, Kawakami, Nishikawa Kōjirō, and Kōtoku, who were all Christians except Kōtoku, founded the first party to carry

4. Katō says: “This generation was in its turn followed by a generation born at the turn of the century which was clearly divided. Some writers, many of the central figures being Marxists, felt strong social concern; some felt none at all” (ibid., p. 245).
the name Social Democrat in Japan. The party was immediately banned. Two months later, Sakai joined the Risōdan, a group of the paper’s journalists eager for social reform, and called himself a socialist.

In 1903, Sakai, Kōtoku, and Uchimura left the paper when its editor began to support Japan’s military confrontation with Russia. Uchimura, a Christian, opposed the anticipated war for humanitarian reasons. Sakai and Kōtoku, on the other hand, opposed the war out of universal socialism. They wrote in a jointly signed article which appeared in the Yorozuchōhō on the day of their resignation: “If we look at international wars from the socialist point of view, they are carried out by private cliques, such as the aristocracy and the military, and a majority of the people are made victims.”

Within a month, Sakai and Kōtoku had founded the Heimin Shinbun [Newspaper of The Common People], “the most representative organ of the socialist movement in Japan at that time.” The paper was disbanded in 1907 because of the government’s harassment, financial difficulties, and the growing tension between Christians and “Marxists.” Yet Sakai later recalled the two years that he worked for the paper as the “most fruitful and intense period” of his life.

It was during this period that Sakai came to understand Marxism through translating the Communist Manifesto in 1904, and Socialism: Utopian and Scientific in 1906, and by reading widely, mostly in English. According to Germaine Hoston, the two translations were “the two most sophisticated presentations of Marxism available in Japanese on the eve of the Russo–Japanese War.” The Shakaishugi Kōryō by Sakai and Morichika Umpei published in 1907 is also regarded as “a third pioneering work.”

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9. Crump, op. cit., p. 59. Sakai himself recalls the paper’s rapid rise in circulation from 5,000 to 8,000 copies, a significant number for a daily of the time. Various reading groups were also established in many parts of the country, and the staff of the paper were invited to talk. See Sakai, “Heiminsha Jidai,” in “shakaishugi Undōshiwa [a sketch of Past socialist Movements],” Chūō Kōron, January 1931, STZ, vol. 6, pp. 189, 195.
13. Ibid., p. 305.
published monthly for five months in 1906, laid the groundwork for the dissemination of Marxism in Japan.\footnote{14} At the same time, Sakai translated a diverse range of European literature, including Zola’s *Fécondité* and *Travail*.

Sakai’s partnership with Kōtoku remained strong until the latter’s execution in 1911. However, their different attitudes to tactics began to emerge as early as 1906, after Kōtoku returned from the United States, where he had spent several months contacting American anarchists and organising a protest movement among Japanese students.\footnote{15} Kōtoku’s position was now more extreme than previously, although his anarchism entailed general strikes, not the violent overthrow of the government.\footnote{16}

Also in 1906, Sakai, Kōtoku and others founded the Japanese Socialist Party, when they sensed that the new government led by Prime Minister Saionji Kinmochi was more tolerant towards political activities than had previously been the case. The party was legal, as its platform pledged that it would conduct its activities “within the law of the state.” Yet within six months it was embroiled in acrimonious internal debate about its strategy towards Parliament.

In the early days most of the socialists were parliamentarians, following in the footsteps of the German Social Democratic Party. Yet their attitudes were mixed, since the election system was then discriminatory. How meaningful was it to support a system when it allowed only wealthy people to participate? The question took a more concrete form in their debate, when they sensed a shift in the global revolutionary trend from German social democracy to the anarchism envisaged by such theorists as Kropotkin and by anarcho-syndicalism in France.

Thus in 1906 Kōtoku proposed direct action from workers rather than a campaign for full parliamentary participation. The party was divided. Although it adopted Kōtoku’s strategy in a 22–1 vote at its executive committee in 1907, many of its leaders, including Sakai, were ambivalent and tried to find a compromise. The final platform rejected Kōtoku’s call for direct action, but also said that its members could engage in a universal suffrage movement voluntarily.

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Sakai’s divided attitudes to Parliament and to anarchism reveal his life-long negotiation between personal freedom and social engagement. For him, personal freedom is the ultimate purpose in life, and yet freedom cannot be separated from the fact that we are “social beings.” To conduct the common life effectively, people need peaceful means to express “social determination” (shakai no kesshin) and “national consensus” (kokuminteki shiji). The country’s representative system is defective and has to be altered, and yet Parliament ought to be the ultimate organ of representing the people, and the country has already in existence the necessary institutions. Thus in 1918 Sakai asserts that universal suffrage and the trade unions are two props of the common good, backed by freedom of speech and association. His hope is to create a new political power within society, a new decision-making mechanism, in which common opinions are formed through association and rational debate, and implemented by an elected executive.

For Sakai compromise between personal freedom and the common life can be made only through autonomous negotiations within society. This conviction remained crucial for him, and is reflected in his parliamentary stance. Sakai appears never to have lost his attachment to Parliament, even when he was regarded as a member of the “anarchist” camp led by Kōtoku in 1906 and 1907, and when he sided with the Bolshevik strategy during a brief period in the early 1920s. Likewise Sakai never became an anarchist, although he remained sympathetic, because he recognised that the anarchists’ fierce hostility towards state power was one way to preserve critical autonomy within the system.

The fact that a choice between direct action and parliamentarianism became the most contentious issue for the socialists in 1906 also reveals the peculiar problems of the Japanese political system which Sakai and other socialists had to face. For in a truly participatory democracy there need be no inexorable contradiction between direct action and broad political participation through Parliament under a system of popular sovereignty. Nevertheless Sakai’s both cautious and optimistic assessments of parliamentarian politics are a record of Parliament’s mixed appeal. For in the absence of full public participation, Parliament could never become an integral part of public consciousness.

17. Sakai, “Futsūsenkyo to Rōdōkumiai,” in Yuibutsushikan no Tachiba kara (Tokyo: Mitashobō, 1919), STZ, vol. 4, p. 496. The article was originally written in 1918.
At the same time the fluctuating fortunes of the Japanese Socialist Party in its early years serve as an index of governmental security. Both tolerance and repression characterised the general atmosphere of society, and the party operated largely unhindered in the more liberal years immediately after the Russo–Japanese War. However in 1907, when the party dropped its previous adherence to “within the limits of the law,” the government promptly banned it.

When the former General Katsura Tarō replaced Saionji as prime minister in 1908, the government intensified its suppression of socialist activities. The government’s tighter measures coincided with the growing pressure of financial and domestic crises. The Russo–Japanese War had left the government with deep financial shortfalls. At the same time the public had become more impatient with what they saw as governmental exploitation, as seen in the Hibiya Riots of 1905. Yet international co-operation, a screen for continued military spending, had to be maintained. New taxes were levied on such basic commodities as alcohol, sugar, and kerosene in 1908, triggering wide-spread protests. Hence the years 1907 and 1908 saw a sharp increase in the number of labour disputes. The increasing harassment of socialists again reflects the beleaguered government’s efforts to reinforce its authority.

By 1910 socialists and their sympathisers, many of whom were Sakai’s acquaintances, had come under continuous police surveillance. In May 1910 the police found a stock of bomb-making materials at the home of one of them, and extracted a confession that he and others had plotted to assassinate the emperor by throwing a home-made bomb. In June and July, some several hundred people were arrested across the country in connection with the case, largely through association or fabricated evidence. Kōtoku was arrested on 1 June for discussing the need for “a revolution by force.” Eventually 26 anarchists and socialist sympathisers were formally charged with the crime of treason under the Criminal Code. In December their trials began at the Supreme Court, in camera, with no witnesses called. On 18 January the court found 24 of them guilty and sentenced them to death. A week later the sentence

was reduced to life imprisonment for half of them, but the remaining 12, including Kōtoku, were executed immediately.

The case shocked many Japanese. Tokutomi Roka described the executions as “assassinations by the state” during a lecture at a Tokyo high school eight days later. Some authors, including Miyake Setsurei and Hirayama Osamu, also wrote critical essays. However, they were in a minority. The general public was silent. For it had now become possible for the state to regulate the people more systematically using the national network of police, the subservient judiciary, and state law. Present here are the hardening attitudes of government towards domestic social movements. Socialists and later communists became the major target of government repression.

For the activists the incident marked the beginning of the “winter” period, when they were banned from all political activities. Sakai, however, continued to make a living through his writing. For him this was also a period of intensive reading, and his political understanding deepened significantly. The loss of close friends and the demonstration of state power seemed to mark him permanently. Afterwards his logic sharpened, and his writing became more pointed and unsentimental. His previous carefree attitude was now replaced by a persistent preoccupation with simplicity of statement, as if clarity was a form of self-defence and self-assertion. Persistent censorship forced him to be cautious, yet his enquiry into authority became much deeper than before. His reading and writing during the winter period was diverse and strongly motivated, and his commitment to Marxism (and his knowledge of it) increased.

The outbreak of World War I in 1914, however, reinforced the spread of socialism, nationally and internationally. In September 1915, Sakai began to publish the monthly magazine *Shinshakai [New Society]*, “the first organ to be published for socialist activities after a long break.” The aim as before was to disseminate Marxism. In 1916, Takabatake Motoyuki (1886–1928) and Yamakawa Hitoshi (1880–1958) joined Sakai to run Baibunsha, a miscellaneous publishing house he had set up after his release from prison in 1910. Socialist supporters began to gather around Sakai, and in 1917 he ran in a general election in a Tokyo

constituency, although he received only 25 votes. In March he sent a congratulatory message to the new non-Bolshevik Russian leaders, representing Japanese socialists, and in October he introduced Lenin’s writings to the general public when he published a translation of Lenin’s *Russian Revolution*.

The Russian Revolution and growing democratic movements abroad also encouraged Japanese domestic movements. In 1917, the number of labour disputes more than tripled compared with a year earlier. In the summer of 1918, housewives in a small fishing village in Toyama Prefecture initiated a riot, protesting against the high price of rice. Riots spread across the country in a month, and involved nearly 1 million protesters. The government of Prime Minister Terauchi Masataka deployed the Army to quell the riots; his action met with strong public criticism, and Terauchi was forced to resign and was replaced by Hara Takashi. Hara was the first prime minister to be chosen based on his party’s parliamentary strength, marking the beginning of party politics in the country. In the same year Sakai was able to abandon his practice of publishing anonymously.

Sakai described the year 1919 as a time of great confusion in Japanese society in terms of political thought and activities. Marxism had begun to attract intense interest among intellectuals, and in late 1918 intellectuals and students guided by Yoshino Sakuzō formed the Reimeikai [Dawn Society] as well as the Shinjinkai [New Man Society] to promote political reform. Universal suffrage and labour and tenant movements began to gain momentum. Nationalist movements also began to emerge. Kita Ikki, “the ideological father of Japanese fascism,” launched Yūzonsha [The Society of Those Who Yet Remain]. Its platform included “the construction of a revolutionised Japan,” “the co-ordination of reform movements,” and “the emancipation of the Asian peoples.” As Maruyama Masao remarks, “It was not simply an anti-Bolshevist movement like the previous groups, but displayed a truly fascist ideology that combined domestic reforms and international demands.” Maruyama sees the year 1919 as the start of “a clear growth in right-wing activity.”

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This new atmosphere also influenced the socialists around Sakai. Takabatake, the first Japanese to translate Marx’s *Capital*, began to advocate state socialism (*kokka shakaishugi*), centring on the imperial family, while Sakai insisted on Marxism. Drifting apart, they dissolved Baibunsha.

Nevertheless the major impact of the Russian Revolution and of growing domestic democratic movements on Sakai is perhaps best to be seen in his increasing recognition of the masses as real political agents. The establishment of the Soviet Union reinforced this process, which in turn fostered his need for a more broadly based political party. For until then Sakai had shared the alienation from the masses of the early socialists.

Crump points to the elitism of the Meiji socialists, and in Sakai’s case says it stemmed from his samurai background and “Confucian training.” Crump quotes Sakai as saying in 1902, “Right-minded young gentlemen must sternly control their desire for food, clothing and shelter and admonish all thoughts of idleness and luxury. But one certainly should not hope to see such attitudes emerge among the majority of ordinary people, on a scale wider than among what I call ‘right-minded’ people.”

Another reason for the Meiji socialists’ detachment from the masses was Japan’s low level of capitalist development and the small number of factory workers, according to Crump. Yet it remains true that Sakai’s socialism was not prompted by proletarian class consciousness, and in his early career socialism was to be practised more for its moral appeal than as an instrument of orchestrated social change. With socialism intensely seen by him as an antidote to personal venality, some key concepts of mass movements, such as association based on open access and spontaneous practical leadership, were absent from his thought. However, the concept of the masses was not entirely removed from his view of the ideal, and his shift from socialism as a personal moral belief to socialism

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24. Crump, op. cit., p.130. Sakai’s article appeared in the *Yorozuchōhō* on 24 December 1902, STZ, vol. 1, pp. 240–41. According to Crump, “In the true elitist Confucian style, society was to be reformed for the ‘ordinary people’. Until this had been done for ‘them,’ ‘they’ could not hardly be considered responsible for their actions—let alone for their own emancipation” (Crump, op. cit., p. 130).

as a guiding principle for mass movements was less problematic than for some of his contemporaries.

The new tendencies were especially apparent in 1922, when Yamakawa published an influential essay entitled “Musankaikyū Undō no Hōkōtenkan [Change of Direction of Proletariat Movements]” in the journal Zen’ei. Inspired by the establishment of the Soviet Union, Yamakawa asserted that Japanese socialists hitherto had been engaged in activities detached from the masses, and they should now align themselves with the people and move them in a new direction. This message was in tune with Sakai’s own reappraisal, and in an essay of 1928 he would say, “The past twenty years of the socialist movement have been largely a matter of private quests for clarification of individual positions, away from the masses. But such an unpolluted (keppeki) attitude has its limits.”

Now, “a small circle of friends” chattering about imaginary revolution or venting their frustrations about police harassment would never change the world. Fifty-two years old, Sakai now readily admitted his previous shortcomings: he and his friends had failed to connect with ordinary people.

Earlier, however, his recognition of the need for a new direction had motivated him to join other socialists and communists to form the Shakaishugi Dōmei [Socialist League] in 1920. Here socialists and labour activists joined forces for the first time. As Sakai put it, the organisation was “an attempt to transform the growing labour movement into a political entity,” and “the first effort of the emerging proletariat to consolidate itself as a political force.” At the same time as Saitō Takao and his colleagues were trying to establish a two-party system, the expansion of the factory-based workforce and the prospect of universal male suffrage prompted Sakai and his friends to envisage sending their own party to Parliament. Their organisation was banned in 1921, however, while a serious rift between “Bolshevism” and anarcho-syndicalism now became clear.

Nevertheless in 1922 Sakai and others founded the Japan Communist Party illegally and he became the first chairman. He was imprisoned in

27. Ibid., p. 355. For the importance of this organisation in the history of Japan’s mass movements, see Watanabe Osamu, “1920 Nendai ni okeru Tennōsei Kokka no Chianhōsei Sainensei o megutte,” p. 165.
1923 for seven months in the first large-scale crackdown on communists, but he did not rejoin the party when it was reestablished in 1926. Instead, he joined the Rōnō-ha, a group of socialists critical of the Comintern, and he inclined towards various proletariat movements.

Thus Sakai helped organise the Nihon Taishūtō [Japan Mass Party], a coalition of seven proletarian parties in 1928, and as its candidate won a seat in the Tokyo Metropolitan assembly in 1929. The party was short-lived, as with many other small non-affiliated organisations. Personal animosities are often cited as the major reason for the repeated splits, but behind such confrontations lie fundamental differences of opinion about the role of a political party in an undemocratic state. Furthermore, for a political party to function effectively it requires an active core of genuine supporters, or a political class with shared interests and political views. Japan’s modernisation and the way in which industry was built did not encourage the spontaneous growth of such groups.

Despite such difficulties, Sakai continued to side with non-affiliated elements seeking improvement of their lives. In 1931, he helped organise the Zenkoku Rōnō Taishūtō [National Labour–Farmer Masses Party]. He criticised the Manchurian Incident as imperialistic aggression, and became chairman of the party’s anti-war campaign committee. And he resolutely resumed his parliamentary position, championing the people’s ability to decide their own affairs through debate at national and local assemblies.28

Crucially, however, Sakai’s career also mirrors the process by which the Japanese state became increasingly capable of confronting its own citizens.29 Thus Sakai was frequently imprisoned for his political beliefs. The first time was in 1904 for violating the press regulations. In January 1908 he was imprisoned for one and a half months for ignoring a police order not to speak in public, in violation of the Peace Police Law. In June 1908 he was again arrested, along with Ōsugi Sakae and eleven other socialists for causing a minor disturbance in the Red Flag Incident.

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was sentenced to two years for resisting the police, and another two months for violation of the press regulations.

Although it was a minor case—a scuffle between the socialists who were waving a red flag and police officers who tried to stop them, with Sakai not even among the flag wavers—the Red Flag Incident signalled the increasing powers of incrimination of the authorities. Thus, a year earlier, the Criminal Code had been revised so that judges could have broader discretion in determining sentences. Although the suspension of sentences was introduced, the new code changed the fundamental definition of crime. Under the old code, punishment was determined based on how much damage the crime inflicted on society. Now the new code could attribute a crime to the personal “defects” of the individual rather than to the attendant circumstances and social conditions, or to how much damage the act had caused. When such a flexible framework was combined with insubstantial measures to protect the suspect, law became a means not only to punish law-breakers but also to define their offence.

A relevant example is seen in Sakai’s later arrest in 1923. Along with more than twenty others, Sakai was imprisoned for seven months as a pre-trial suspect. The Code of Criminal Procedure allowed pre-trial judges to detain the suspect for questioning without evidence. This pre-trial questioning system (yoshin seido) was first introduced in the Chizai Hō of 1882, the first modern regulations for criminal procedure, and passed into the Code of Criminal Procedure of 1890. Sakai was imprisoned for another six months in 1926 after the court finally ruled on his case. This pattern of flexible incrimination had already been observable in the Japanese legal system in such practices as “summary prosecution” (ikeizai sokketsu). However, the tendency increased as the authorities felt the difficulty of containing social protests. Thus in 1924 the Code of Criminal Procedure was revised to reinforce prosecution powers, and

30. See Mitchell, Janus-Faced Justice, p. 27.
32. For contemporary criticisms, see ibid., pp. 259–62, and also Matsuo, Taisho Demokurashi, p. 129.
in 1928 the Peace Preservation Law of 1925 was revised to include the death penalty.

This increasing flexibility in the authorities’ ability to incriminate was accompanied by harsher treatment of prisoners. When Sakai was imprisoned in 1926, in contrast to what had happened to him earlier, his reading and letters were censored, and the prisoners’ daily regime was much more punitive. Thus state power was taking a more concrete shape in the form of legal empowerment and oppression, at precisely the time when a new civil force became a possibility with the extension of the male franchise. Yet the enactment of the Peace Preservation Law, together with the state’s harsher treatment of political prisoners, clearly suggests the further polarisation of Japanese society. Sakai’s career demonstrates both the intensifying confrontation between authority and the individual, and authority’s assumption of increasing powers to incriminate the individual on its own terms.

Nevertheless Sakai’s socialism remained flexible and creative, never blindly dogmatic. Ideology provided him with the tools of social analysis, but he was never a formalist, tending rather to appropriate Marxist notions in the service of his own moral intuitions. Like the two other subjects of this study he was a child of the Meiji Enlightenment, and like them his strong sense of the historical moment moved him to action. In the scale if not the style of his thought he is again representative. In Sakai’s case, however, Marxism provided him not only with a vision of society but with a methodology for its critical assessment.

Sakai’s career and his critique of government is thus a useful gauge of the transformation of the Japanese state and society. His work in this area provides penetrating criticism of the whole structure of government and of the social and economic system. Thus in the first section of what follows I will trace more fully his Marxist inheritance, giving close attention to the origins of socialism in Japan. In the second section I will focus on Sakai’s gradual rejection of the Communist Party, and his move towards non-affiliated proletarian movements. In the third section I will discuss Japan’s industrialisation and the various forms of inequity that followed, which, along with government harassment, hampered the movement towards solidarity. In the last section of the chapter I will relate Sakai’s reformist views to the conditions of women and of agricultural workers: here previously disadvantaged sectors of society
were further victimised by government policy and the drive towards modernisation. In all of these areas Sakai applies his Marxist inheritance to changing Japanese circumstances.

SAKAI THE IDEOLOGUE: FROM JIYÛMINKEN UNDÔ TO MARXIST DIALECTIC

On 28 June 1912 about forty people gathered at a Tokyo restaurant to celebrate the bicentenary of the birth of Jean-Jacques Rousseau. The participants included socialists such as Sakai who were prohibited from engaging in “political” activities in the wake of the High Treason Incident, and also the old guard of the Jiyûminken Undô. Sakai likened the connection between the Jiyûminken Undô and the rise of socialism in Japan to the ideological and historical link between the early French social philosophers, such as Rousseau, and the modern social reformers, such as Saint-Simon, Fourier, and Owen (as Engels had explained it in his *Socialism: Utopian and Scientific*). Further, Rousseau’s *Social Contract* had been translated into Japanese by Nakae Chômin, one of the leaders of the Jiyûminken Undô, in 1882. Later, the five-point manifesto of Sakai and Kôtoku's *Heimin Shinbun*, first published in 1903, begins with a salute to “freedom, equality, and fraternity.” The newspaper’s fifth issue includes an article commemorating the third anniversary of Chômin’s death and written by Kôtoku, who was one of the former’s protégés. Accordingly Sakai asserts that the Japanese socialist movement sprang from the left-wing camp of the Jiyûminken Undô.

As with the case of Chômin, Confucianism undoubtedly contributed to Sakai’s “positive” humanism. “Chômin’s was an extremely idealistic view of mankind,” according to Matsumoto Sannosuke, referring to the influence of Mencius on him. “It held, in essence, that mankind, having received its nature from heaven, possessed something (at least latently or potentially) equivalent to an inherent capacity to establish norms for itself and to construct order by itself so as to achieve satisfaction in life.” According to Chômin, “It was necessary for men to discover the ‘truth’ (shinri) and to advance the cause of ‘humanity,’ for these would

35. Ibid., p. 191.
never be realised merely through individual ‘complacent self-cultivation’ (dokuzen jiyō). Rather it was only through the ‘intercourse’ (kōsai) of many persons serving as the bearers ‘respectively of all thought’ that truth and ‘humanity’ might best be fulfilled.” Sakai often borrowed Confucian terms to explain his vision, and his closeness to Kōtoku is partly to be explained by the fact that they were both steeped in Confucian precepts, even as the dominating force in their early socialist circle was Christian.

However, as Crump suggests, their joint Confucian background was less significant than their exposure to various other ideas disseminated by the jiyūminken activists, such as the concept of inalienable rights. Thus “Sakai was said in 1903 still to be ‘someone who regularly loves to read the Analects of Confucius and Mencius’.” And “To the extent they were saying that an important area of their thought remained rooted in Confucianism, these assertions of Kōtoku’s and Sakai’s were perfectly correct.” Yet “Their claims that they had followed a Confucian path to ‘socialism’ … need to be treated with a considerable amount of scepticism.” In Sakai’s case, however, we can at least say that Confucianism was by no means an obstacle, but served as a partial yet exemplary forerunner of key aspects of his thought.

Nevertheless the most potent ideas underpinning socialism and communism in Japan were introduced as part of the wholesale importation of Western ideas in the early Meiji period. At first the relevant ideas had no practical impact, as only a small number of intellectuals knew about them. Yet the insatiable interest in the development of Western society, particularly its problems, meant that socialism and communism could not go unnoticed. Accordingly in May 1882, a political party calling itself Tōyō Shakaitō [Oriental Socialist Party] was established in Nagasaki Prefecture by Tarui Tōkichi (1850–1922). And the Chōya Shinbun newspaper, critical of the government and sympathetic to the Jiyūminken Undō, carried “the first comprehensive introduction of communism and socialism” in a series of eleven articles entitled “Ōshū Shakaitō o ronzu [About European Socialist Parties]” between June

37. Ibid., p.260.
39. One of the earliest Japanese texts to use these terms is Katō Hiroyuki’s Shinsei Taidi [Outline of True Government]. This book, published in 1870, aimed at introducing the French concept of inalienable rights, which Katō would later repudiate.
and August. These articles mentioned Marx’s historical materialism, the exploitation of the proletariat by capital, and workers’ movements such as the First International. Yet general understanding of socialism and communism was thin, and even many jiyūminken activists regarded socialism (which they vaguely understood as the common sharing of wealth) as “unrealistic” and “heretical.”

A deeper understanding of socialism and its potential for society occurred at the turn of the century when Japan’s industrialisation and urbanisation began to cause social distress. In 1896, Shakai Seisaku Gakkai [Association for the Study of Social Policy] with a strong reformist position was established by Kuwata Kumazō and Kanai Noboru, who were students of German historicism and critical of laisser-faire. The society included reformist bureaucrats among its members. Shakaishugi Kenkyūkai [Socialism Study Club], Japan’s first study group of socialism, was also established in 1898 mainly by Christians, although Kōtoku, who was not a Christian, was a member. A study of the poor, apparently influenced by the works of the English social reformers, such as “General” William Booth and Charles Booth, Yokoyama Gennosuke’s Nihon no Kasōshakai [Japan’s Lower Classes], was published in 1899. Sakai’s interest in socialism therefore flourished at a time when “shakai mondai” (social problems) had begun to attract wide public attention.

Sakai himself explains why he became a socialist. Two influences were crucial: the Confucian teaching of Mencius, and jiyūminkensetsu (freedom and popular rights) deriving from the French Revolution. Yet despite the introduction of Parliament in 1890, neither social justice nor popular freedoms had been implemented to his satisfaction. His disappointment was aggravated by intellectual confusion, for he glosses his early intellectual make-up as a typical mishmash of reformist Meiji thought, youthful patriotism, Christianity, British utilitarianism, and Social Darwinism. “I was extremely confused,” he says. But when he encountered socialism, it became clear why the French Revolution had

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40. Shibahara Takuji, “Minkenha no Shakaitō Kyomutō ron [Popular Rights Activists’ Views towards Socialist and Nihilist Parties],” Keizai Kagaku, Department of Economics, Nagoya University, vol. 34, no. 4, March 1987, pp. 159–65. Sakai was then around 12 years old and does not mention the articles in his biography. However he does say that he was then regularly receiving the Chōya Shinbun from one of his brothers in Tokyo, and that the paper drew him to the Jiyūminken Undō. See “Sakai Toshihiko den,” STZ, vol. 6., p. 60.

failed to achieve its goals and why modern socialism had developed in its wake. Socialism provided him with a coherent way of understanding society, and prompted his wish to change it.

As with many of his socialist friends, socialism for Sakai combined the dream of millennial reform with a strong desire to connect to international movements. Sakai and his colleagues closely followed the development of the Second International (1889–1941), which brought together representatives of socialist organisations and trade unions in various countries. Thus as major Western sources for the socialist thought entering Japan before the Russo-Japanese War, Crump cites Russian populism, the German Social Democratic Party (SPD), which dominated the International, and a diverse range of popularised doctrines associated with socialism in the English-speaking countries, including “the ideas of American social-gospellers, of British Fabians and even of New Zealand’s Lib-Labs.”

Reflecting such eclectic influences, Sakai and his colleagues of Heiminsha commemorated their first anniversary by publishing a set of six postcards carrying the pictures of Marx, Engels, Lassalle, Babel, Tolstoy, and Kropotkin. Sakai himself acknowledges the ideological pot-pourri, but he does name R. T. Ely’s *French and German Socialism in Modern Times* as the first book that he read about socialism and “the virtual bible of those starting to call themselves socialists in Japan.”

Key influences also were the writings of the Western utopian tradition. Thus in 1904 Sakai translated Edward Bellamy’s *Looking Backward* and William Morris’s *News from Nowhere*. Twenty years later he would remember a passage from *News from Nowhere* while in prison. Bernard Shaw also became one of his favourite authors. Sakai translated many of
Shaw’s works, including *Man and Superman* and *Arms and the Man*, during the “winter” period when he was unable to engage in open political activities.

However, it is the writings of Marx and Engels that shaped Sakai’s thought most firmly. He translated *The Communist Manifesto* and *Socialism: Utopian and Scientific* as early as 1904, and read Kautsky’s *Ethics and the Materialist Conception of History* in 1908. But it was not until after the execution of Kōtoku and the other anarchists in 1911 that Sakai began to write about historical materialism with conviction.

Two essays of 1912, “Yuibutsuteki Rekishikan” and “Yuibutsuteki Rekishikan Kenkyū,” testify to his mature understanding of a materialistic conception of history. The articles appeared in the political magazine *Kokumin Zasshi* published by Sakai’s friend and journalist Yamaji Aizan in response to the latter’s criticisms of Marxism.

Here Sakai defined materialism by quoting from *The Communist Manifesto*, Marx’s Preface to *A Contribution to the Critique of Political Economy* of 1859 (the same short essay that caused a stir in the academy through Kawakami Hajime’s commentary a decade later), Engels’s *Socialism: Utopian and Scientific*, and *The Origin of Family, Private Property, and State*. Sakai was then at least a decade ahead of mainstream academic awareness.

In the Preface to *A Contribution to the Critique of Political Economy*, Marx challenges the seemingly immutable dominance of existing political, legal, and social arrangements, saying that they are in fact determined by “the material conditions of life” based on economic relations. Our consciousness too is determined by our “social existence,” because we are all social beings and our existence is intertwined with the prevailing “material conditions.” Marx’s subjugation of the state to society through his insistence on “the material conditions of life” had immediate appeal for Sakai, for whom society was always “the fundamental subject.”

Hence, he found, if social revolution was to succeed, people must be aware of existing contradictions. And if the system begins to produce contradictions, it ought to be challenged. The following passage from the Preface became one plank of Sakai’s Marxism: “In the social production of their life, men enter into definite relations that are indispensable

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and independent of their will, relations of production which correspond to a definite stage of development of their material productive forces. The sum total of these relations of production constitutes the economic structure of society, the real foundation, on which rises a legal and political superstructure and to which correspond definite forms of social consciousness. The mode of production of material life conditions the social, political and intellectual life process in general. It is not the consciousness of men that determines their being, but, on the contrary, their social being that determines their consciousness."

This linkage of the “the relations of production” with human relations in general was a powerful presupposition for Sakai, providing him not only with a theory of historical progress but also with an empirical method linking our cognitive ability and the outer world.

Thus what initially attracted Sakai to materialism was that it severed the existing order from the status of fixed and insurmountable social norms. For him, society was no longer a complex of ready-made things, but a shifting construct amenable to rational interpretation. And each man might be an active agent in this construction. Thus, as in the case of Minobe, who also accepted change in the existing norms by endorsing common law, Sakai secured an approach to social change which could contest the status of received morality, religion, and social custom. Materialism freed him from the confinement of existing norms, and his dissatisfaction with the way in which government was run and society operated was now legitimate: debilitating compromise was no longer inevitable, and critique was a defining act for a social being.

At the same time Sakai’s defence of materialism epitomises the various psychological difficulties that many Japanese faced in acquiring a sense of autonomy. For the ideological world that many Japanese inhabited was still composed of the familiar Confucian norms of meibunron, which situated the individual within a well-ordered, time-honoured epistemological whole. Yet affecting the traditional world-view, and shared by all, was the perceived force of change. Change, whether contrived or seemingly fortuitous, was everywhere apparent, and appeared unstoppable. But


47. Such perceptions are recognisable in the common usage of the word “toki” (time) and its association with force. The words and phrases that combine the two, such as “jisei” and
how could they connect themselves as autonomous beings to something in such powerful flux? Both sets of forces, the old inertias and the new dynamism, as well as the new coercive powers of government, conspired against a vision of society as a material reality which might be remoulded by individual or communal effort. Nevertheless, for many, the primary challenge was to resolve the conflict between familiar forms of behaviour and the new ideas they had begun to cherish.

Thus, according to Irokawa Daikichi, many jiyūminken activists were caught between the new values and the familiar Confucian norms to which they still adhered. For them, their ideal shishi lifestyle was no longer confined to the traditional master–servant relationship, or to the model of the samurai fighting for sonnō jōi. Shishi were now comrades fighting against oppression and trying to establish “free government.” They valued the French and American revolutions. Their heroes were those trying to realise “what many people desire,” and who were concerned with realising “the welfare of the public (shakai taishū no bengi),” in the phrase popular around 1885. In this sense, they were pursuing new values and a new community based on those values. Yet they also adhered to the familiar Confucian framework, not because they felt comfortable with it but because they did not know how to integrate the new and the old. For them, the norms of behaviour were already given. “Thus inner conflict would deepen if one’s desire and the perceived norms of behaviour began to contradict.”

In effect these young men possessed neither the scepticism nor the autonomy strong enough to reverse the familiar cosmic order. So, even as Irokawa is careful not to generalise excessively from individual cases, he assumes that such conflict could only intensify for those who took part in the Jiyūminka Undō as government harassment intensified and their sense of personal failure grew. Irokawa speculates that if the Jiyūminka Undō had survived long enough, its participants might have been able to develop new norms that


Sakai Toshihiko: industrialisation, hierarchy and socialism

would match their newly acquired values. Yet reconciliation between the new values and perceived norms became a serious personal problem for many Japanese precisely because they had assumed those norms were fixed.

Sakai too faced such a dilemma in the intellectual upheaval of the early Meiji years. However, dialectical materialism helped him to a new vision of cultural relativism and historical process. And this provided him with the freedom to explore his own society in a radically liberating way. From here on, matters of objectivity and subjectivity, self and other, private and public, became not less pressing but less problematic.

Prompted by his discoveries, and particularly from 1912 onward, Sakai expounded the new creed in a number of articles. Attacking religion, state, divisive social customs (especially those that kept women as “second-class” citizens), and education as a mere moulding of minds for the national purpose, his polemic was a natural outgrowth of his understanding of Marxism as a critique of existing political, economic, and social arrangements. Yet the core of Sakai’s materialism was anthropocentric and fluidly humane, and it remained so, even as many supporters of socialism and communism began to interpret historical materialism as an inevitable “economism,” in as much as society must evolve naturally within the economic process, regardless of individual effort.

At the same time Sakai’s polemical defence of historical and dialectical materialism was conducted in the face of persistent hostility. To many of his critics the idea of historical progress as “the development of material forces” was antithetical to their mythic notions of the national past and their adherence to the idea of never-changing “truth” and social

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49. Irokawa, Shimp’en Meijishi, p. 52.

50. Henry D. Smith observes that this problem was inherited by elite university students in the 1910s and 1920s. They were deeply aware that the rapid development of the capitalist system was causing serious distress, and the way it was organised required radical readjustments, but they were not entirely sure how this was to be achieved. Possessed of a hierarchical notion of social order that “all men have a determined place in society” and an elitist notion of government that “some men will naturally emerge to lead the rest,” they also had to confront the pressures of international politics and the new social realities. The situation caused “a continuing pattern of generational dislocation” in post-Restoration Japan (Smith, Japan’s First Student Radicals, p. viii).

51. See, for example, Arahata Kanson, “Tōhisha,” in Seikatsu to Geijutsu, quoted by Sakai, “Gomashio Atama,” Kindai shisō, from October 1913 (vol. 2, no. 1) to September 1914 (last issue), STZ, vol. 4, p. 91.
ideals. Thus his colleague Yamaji criticises the vision of class struggle as cruel, and historical materialism as “a cold view of history.” He feels an “intuitive animosity” against it, for it ignores the presence of heroic individuals in history, and undermines humane philosophy. Sakai responds that historical materialism, like Darwinian evolution, is severe, not cruel, and each corresponds to the law of nature (rihô).

According to Sakai, he and Yamaji had fundamentally different views of the state. Yamaji sees the state as the outgrowth of the communal spirit inherent in man. Sakai does not dismiss the importance of the spirit of community in history, but he regards Yamaji’s views as naïve, because they ignore the presence of social conflict. For him the state is the projection of the power relations of society. Sakai quotes Engels to the effect that “the state is … a product of society at a certain stage of development.” Thus, “A power seemingly standing above society became necessary for the purpose of moderating the conflict, of keeping it within the bounds of ‘order’: and this power, arisen out of society, but placing itself above it, and increasingly alienating itself from it, is the state.”52 Thus, for Sakai, it is both legitimate and necessary to criticise the state, and patriotism cannot paper over the cracks in the existing social fabric.

In this way Sakai’s acceptance of historical materialism entailed a view of himself as the victim of the existing system. Such self-identification was essential to determining how one saw not only the state but also social relationships. For if our opinions are shaped by our perceptions of “social” problems, so are our perceptions a reflection of how we identify ourselves in society. Sakai was very much aware of his position in such relativist terms. Thus, in 1921 he criticised Yoshino Sakuzō (1878–1933), one of the most influential critics of the political system during the Taisho period, an advocate of “government based on the people” (minponshugi), and an occasional collaborator of Sakai’s, for his “neutrality” in the labour movement. According to Yoshino, workers deserve our sympathy because of their poor working conditions, but this does not mean we should endorse every action workers take. In direct repudiation of materialism, Yoshino claimed that people

should act according to “righteousness,” not group affiliation. For Sakai, righteousness is relative. It must be qualified by attending to the specific interests of the parties involved and the expected effects of their actions. Otherwise, righteousness becomes a mere chameleon of discourse that imposes private values on others.53

Around the same time Sakai lodged a similar criticism against Kawakami Hajime (1879–1946), a professor of economics at Kyoto Imperial University and “one of the founders of Japanese Marxism,”54 for the latter’s insistence on universals. Kawakami had proposed that a fairer society could be achieved not only by enlightened policy but also by its members striving for absolute and universal values. For him, personal moral perfection was just as important as the realisation of an egalitarian society. For Sakai, however, morality was historically and culturally specific. In his view, Kawakami’s heavy emphasis on “morality” was an obstruction to man’s critical engagement with history and society.55

Relativism, however, did not by any means imply the rejection of all social values. On the contrary Sakai, adhering to his principles, believed that if moral forces were to be capable of directing the people as a whole, they must be rooted in the present, and be equally shared. For his political sensibility ideals imply “a mind that recognises its dissatisfaction with the present and seeks fulfilment.”56 A belief in socialism therefore entails a belief in society’s transformative power, with politics and vision generated by social forces. For Sakai, idealism such as Kawakami’s might stifle society’s transformative power, if ideals became so rigid as to dictate our visions of social organisation. However, if those ideals were coherent

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53. Sakai, “Tare no koshieta Dōrika [Who Makes Justice?],” Shakaishugi, March 1921, STZ, vol. 5, pp. 84–8. As for Yoshino’s position, Tetsuo Najita says: “He conceived of democracy as a pure metaphysical ideal, and it was idealism that led him, toward the end of his life, to deny in sweeping fashion the democratic potential of organized political activity—a denial which a supporter of liberal or social democracy in the West at that time would have found difficult indeed to uphold” (Najita, “Some Reflections on Idealism in the Political Thought of Yoshino Sakuzō,” in Japan in Crisis, ed. S. Silberman and H. D. Harootunian, p. 31).


and concrete enough to be applicable to existing arrangements, then idealism was fully compatible with materialism.\footnote{See Sakai, “Yuibutsushikan to Risōshugi,” p. 447.}

For Sakai then materialism was primarily a means of social connection. Thus a key theme of his articles in the 1910s is the practice of separating ideal from reality. Relevant here are a series of essays which appeared in Kindaihisō from October 1913 to September 1914, which reflected the strong influence of Engels’s collaborator Karl Kautsky (1854–1938).\footnote{Kautsky, a major interpreter of Marxism and a leading theorist of the Second International, reinforced Marxism’s criticism of the Kantian dichotomy between \textit{phenomena}, the world of phenomenal appearance, and \textit{noumena}, “things-in-themselves” which remain unknown. For him, “There is no need to deal with it; one might simply take it as a method of designating the fact that our knowledge of the world is always limited by the nature of our intellectual faculties, is always relative, that for us there can only be relative and no absolute truths, not a final and complete knowledge, but an endless process of knowing” (Kautsky, \textit{Ethics and the Materialist Conception of History}, trans. John B. Askew, fourth edition, revised [Chicago: Charles H. Kerr, 1918], pp. 40–1). This latter emphasis spoke strongly to Sakai.}

In his \textit{Ethics and the Materialist Conception of History}, Kautsky had dealt with fundamental questions inherent in historical materialism and determinism. Why do men, who are supposed to be free, feel a certain action to be necessary? If history has a direction, how can we assert our freedom? Kautsky’s answer was that we choose our own aims as “active agents.” Necessity belongs to the past, “the world of experience,” and freedom to the future. But standing on “the boundary,” we make our own judgements. In this sense, necessity and freedom both facilitate our action. Sakai was aware that in his case such choice was limited. Yet freedom complements necessity, because it is still he who decides. Once again materialism proclaimed the reality of autonomy at a time of severely restricted freedom. “\textit{Idea cannot match necessity completely. But we should try to reconcile them as much as possible. Otherwise, we will be left only with disappointment.}”\footnote{Sakai, “Gomashio atama,” STZ, vol. 4, p. 92. By championing autonomy, Sakai was in fact subscribing to views held by German philosophers associated with the Neo-Kantian movement of the nineteenth and early twentieth centuries, particularly those of the Marburg School. For the Neo-Kantian movement, see Thomas E. Willey, \textit{Back to Kant} (Detroit: Wayne State University Press, 1978), pp. 37, 155, and also Barshay, \textit{State and Intellectual in Imperial Japan}, pp. 74–5.}
ideal and reality, theory and practice. Sakai wrote it when he was banned from overt political activity in the wake of the High Treason Incident. Yet at that time young socialists such as Ōsugi and Arahata Kanson remained eager to act promptly. Sakai was not so sure. Idealism alone seemed no longer viable, and caught between his socialist ideals and the realisation that the present situation did not allow him to act as he wished, Sakai concludes that necessity does not invalidate freedom as long as we maintain our capacity for judgement.

Sakai thus cherished materialism as a worldview that defended self-determination against the many forces that might be ranged against it, be they the all-consuming ideology of nationhood, the pressure of autocratic institutions, the power of rigid social norms, or the impact of religious or quasi-religious dogmas. Hence his concern with autonomy and belief in man’s active role in social organisation led him to view the intellectual “mood” of the times very critically. Particularly in early Taisho Japan, he saw a growing preference for the ineffable, discernible in the forms of popular “spiritualism,” in the emphasis on loosely defined “morality” by government and some intellectuals, and in the rise of a prevalent pseudo-philosophy, in which half-baked mystical thought was presented to the public in language not clearly expressed. All these trends, which to him reflected the fluid yet capricious mood of post-Meiji society, were accepted or benignly overlooked on the assumption that “intuition” and “spirit” belonged to a higher realm. “People often say that the human intellect is only partial, compared to the wholeness of intuition. Science based on intellect, thus, has only a partial function. ... To follow our intuition is the right way to act. Intellect should be subjected to the senses and intuition.” Sakai challenged such a view, saying that intellect and intuition were inseparable. For him, necessity and the ideal must be unified through scrupulous self-examination and this process must be shared.


Sakai’s objection to the seeming disparagement of thought and language is therefore part of his social vision. For to assert something that transcends mutual understanding is mere mystification or, worse, distortion. To him socialism is firmly associated with new ways of conducting the common life. Thought therefore ought not be the servant of shallow obscurantism. So in the 1912 articles, Sakai translates Marx’s vision of a civil society (bürgerliche Gesellschaft) into “shiteki shakai” and “minkan shakai” (a society of private people).62 For Sakai understands that historical materialism embraces such a vision, while advocating society’s transformation into a communicative and thus truly civil society. “Human knowledge,” he says, “is still limited, and social and personal matters are full of the unknown. That is why we communicate with others, trying to let others know what we have already learned.”63 In this way the political health of a society will manifest itself in its discourse, and mystical indeterminism is unhelpful.

For Sakai socialism is intensely humanistic, flexibly undogmatic, and empirical. It concerns common human needs and seeks rational ways of addressing social problems. It constitutes and confronts one’s moral stance towards the outer world, intensely critical of it, but at the same time stresses the need for connection in a meaningful way. Socialism for him was a process by which one co-operated with society without abandoning one’s right to interrogate it.

Nevertheless, Sakai clung to his belief that human history was a history of progress. Historical materialism did not promise the final stage of justice: the abolition of the capitalist system in which individuals were fatally separated from each other only meant the beginning of a new era when they could work together to create a fairer and freer society. “You might think that such a view is extremely optimistic. But at the bottom of our hearts we socialists all have such a hope. Our messiah is not a hero in the traditional sense but the entire working class.”64

Serious problems remained, however. Were there appropriate conditions for the Japanese to advance to a new era? Were they autonomous

62. Sakai, “Yuibutsuteki Rekishikan,” p. 12. Marx’s vision of civil society, however, is more restricted than Sakai’s: for him “the anatomy of civil society has to be sought in political economy” (Marx, “Preface to A Contribution to the Critique of Political Economy,” in The Marx-Engels Reader, p. 4).
enough as a people to direct their own affairs? Habermas, as we know, asserts that open and unobstructed debate is essential for the social spur of consensus making. Pre-war conditions in Japan by no means appeared to assure that debate. Maruyama Masao, pointing out “problems” of modernisation which made it difficult for the Japanese to voluntarily form their own associations, describes two periods, one the years from around 1900 to 1910, and the other the years immediately following the Great Kanto Earthquake of 1923, as two of the most obvious turning points when transformation in Japanese society became apparent. He speaks of the contrary forces of “rationalization, mechanization, and bureaucratization,” and describes the two periods as points when individuation assumed sharp focus. By individuation he means defining reactions to “modernization,” disrupting and emancipating simultaneously. Yet these periods also saw a growing number of atomised people unwilling to establish solidarity with their fellow citizens voluntarily. Several factors contributed to this trend: government harassment, the increasing regimentation of society, separation between cities and the countryside in both material conditions and in the popular imagination, and the unstable economy. The problem of association was particularly discernible among the youth, for “The Japan in which the younger generation lived was a country where a fundamental construction of the national state had almost been completed and social life had begun to be managed by routine.” Ishikawa Takuboku, sixteen years junior to Sakai, clearly fits the diagnosis. The “over-sensitive response, on the part of the government, to every show of marked individuation” also worked to perpetuate “traditional conformism and the attitude of silent obedience.” By contrast Sakai belonged to a more fortunate generation which could proceed in its enquiries in less confined circumstances.

65. Habermas notes: “Decisions for the political struggle cannot at the outset be justified theoretically and then be carried out organizationally. The sole possible justification at this level is consensus, aimed at in practical discourse, among the participants, who, in the consciousness of their common interests and their knowledge of the circumstances, of the predictable consequences and secondary consequences, are the only ones who can know what risks they are willing to undergo, and with what expectations” (Jürgen Habermas, Theory and Practice, trans. John Viertel [London: Heinemann, 1974], p. 33).


67. Ibid., p. 511.

68. Ibid., p. 528.
Maruyama continues: “Nor do political oppression or social pressure tell the whole story. As long as the ideologies of ‘individualism’ or ‘democracy’ are associated with what is urban, and as long as the reality of the mammoth city, represented by Tokyo, makes alien to the people the idea that there does also exist an ASSOCIATIVE form of individuation, then there will always be the psychological tendency to identify political and social chaos as well as lack of solidarity with individuation per se; the attraction to the ‘aseptic’ will continue to frustrate efforts to strengthen, by exposure, the body’s resistance to, or toleration of certain germs.”

Thus Maruyama defines the widespread antipathy to the new social forces, and the common assumption that “individuation” was socially suspect. What chance, therefore, for Sakai’s Marxism in such a society? Certainly after World War I, Marxism had swept through the academy, and explaining why so many intellectuals were attracted to it Maruyama cites the attraction of the new subjectivity in learning. Yet society’s scepticism and the consolidation of the powers of the state meant that it would always encounter formidable obstacles. Nevertheless Sakai’s Marxism continued to emerge as a force for autonomy in a hostile environment.

At this stage, however, Sakai was seriously detached from the needs of the masses. Such weakness becomes especially clear if we compare his work with the more concrete criticisms of the impact of industrialisation on Japanese society made by Yokoyama Gennosuke in his “Nihon no Shakai Undō” of 1898. Here Marxism and other economic theories were discussed, less abstractly, within the context of immediate social problems, with concern for rising inflation, labour disputes, and various tax increases. Japanese trade unions had also begun to get under way at precisely this time, and grew in importance (despite government harass-

69. Ibid., p. 531. Original emphasis.
ment) over the next decades.\textsuperscript{71} Increasingly aware of the limitations of his thought, and of the examples of Yokoyama and his followers, Sakai late in his life began to replace the abstractions of \textit{shakaishugi} (socialism) with the immediacies of \textit{shakai undō} (social movements). In the next section I will examine this shift in his thought in response to contemporary social and political change.

\textsc{Sakai and the United Front: From Visionary Marxism to Proletarian Engagement}

The Russian Revolution in 1917 and the subsequent establishment of the Soviet Union in 1922, the collapse of the German Empire in 1918, and the growing domestic demands for broader political participation exposed Sakai's socialism to new challenges. Until then, his socialism was a privately cherished personal belief. Long insulated by the absence of a self-assertive working class in Japan, Sakai knew that his political beliefs were founded upon utopian intellectual ideals. The post-war international and domestic developments changed his outlook. Cautiously, but with growing commitment, Sakai moved to “collective” political activities.

It is difficult to give a clear-cut assessment of Sakai’s opinion of the newly fledged Soviet Union. Like many other socialists, he rejoiced in the birth of the first workers’ state. And yet the dominance of a single party contradicted his egalitarian views, unless present arrangements were considered transitional. This dilemma was reflected in his involvement in the establishment of the illegal Japanese Communist Party in 1922, and then in his departure from the party in 1924, when it became clear that the party was under the burgeoning influence of the Comintern. During this brief period, Sakai appears to have abandoned his parliamentarian position, hoping to see a Soviet-style proletarian revolution occur in Japan.

On his departure from the party, Sakai became increasingly involved in proletarian movements. Both national and local assemblies were at

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the centre of his political activities, as will be documented later. His admiration for Lenin and for the idea of a workers’ state remained, but he appears to have adhered no longer to the idea of a “vanguard” party, and instead envisaged a “united front” of different social classes in a capitalist society. None of the movements lasted long enough to steer the masses because of government harassment and internal disagreement. However such an emphasis on “solidarity” was a bold attempt to affirm society rather than state. This section will examine that phase of Sakai’s socialism when popular participation in politics appeared to him a possibility.

The year 1919 witnessed “the most drastic progress” in people’s attitudes towards politics in general in Japan, according to Sakai.72 Amid the global changes, domestic unrest, evident in the growing number of labour disputes and the Rice Riots of 1918, was causing considerable upheaval. The Rice Riots symbolised the people’s protest at the human costs of the government policy of national expansion. The mood of change excited many, as seen in the formation in late 1918 of various groups calling for political reform such as the Reimeikai and Shinjinkai. The government was obliged to promise that it would not prevent the dissemination of “foreign” ideas as long as they respected the spirit of the nation and did not trigger drastic social unrest. And it had to state that the law did not ban trade unions.73 These moves all encouraged domestic pro-democracy movements.

However, this more assertive public encountered renewed urgency in a bureaucracy keen to align the populace within its perceived goals for the national good. Thus in 1919, the Home Affairs Ministry launched a nation-wide campaign to “foster national strength” (Minryoku Kanyō Undō) so as to overcome the post-war “slackening of social order” by promoting savings and frugality. Recognising a pattern in pre-war government public policy, Sheldon Garon notes: “Following both the Russo–Japanese War and World War I, the public was warned again and again of Japan’s ‘coming peacetime economic war’ with the Western powers and the need to work hard, make sacrifices, and rally behind the

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It was clearly felt that the relationship between state and society, and the state and the individual, required reshaping.

At the same time reactionary movements also sprang up, including the establishment of new nationalist groups. Polarisation of opinion over the new national policy was also discernible within government. Thus while the Cabinet of Prime Minister Hara Takashi was signalling its willingness to co-operate on U.S.-led international efforts for post-war disarmament, a unit of the Japanese Army stationed in Manchuria was reinforced, thereby becoming the Kwantung Army, and enhancing the military’s autonomy in the region. Maruyama therefore finds in the year 1919 the first signs of the fascist period. Nevertheless democratic and reactionary trends flourished simultaneously, and are perhaps discernible in the demise of Sakai’s own publishing house, Baibunsha, which broke up in March 1919, when Takabatake, a key member of the house, and others began to advocate state expansion.

Against this background, debate about social problems (shakai mondai) grew apace. In the wake of the Russian Revolutions and the growing interest in social change, Marxism became popular among academics, writers, and students. Kawakami Hajime’s Shakai Mondai Kenkyû sold tens of thousands of copies. Takabatake and Yamakawa both published their respective commentaries on Marx’s Capital. The government still prohibited socialist propaganda, but allowed these publications in the name of academic research.

Sakai himself embraced the sense of a new era. In such a chaotic period, he said, thought of all kinds was undoing the old attempts at synthesis. Yet he would stick with the Marxism he knew. He acknowledges that it is now prone to division, and that he cannot say at this moment to which school he belongs. But loyal to the old framework, he proclaims the abiding importance of material circumstances. “Periods have their own particular trends,” he says, “and each country has its own peculiar features. The combination of the two will determine what kind of political movement gains force in each country. … It is better to prepare

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for the future, help promote development, and wait.” Despite the new uncertainties his commitment to historical progress was undiminished.

Socialism for Sakai, however, always sought to mediate between individual freedom and communal solidarity. Yet until the mid-1910s, his socialism had remained relatively aloof and utopian. The short-lived Socialist Party of Japan, which he had helped to establish in 1906, for instance, remained far more an ideological group than a party with any real prospect of participating in mainstream politics.

That climate changed for good in the late 1910s. Sakai ran for the general election in 1917. Although he and his supporters were not able to mount an effective campaign because of police harassment, a diverse range of people rallied round him, including the writers Baba Kochō, Ikuta Chōkō, and Abe Isoo. A new civil movement was emerging,78 and during this period Sakai actively sought contact with those seeking new political and social arrangements, such as Yoshino Sakuzō,79 and with the labour activists. In his writings he probed the old separation between politics and society, and made social problems his central focus.

The key distinction between social problems (shakai mondai) and social policy (shakai seisaku) was made by Kawakami Hajime.80 According to Kawakami, social policy was widely used to refer to policies about production. That was why it was discussed frequently within government and in the academy. However, social policy should also concern itself with a more equal distribution of wealth so as to alleviate social distress. Sakai supported Kawakami’s claim, despite his criticism of the latter’s rejection of historical and dialectical materialism.81

77. Ibid., pp. 323–4.
78. See Matsuo, Futsūsenkyo Seido Seiritsushi, pp. 110–1. Co-operation between liberal writers and socialists in suffrage movements started during the “winter” period. Sakai supported Baba’s candidacy in the general election of 1915 behind the scenes. Yasunari Sadao, a Baibunsha associate, became chief of Baba’s election campaign. Many writers supported Baba’s candidacy, and Natsume Sōseki was one of many contributors to the 1,127-page collection of essays published to raise funds for the campaign. See ibid., p. 109.
81. For their debate, see Gail Lee Bernstein, Japanese Marxist: A Portrait of Kawakami Hajime, pp. 113–5. For the introduction of the concept of social policy in Japan, see ibid., pp. 52–5.
Thus, in an article of 1919, Sakai attempted to explain why social and political problems had become detached from each other. In Japan, political movements had begun as protests against government, as in the case of the Jiyūminken Undō. However, since the promulgation of the Meiji Constitution, activists had become either members of Parliament or government sympathisers. Capitalist pressures facilitated such fusions with the ruling class, and political movements lost their original role. Through this process “Political movements are no longer respected nor feared. They may be despised or rejected as much as before, but their meaning has completely changed.” Politics itself has little time for the crucial task of winning popular trust. Sakai sees the demise of nascent popular politics as the result of the historical evolution of Japanese radicalism and the inner dynamics of the new capitalism.

On the other hand, he says, social movements, which were once considered apolitical, including charity and relief work, the elimination of prostitution, campaigns against alcohol and smoking, and the literary movement in favour of the vernacular, are political, because they are ultimately related to the unequal distribution of wealth and privilege and so concern the whole of society. Thus, says Sakai, if the political movements of the past have been absorbed into the status quo, social movements have now replaced them as critiques of government and of the economically privileged class.

In this way “The new political social movements have become the No. 1 enemy of government and of the ruling class in general, and they have tried to suppress them. That is why such thought is labelled dangerous. Attempts to suppress it, various confrontations, oppressions and explosions have begun to take place.”

Clearly, for Sakai, the distinction between social and political has once more begun to blur because ordinary people have begun to express their opinions directly. These activities are still “unconscious,” lacking a clear sense of class identity or political direction. Nevertheless such movements are taking place against a background of more assertive individuals and workers. These new social and political movements have so

83. Ibid., p. 502.
84. Ibid., p. 503.
far failed to develop as conscious acts, mainly because the government has acted before they began to develop as broader civil movements. However, the new forces, “led or exploited by disenchanted politicians, have become an unconscious (or semi-conscious) harbinger movement. The Rice Riots in 1918 were such a movement.”

This new historical perspective helped expand Sakai’s understanding of mass movements. Yet in 1915, he had rebuked the masses for their lack of consciousness as the exploited class. In fact, many activities in Japan then seemed to him to be taking place without clear consciousness. Japanese society appeared a mere vortex of undirected personal desire and intention. Yet for Sakai, consciousness meant class consciousness, and many Japanese were found wanting. In 1918, however, he had become more sanguine.

No essay in the Zenshū, the six-volume collection of Sakai’s writings, addresses this question directly. However, an article he wrote in 1919 for Shinshakai, apparently based on Marx and Engels, and especially on Marx’s “The Civil War in France” and “The Possibility of Non-Violent Revolution,” implicitly links the absence of consciousness to Japan’s post-Restoration history.

In his article, Sakai interprets the Meiji Restoration as a bourgeois revolution, and explains that the relatively smooth transition from the feudal society of the Tokugawa shogunate to a new capitalist society was due to the features of the existing structure, including the significant political autonomy of the “han” domains, which facilitated its dissolution from within, and the keen social insight of the political actors involved. These forces had worked as preparatory instigators of major change. Now, despite the appearance of unconscious harbinger movements, there is no such institution capable of leading society. “Political parties or companies may have equivalent functions, but they have not yet grown to include elements of the newly emerging class and thus they

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85. Ibid., p. 504.
86. Sakai says: “The capitalist camp, although unconsciously, knows how to exploit the people based on its selfish logic. However, many people, who are supposed to challenge it, lack such [class] consciousness utterly” (Sakai, “Zansho to Shinryō [Lingering Heat and the New Coolness],” in the first issue of Shinshakai, quoted by Kawaguchi, op. cit., vol. 2, p. 74).
cannot serve as preparatory organisations." Sakai identifies the peculiar stage Japanese society has reached: a society which has lost its previous framework, but which has not yet found an adequate alternative. Now, for peaceful revolution to occur, Parliament will have to accept new parties that represent the newly emerging class, and companies will have to change their outlook to allow workers to influence their operations. A Socialist Party or a Labour Party will be necessary, and trade unions must be encouraged. Thus Sakai points to the absence of institutions capable of representing the new class, and identifies major weaknesses of the present political system.

Another problem affecting social change identified by Sakai is that authority acts as a ruling class, which creates antagonisms among the public yet also creates an imperfectly radical class critical of it. “People who engage in the social movement and the emerging class in general decide their strategy, attitude, and policy in response to the attitudes of the ruling class.” But “No one is willing to take the risk of creating a great many sacrifices when peaceful revolution appears to be possible, because making such sacrifices is painful personally and also entails great loss for society as a whole.” Nevertheless even if no true working class has yet emerged, if there is a ruling class, its behaviour will create groups that are not well disposed towards it. Thus a disaffected class may be created by the ruling class, but as yet it is without consciousness, cohesion, or political intent.

In this way, Sakai asserts that class antagonisms exist even if there is no working class, and they are the creation of the ruling class itself. But in Japanese society there is no institution that represents the emerging class and which can transmit its opinions in the formal decision-making process. Without such institutions, class antagonisms erupt as irrational momentary outbursts of personal grievance. Thus Sakai moves to interpret the absence of co-ordinated behaviour among the masses not as reflecting a settled and self-defeating “lack of consciousness” but as rooted in the problems of institutions. For only institutions can give coherence to what is otherwise irrational, unrelated, sporadic behaviour. Freedom of speech, freedom of association, and universal suffrage

89. Ibid., p. 339.
are all indispensable, but the absence of conscious behaviour and the separation among political, labour, and social movements are all to be explained historically and attributed to the absence of a linkage institution. This for Sakai means Parliament, defective though that may be. “Hence the labour movement is a social movement, and they are both political movements. However, the labour movement has elements not directly linked to politics, and some aspects of the social movement are not directly linked with the labour movement. ... The immediate means to link them together is universal suffrage.”

In all of this Sakai’s criticism of the separation between society and politics stems from his own observations reinforced by his understanding of Marx and Engels: their emphasis on the origins of capitalist revolution, the nature of resultant bourgeois government, and the need for proletarian revolution. But it is his own experiences which most sponsor his need to participate and intervene. Now his still developing historical awareness moves him again so as to recognise, albeit belatedly, the importance of mass movements.

The impact of the Russian Revolution, fascination with Lenin’s thought, and the emergence of the Soviet Union deeply influenced Sakai’s views about the role of a political party in such a revolution and the shape of proletarian government. However, Sakai’s views about the role of a single party and of party-led revolution were highly ambivalent. He recognised the need for such a party in the transitional period pointed out by Marx and Engels, but the idea of a single party leading the masses indefinitely was repugnant to him. Even at the peak of his fascination with the world’s first workers’ state, he was strongly aware of the need to reconcile majority rule and minority opinion.

Sakai first engaged with these topics in three short essays of 1918. In the first essay, entitled “Tasūketsu to Zen no igi [Majority Rule and the Significance of Goodness],” Sakai repudiates his own daughter’s objections to majority rule. “I immediately sensed a kind of obnoxious view in her words, which is similar to that of tetsugaku-shugi (philosophical elitism) as taken by some scholars and writers who rebuke ‘the stupid masses’ and regard themselves above them, also zenseishugi (self-righteousness thinking) and senseishugi (authoritarianism). So I asked her how we could know that a ‘good’ person was really a good person, or

that a ‘good’ decision was really a good decision.”

For a materialist, in other words, the concept of the good is not absolute but relative. Yet this does not mean that it is exempt from any definition. On the contrary, concepts of the “good” must be examined by referring to their impact on the masses. Thus his exposition of a theory of majority rule which will not exclude minority opinion leads on to his advocacy of communicative democracy:

I think that the fairest and solidest way [of making decisions] is a process by which wise opinions addressed by a minority are chosen or rejected by a majority in terms of their merits. Sometimes authoritarian rule by a small number of wise people and a majority’s blind loyalty to their decision may be the most effective and prompt way [of getting results]. But if we take into consideration that the combination of authoritarian rule and blind loyalty can produce enormous damage, the time expended on a one-time detour or wasteful labour is a much smaller loss.

Social democracy then, a process by which government policy is monitored and checked by the general public, may be inefficient, but ignoring it would cost society dearly. For Sakai is extremely wary of the manipulation of majority opinion by a minority: “In a society where class difference prevails, if a powerful minority trains and manipulates majority opinion through direct and indirect strategies, what appears as majority opinion is in fact that of the minority.”

He also says: “Sometimes, if a person with strong charisma and authority and with a strong ego insists on his opinions passionately, even minority opinion may take the form of unanimous agreement. Therefore, unanimous agreement is not so sacred, because it may coincide with authoritarian rule.”

Thus even in 1922 when Sakai was closest to accepting the Bolshevik “vanguard” strategy, he could still call for the furtherance of enlightened social forces by every means available, including freedoms of speech and association, the universal suffrage movement, and parliamentary tactics,

92. Ibid., p. 197.
93. Ibid., p. 197.
94. Ibid., p. 198.
even as a sense of desperation strengthened the appeal of direct action. So when in 1926 the Japanese Communist Party was re-established by Sano Manabu, Tokuda Kyūichi, and others (after its dissolution in 1924), Sakai, along with Yamakawa and Arahata, did not join. Instead they established a break-away group, later signalled by the publication of the journal Rōnō in 1927. The group continued to criticise the party for alienating the masses, and grew closer to the growing number of non-partisan organisations. Sakai never explained the actions he took during this period, and his departure was criticised by the stalwarts of the party as capitulation and betrayal. Yet he had long been uncomfortable with the terms of the new activism. For Sakai, Marxism remained a philosophy of life that directed him to political engagement as an active, autonomous, and thinking individual. The notion of the subjective or acting self, one basic tenet of classic Marxism, remained central to his philosophy. Such a creed had become increasingly foreign to those of the younger generation who became “Marxists” in the 1920s and 1930s. For them Marxism represented an all-encompassing ideology, a theory of hierarchical organisation, deeply suspicious of individuality and spontaneity. Matsuzawa Hiroaki asserts that these new “Marxists” failed to grasp the essential Marxist proposition that our perceptions of society are relative and that we ourselves must envisage a course for the future. Instead they abandoned independent dialectic and subscribed to the overwhelming influence of the party. For them any policy or strategy could be endorsed as long as it furthered the needs of the proletariat. All ideological alternatives, as well as questions of cost and feasibility, were counter-revolutionary.

Matsuzawa claims that these young “Marxists” were in fact trapped in the traditional thought system that did not distinguish values from social norms. Loyalty to Marxism was automatically seen as “good,” as was loyalty to the party. Organisational Marxism promoted a dogmatic moralism that discouraged spontaneity, free discussion, and dissent. Dissenters did exist, but they were in a minority. Thus within this circle

98. Ibid., p. 207.
Marxism became a rigid, coercive system of norms of behaviour. This new Marxism, which saw the Comintern as the apex of the system, was alien to Sakai. Some of the new “Marxists” may have been grappling with new organisational problems, outside forces, and the relationship between theory and practice with an intensity and immediacy that Sakai’s generation had never experienced. Nevertheless, they were undoing the post-Restoration tradition of sceptical nominalism, with its doubts about inherited universals, and its emphasis on self-enquiry. Such contrasting attitudes may explain why many of them left the party when their prominent leaders recanted in 1934, while Sakai remained attached to his own brand of independent Marxism until his death.

Sakai formulated his final vision of political organisation in a pamphlet entitled Musantō Zengōdō (united proletarian parties) published in January 1931. The pamphlet was written at a time when various proletarian parties were coming into existence, fusing, and then separating again. Thus Sakai’s unified proletarian party would not be class based in a strict sense, nor would it be either social democrat or communist, because it would not have any insistent and inflexible guiding principle: “The envisaged single proletarian party may be described as a united front of different classes (or social classes) in the capitalist society. It may also be described as a unified front of different stages of consciousness (between different ways of thinking, or between different attitudes about one’s social conditions). That is, the front will cover all kinds of stages of consciousness, commitment and character, ranging from the most mature, clearly defined consciousness of resistance of the proletariat to more elementary, ambiguous, or weak anti-bourgeois consciousness.”

Here, with mingled strength and weakness, Sakai reveals his millennial trust in the collective human ability to organise society without one group exploiting another. Here too he recognises the plurality of society, searching for a way to unite it for political purposes. Precisely because of the scale of social difference, even within the proletariat, politics has its role for mediation. Politics becomes an enterprise that will embrace all members of society; it is an instrument of social integration.

As a social theory, Sakai’s ideas on the united front may appear insubstantial and not especially practical. Yet as support for a theory of political movement they have significant implications. For they are meant not only to criticise state power but also to create a social force for self government, a new kind of state power arising out of society, an attempt to make the “social” assume the “political.” Politics now becomes a matter of conscious interaction among members of the community, and Japanese government becomes representative in unprecedented ways. By attempting to return politics to society, Sakai’s ideas signal a new assertiveness of society over state.

They also represent an attempt to produce a system for the creation of shared opinion. This task does not seem to have been completed even in our time. Ideological absolutism as represented by the emperor system may have gone. But a credible opposition has yet to emerge.\textsuperscript{100} The problems of institutions, of the electoral system, of Parliament, and of finding a viable mechanism for public debate still remain. Sakai’s Marxist vision, especially in its later “unworldly” manifestations, remains immensely relevant to present problems.

**PROBLEMS OF UNITY: STATE, INDUSTRIALISATION, AND SAKAI’S VISION OF SOLIDARITY**

Late in life then, Sakai began to work for the formation of a “united” front against the “bourgeoisie.”\textsuperscript{101} Sakai used the term “bourgeoisie” for that conjuncture of state power and capitalism that was attempting to further exploit workers and farmers to overcome the global recession. At the same time he rejected a Soviet-style revolution led by an elite party. For Sakai, what made people act together was not party guidance but their own agreement. However, the predominant role of the state, i.e., government, in shaping “superstructure” and “base” was a major hindrance to spontaneous solidarity movements. In the last two sections of this chapter I will examine the historical significance of such solidarity.

\textsuperscript{100} Japan has been governed by a single party, the Liberal Democratic Party, almost uninterruptedly since 1955. In the summer of 2009, however, the Japanese electorate gave overwhelming majority rule to the opposition Democratic Party. In December 2012 that party was roundly defeated.

\textsuperscript{101} Sakai’s position conforms with that of the Rōnō-ha, which was criticised by those loyal to the Communist Party. See Hoston, op. cit., p. 95. For further analysis of the Rōnō-ha’s position, see ibid., pp. 237–8.
movements, and Sakai’s attitudes to them, against the background of the country’s political, social, and economic arrangements.

According to Sakai, the potential members of the envisaged front are factory workers, who are the proletariat in a strict sense, tenant farmers, white-collar workers, independent farmers (whose economic conditions are more dire than those of tenant farmers), and property-less self-employed people. Their immediate interests may differ from each other, but they can share their basic goals as they are all exploited by the bourgeoisie. For instance, factory workers’ demands for an eight-hour workday and tenant farmers’ demands for land cultivation rights may appear to be connected only remotely. But they can relate their interests “as long as those interests are in conflict with those of the bourgeoisie.” This degree of common cause should allow factory workers and farmers to act together, according to Sakai.102

Sakai’s emphasis on shared interest, rather than party guidance, was in direct opposition to the guiding principles of the Communist Party as stated in the 1931 Theses. Both were critical of state power, but disagreed about the components of revolutionary force and its sources. The theses emphasised the role of the urban proletariat and its vanguard role in leading the masses. Sakai disagreed. To him, the proletariat was not the only component of revolutionary force against the bourgeoisie in a capitalist society. Also the vanguard could not be formed instantaneously, as it too was a product of environment. Thus the vanguard could not rule the masses unilaterally, as they interact with each other. The people need “a broader, bigger, and more solid” framework that truly integrates society and transcends such overly definitive labels as communism or even social democracy.103 In effect Sakai’s views were in line with the die-hard “liberalism,” which the 1931 Theses had condemned as “a tendency toward right-wing opportunism” that had failed to understand the enlightened role of the Party.104

Nevertheless when he called for such a solidarity movement in late 1931 in his last political pamphlet, Sakai was trying to hold together the fragile proletarian cause as a leader of the Zenkoku Rōnō Taishūtō,

102. Sakai, Musantō Zengōdō, p. 28.
103. Ibid., p. 37.
104. The 1931 Theses, in English, can be found in George M. Beckmann and Okubo Genji, The Japanese Communist Party 1922–1946, p. 318.
one of several defiant proletarian organisations. The party’s antecedents had begun in 1923 with the establishment of the Seiji Kenkyukai group a year after the illegal formation of the Japanese Communist Party. In 1925, the country’s first proletarian party, the Nomin-Roddoto [Farmer-Labour Party], was established but banned immediately on a charge that its members included “extreme radicals.” Yet various proletarian groups sprang up undeterred. In 1928, these non-affiliated parties won eight seats in the first general election under universal male suffrage. The period between the emergence of these parliamentarians with a proletarian background and the so-called Popular Front Incident shortly after the outbreak of the Sino-Japanese War in 1937 saw high tension between the proletarian movements and the government, and the Communist Party was by then severely suppressed. These proletarian movements represented a new form of popular political action in the era immediately after male universal suffrage.

Fearing signs of the growing influence of communists after the general election, the government intensified its anticommunist repression. Large-scale crackdowns commenced, notably on 15 March in 1928, and then on 16 April. Against this background, Sakai helped organise the Nihon Taishutou [Japan Mass Party], a coalition of small proletariat parties, in 1928, and as its candidate won a seat in the Tokyo metropolitan assembly in 1929. After the party was dissolved because of an internal rift, Sakai and others formed a Tokyo-based successor, and Sakai became chairman of a nation-wide federation of similar local groups in March 1930. In July he became an adviser to the newly formed Zenkoku Taishutou [National Masses Party], which merged with the Ronoto to become the Zenkoku Rono Taishutou in July 1931.

When the 1931 pamphlet was written, the Zenkoku Rono Taishutou was trying to link up with another major, non-communist group, Shakai Minshuto [Socialist People’s Party]. Sakai’s optimistic hopes for the alliance were quickly betrayed. In September, the Kwantung Army launched its attack on the Chinese Army to cement its control of Manchuria. Later in the year, Sakai suffered a stroke, which left him severely disabled (he died in 1933). The Taishutou itself lost momentum, with its members divided over its policy regarding the Manchurian Incident. Amid the increasing war efforts, the proletarian solidarity movements began to flounder. The Zenkoku Rono Taishutou and the Shakai Minshuto, hav-
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... managed to merge in 1932 to become the Shakai Taishūtō [Socialist Masses Party], gradually accepted the government’s expansion policy and the military’s initiatives. The death knell for the pre-war proletarian movements came when nearly 450 labour activists and socialists, including Yamakawa, and then dozens of Marxist academics critical of what they saw as the government’s imperialistic and fascist measures, were arrested in late 1937 and early 1938 in the Popular Front Incident. With the elimination of these dissidents by the government, and “voluntary” ejection of some members, the pre-war solidarity movements ended. The Shakai Taishūtō survived as the last legal proletarian party until it dissolved itself to join Konoe Fumimaro’s new unity movement in 1940.105

The solidarity movement envisaged by Sakai ended without mobilising the masses. Like many other spontaneous activities, it could not survive the growing moves towards totalitarianism after the Manchurian Incident. However, Sakai’s criticisms of government and society provide us with strong clues for an understanding of Japan’s internal problems at this stage.

What Sakai called the bourgeoisie was really the entire political, economic and social establishment. Thus the solidarity movement meant a movement seeking the expansion of political freedom as well as the levelling of prevailing inequalities. Sakai’s vision of the movement is echoed in the Taishūtō’s platform, which includes 60 demands for reform: in politics (6 demands), diplomacy (4), administration (4), military reform (4), the judicial system (6), taxes (9), education (6), labour (11), agriculture (7), and general issues (13).106 Some of these seek socialist measures such as the abolition of consumption taxes, full progressive taxation, workers’ rights to organise, bargain, and act collectively, minimum wages, unemployment insurance, a legal cap on tenant fees, full legal and social equality between men and women, abolition of the peerage system, a ban on the monopoly of transport, electricity, and gas, and free health care. But others call for measures to establish free and responsible government, specifying full universal suffrage,

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freedom of speech and association, abolition of the Peace Preservation Law, open diplomacy (disclosure of diplomatic affairs), public elections of governors and other heads of municipalities, empowerment of local assemblies, appointment of civilian ministers of the Army and Navy, termination of textbook screening and military education at school, and the open operation of funds kept by the Finance Ministry’s Deposit Department. Accompanied by a denunciation of Japan’s immediate expansion policy, these proposals project Sakai’s own view of an alternative form of government based on egalitarian principle and universal solidarity.

This programme inevitably contained tensions between liberalism and socialist ideology. Nevertheless its emphasis on economic and social equality, personal autonomy, and international worker co-operation reflects the principled outcome of Sakai’s political thought as an international socialist who had to work under conditions of seriously restricted political freedom. He was, however, clearly aware that these tensions could not be resolved by ideology or party guidance alone, and he chose to focus on more practical reform.

Thus the proposals challenged many practices and institutions on which government stood: taxation, restrictions on popular participation in politics, bureaucratic secrecy, and the expansion policy. Sakai’s strategy was not only to engage in political struggle to change those institutions but also to encourage change from within society. However, the society Sakai believed was capable of inner transformation was also one under severe restraint by the state.

For in Japan’s modernisation and industrialisation, the exercise of state power had been central to introducing a capitalist economy and implementing other far-reaching reforms. Such state presence had been severely detrimental, promoting, amongst other things, exacerbated social division. Similarly, the prominent role that government played in shaping not only the political and economic structure but also the everyday pattern of life had complicated people’s attitudes towards state authority, as Ishikawa Takuboku observed in 1910. Inevitably bound up with the formation of a modern Japanese identity, this far-reaching role of government acted to inhibit class solidarity. Many identified with the state, as the state was perceived as the primary projection of their existence. An emotional attachment to statehood even divided those
engaged in non-affiliated movements. Thus many non-affiliated groups had to be disbanded, because their differences over government policy widened as war efforts intensified, nationalistic sentiments grew, and emphasis on national unity increased. As Minobe complained in 1935, nationalistic propaganda was dividing the public. For a “new” nation, nationalism could both promote and disrupt popular unity.

Furthermore farmers seeking the social recognition of their rights to cultivate land, and workers seeking an eight-hour workday, needed distinct forums to meet and agree that their interests were indeed mutual. Sakai and like-minded people attempted to create such a forum by advocating the formation of a united front. However, given the increasing government harassment, combined with the general absence of indigenous institutions thought to be legitimate, autonomous exchange of opinion among the citizens became difficult, once they had been labelled as critics of government. Sakai’s own career demonstrates the severity of government repression. These problems of definition and assembly were intertwined with institutional obstacles to hamper spontaneous civil movements.

Especially important was the role of state power in the development of Japanese industry. Once again Marx’s descriptions of the origin and characteristics of the state are useful in order to examine the relevant connections. Marx’s analysis of capitalism was inseparable from his deep concern with the plight of the worker which he believed resulted from the commodification of labour. Alienation of course, both at the personal and social level, became the leitmotiv of his analysis of capitalism, particularly in his early writings. There Marx provides two different definitions of the state, historical and sociological.

The historical definition constitutes part of his material conception of history. The course of history is determined by the dominating productive forces of each period, and the state has emerged “historically” from the division of labour. The rise of the modern state thus coincides with the growth of manufacturing, trade, and commerce.

In his “sociological” definition, Marx sees man as a social being. We live in a community and accept its interests “naturally.” State power arises from this general interest. However, this general endorsement is illusory, as long as the division of labour exists, for it merely represents the interest of the dominating economic power, which is “the power of
disposing of the labour-power of others.” Thus Marx defines state power as “the social power, i.e., the multiplied productive power,” which arises from the necessities of the community but has grown to become “an alien force” existing outside people and which they cannot control.107

In this definition Marx articulated the permanent conflict between general and particular interests. Marx’s answer to resolving this conflict was communism, that is, the abolition of the division of labour and private property. Sakai’s answer was social democracy, parliamentary politics, and accountable government, as we have seen. However, both saw state power as constituting and serving the socio-economic forces that divide the people and stifle civil society (what Marx called “the true source and theatre of all history”108), and both criticised capitalism and its operators for exerting such powers. It is this humanistic analysis by Marx of “social” power, power which stifles human nature and thwarts society’s capacity for transformation, that is relevant to Sakai’s criticism of state forces then in operation in Japan. And to understand the general failure of voluntary association in pre-war Japan, we need to examine the nature of this state power, especially in its socio-economic manifestations.

It is fair to say that a capitalist economy powerful enough to transform social relationships did not exist in Japan even at the outset of the Meiji Restoration. Sakai and the more recent modernisation theorists claim that recognisable potential for such change emerges in the late Tokugawa period, and is discernible in the growing influence of the commercial sector. However, the essence of a capitalist economy, involving the domination of commodities and their circulation as dictated by the modes of production, exchange, and distribution, and affecting the whole social structure, was absent even in the early Meiji period when Sakai grew up. The necessary extrication from “feudal” arrangements was carried out by the new government.109 In this sense, Marx’s insistence on the state’s auxiliary role in facilitating capitalism does not really apply to Japan’s industrialisation.

108. Ibid., p. 163.
Nevertheless the combined effect of economic and social forces that Marx described in his early writings can still be validly applied to Japanese society, because here Marx was concerned with the functioning of power in an industrial society, power which alienates the individual from self, from others, and from power itself. Thus Japan’s modernisation, when seen as a joint process of state-making and industrialisation, was a process of exacerbated alienation, with the calculated division of society integral to Japan’s modern nation-making making national unity an inherent problem, and frustrating the Marxist vision of ultimate class convergence. Hence the relevance of the new industrial economy, and the state’s role in sponsoring it, as they prompted and energised Sakai’s career.

Japan’s “Industrial Revolution” is believed to have started around 1886, when a number of companies were established after the government’s fiscal and monetary policy had laid out a favourable environment. The relevant industries gained momentum after the Sino–Japanese War of 1894–95, and the Russo–Japanese War of 1904–05. The revolution was “completed” around 1907, when the technology used in the steel and machine-tool industries had reached high standards and self-sufficiency had been more or less achieved.110

Such a description tallies with the commonly-held assessment among economic historians that the development of a capitalist economy in the country had several of the characteristics of “late development” and was thus significantly different from that of Britain. Yet Japan’s Industrial Revolution did not embrace the whole society. The farming community, which represented nearly 50 percent of the total workforce during the pre-war period, was left behind, with its total pro-

110. See in particular Nihon Sangyō Kakumei no Kenkyū [A Study of Japan’s Industrial Revolution], 2 vols., ed. Óishi Kaichirō (Tokyo: Tokyo Daigaku Shuppankai, 1975). Debate about the timing of Japan’s Industrial Revolution depends on the definition of an Industrial Revolution and Japan’s “peculiarities” as a “late developer.” Major theorists include Yamada Moritarō (1897–1980), who asserts that industrial capital was established between 1897 and 1907, based on his analysis of the development of the textile industry and of the steel industry (Yamada, Nihon Shihonshugi Bunseki [Tokyo: Iwanami Shoten, 1934], p. iii). Yamada’s theory is further developed by Óishi. He sees the start of the Revolution around 1886, when large-scale cotton mills began to operate commercially, thanks to available capital, the latest technology, and machines imported from abroad. See Óishi, ibid., p. 18. For a more compact explanation of the same theory, see Nagahara Keiji, Nihon Keizaishi (Tokyo: Yūhikaku, 1970, 1987 impression), pp. 221–3.
duction remaining stagnant. Marx saw as a major prerequisite for the accumulation of surplus value and thus for the “emergence of capital,” did not appear on the same scale as in Britain. In Japan’s case, capital had to be created by government.

Pointing out the role of state power in the development of a capitalist economy, Marx cited four distinctive practices in the development of Western capitalism: the establishment of colonies, the national debt (i.e., the system of public credit), the modern tax system, and the system of protection. Marx says: “These methods depend in part on brute force, for instance the colonial system. But they all employ the power of the state, the concentrated and organized force of society, to hasten, as in a hothouse, the process of transformation of the feudal mode of production into the capitalist mode, and to shorten the transition. Force is the midwife of every old society which is pregnant with a new one. It is itself an economic power.” Perry Anderson also concludes that a major reason why capitalism developed first in Western Europe and nowhere else is the operation of absolutist power. He too sees the exercise of centralised power as a prerequisite for the progress of a capitalist economy at its initial stage.

Thus, at the outset of forming a capitalist economy, Japan resorted to all the classic methods, with the exception of a system of colonies: public credit, taxation, and protection, although colonies would occur later. Out of this combination of methods, the new capitalist economy took shape, and state power solidified. Without a stable financial base or currency, the government had still to support industry. Direct taxes were thus crucial to secure national finances, credit was amply used to compensate for a barely workable monetary system, and a flexible accounting system was necessary to meet its priorities. These measures

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were for practical reasons, and yet they collectively helped to shape state authority. The stable monetary policy introduced under Matsukata Masayoshi’s leadership helped to develop the capitalist economy. Combined with the benefits of the government’s various support programmes, a number of companies were established in such industries as railways, spinning, and mining during 1886–89, the period of the first surge of business enterprises (きょうぶっこう). The credit system began to operate, the spinning industry began to receive capital both from silk wholesalers in Yokohama and from local banks and the Bank of Japan in 1887, and capitalist manufacturing was established in the spinning industry. In this way Japan’s Industrial Revolution got under way.

Such policies were highly divisive. Thus although Matsukata’s fiscal and monetary policy contributed to the development of the capitalist economy, it was during his regime that a large number of land-less people, including both former samurai and farmers, were created. Matsukata’s monetary and fiscal policy is commonly seen as a break from that of his predecessor, Ōkuma Shigenobu, whose strategy was to issue government bonds in order to finance various programmes and encourage industrial growth. However, if we observe their policies as a sequence, their combined effects produced significant amounts of destitution among the small farmers and within the cities, in effect a proletariat, as well as the simultaneous accumulation of capital. But as yet the new proletariat was without definition or political momentum.

It was the members of low-ranking samurai households who suffered first. In 1876, the government had ended its economic support for the samurai class, with payment of government bonds. Because of inflation, many sold off the bonds, and in 1882 and 1883, only 17.8 percent of all bonds that had been issued for this purpose were held by their original holders. Many samurai became urban labourers, and the bonds went to wealthy merchants and land-owners, and thus became capital.

In this way the strategic use of national debt was one aspect of Japan’s “coerced” modernisation, and it was closely related to the discretionary

nature of the government’s fiscal and monetary policy. It was thought necessary and justified in order to allow a government with little fiscal resources to bring in western style manufacturing and to finance various modernisation programmes.

Farmers followed samurai households. In 1873, the year when the land tax reform came into effect, about 27.4 percent of cultivated land was under tenancy. Matsukata’s policy was to keep or increase the tax level. With a drastic reduction in the circulation of paper notes, severe deflation set in and prices of agricultural products, including rice, dropped. Many farmers sold their land and became tenant farmers. Tenancy rates continued to grow, and in 1887, the rate rose to 35.9 percent. In 1903, the rate was 43.2 percent, while that in Tohoku was 36.5 percent compared with 14.6 percent 30 years earlier.117

Yet the period 1881–1900 when Matsukata presided over monetary and fiscal policy (excluding 1892–96 when he was out of office) saw a growth in business enterprise. The government began to sell off unprofitable operations, including mines and other model factories at a cheap price in 1884, which also helped the emergence of the large business zaibatsu. Accumulation of capital became possible, thanks to these measures. But it was during this same period that farmers’ protests against high taxes became fierce.

After the Sino–Japanese War of 1894, large factories were created and Japanese silk began to dominate the U.S. market around 1900. Cotton spinning was another key instrument of Japan’s industrialisation. Relying on imported state-of-the-art machines, cheaper imported cotton, cheap labour, and the state credit system, the country became an exporter of cotton yarn in 1897. On the other hand the development of heavy industry in Japan was more challenging than for light industry because of gaps in technology. Thus the role of government was more pronounced than in cotton spinning and silk production, and the sociological and political problems attendant upon the operations of state power were more acutely exposed.

In this regard the Sino–Japanese War of 1894–95 was especially important for it encouraged expansionist nationalism and collaboration

between the military and heavy industry through government financing. Enomoto Takeaki, then Agriculture and Commerce Minister, recommended that the government build large-scale steel mills shortly after Japan had acquired an indemnity from China. “The urgent task for the country is to strengthen the foundation of Fukoku Kyōhei, and to ensure perpetual management of the national economy through extending national rights externally and developing industry internally. Strengthening military capacity means building warships and munitions, and at the same time extending the railways so that dispatch and distribution of troops and weapons can be improved. Armaments will be more complete if guns and other weapons are domestically manufactured.”¹¹⁸ Here the original emphasis on commerce in the Fukoku Kyōhei policy gives way to an emphasis on military expansion. The war and the country’s victory produced a powerful creed of nationalism that conflated beliefs in social progress and military might, which Sakai in his youth was deeply aware of.¹¹⁹

This new military–industry alliance had to be furthered by the government, since no private company was financially capable of building the necessary industry. Thus the government decided to build the Yawata Iron and Steel Works, using the indemnity and funds coming from public bonds and taxes. China became an important supplier of iron ore. The drive for colonies, military ambition, and forms of government funding were now intertwined. This aggregated force was always there to counter solidarity movements.

However, it was not until after the Russo–Japanese War that the military and private capital began to close ranks to produce weapons. This coincided with the moment when the military established its legal autonomy through the establishment of gunrei.¹²⁰ Nonetheless close co-operation between the two did not mean the absence of private initiatives. However, the latter were small compared to those taken by government, and government was deeply involved in the operation of heavy industry as both financier and customer. Within the closed

state-led circulation of capital and production, capital had to come from outside.

This siphoning structure, in which the nation’s revenue from taxes, the issuance of government bonds and other forms of loan, were diverted to “strategic” areas, required a malleable accounting system, free from legal and parliamentary constraints. Initial and inevitable flexibility in the exercise of government authority was reinforced by new demands for industrialisation, social management, and colonial expansion. The Deposit Department, as Sakai reminded his readers in his final pamphlet Musantō Zengōdō, epitomised the siphoning structure, for funds collected from the general public were converted to capital by the means of government bonds and this capital was at the disposal of an unaccountable government.121

Such a development reveals the expansion of state power into what Sakai called unchecked “bourgeois” government incapable of true democratic reform. For when the government had to spearhead the growth of industry, monetary and fiscal discretion may have been necessary. However, the progress of a capitalist economy had created a new situation in which state power could directly intervene in the economy. Thus, according to Yamamura Katsurō and Katō Mutsuo, the development of a capitalist economy had changed fundamentally the role of government in the country’s economy. Before the capitalist economy took off, government was “outside” economic activities and promoted industry through various orders. But now government had entered into the economic sphere as an active agent, as buyer and financier.122

In this way the new financial “mobility” spared government from being fully accountable for its spending. Yamamura and Katō point out problems in the account system even after its revision in 1921: the government maintained its authority to spend funds outside a Budget as long as it sought Parliament’s retrospective permission, and the House of Representatives was no more authoritative than the House of Peers in debating a Budget, which undermined parliamentary authority as a whole. In fact, various practices that allowed “flexible” spending to con-


tinue were intact, such as multiple-year spending programmes without parliamentary scrutiny, the increasing role and volume of supplementary budgets, growing demands for interest payments on government bonds, and more special accounts. These budgetary conditions worked to weaken Parliament’s authority in deciding a Budget.\textsuperscript{123}

Generally therefore industrial and mercantilist policy after the Restoration created formidable politico-economic forces that worked against spontaneous solidarity movements, and were made possible through the highly discretionary nature of government fiscal and monetary policy. This was not only because industrial policy took precedence over public welfare policy but also because the degree of discretion given to government added to the panoply of forces which constantly undermined movements by citizens to establish new institutions or practices so as to formally influence government. The inequalities sponsored by arbitrary government were an effective form of disenfranchisement.

Nevertheless, Japanese capitalism was no different from any other forms in terms of its exploitation of workers, particularly of young women. Here Marx’s observation that surplus value is accumulated firstly by exploiting surplus labour is applicable. Japanese workers both men and women in the spinning industry had to work on wages much lower than those of even their Indian counterparts.\textsuperscript{124} The importance of female workers increased as the spinning industry grew, but various measures were introduced to maximise their labour, not primarily by government but by the employers. Those measures included piece-work, a dormitory system, and the recruitment of workers from distant areas.\textsuperscript{125} Ōishi Kaichirō asserts that one of the major reasons why work-

\textsuperscript{123} Ibid., p. 118.

\textsuperscript{124} In 1890 the average monthly salary for Japanese male workers in the spinning industry was 4.8 yen and for Japanese female workers 2.3 yen. The adjusted monthly salary for Indian male workers was 4.5 to 9 yen, and for Indian female workers 2.7 to 4.5 yen. In 1897, Indian workers received 8 to 10 yen, while Japanese male workers received 6.5 yen and female workers 3.9 yen. In the spinning industry in India, 69.3 percent of the workforce were men over 20 in 1890. In Japan, 69.2 percent were women in the same year, and women under 20 made up 50.7 percent of the entire workforce in 1897. See Ōishi Kaichirō, “Rōdōryokugun no Kōsei,” in \textit{Nihon Sangyō Kakumei no Kenkyū}, vol. 2, pp. 160–2. The validity of this comparison is discussed by Ōishi, ibid., p. 175.

\textsuperscript{125} See Nishimura Hatsu, “Sangyō Shihon (1): Mengyō,” in \textit{Nihon Sangyō Kakumei no Kenkyû}, vol. 1, pp. 130–1. The conditions were the same for the majority of female workers in silk production. See Ishii Kanji, “Sangyō Shihon (2): Kengyō,” ibid., pp.186–8. When Beatrice Webb visited Japan with her husband Sidney in 1911, she was dismayed to see the working conditions at various spinning factories, particularly the common use of dormitories for
ers’ class consciousness did not develop was because the major part of the workforce was composed of women and they had to work in a divisive way. Networks for solidarity were very hard to develop. And the government’s role here was not to protect the workers but to support business. Thus it resisted implementing a Factory Law until 1916, and the new law continued to permit a 14-hour workday in silk production and night work in the textile industry.

The state-guided economy also hindered economic activities in general. For instance, the growth of the spinning industry did not stimulate other industries, partly because “efficient” circulation of capital helped by the government did not create enough surplus capital that could go to other industries. This can also be said of heavy industry. Government-sponsored and military-inclined industry did not filter through to other industries so as to encourage independent domestic production. On the other hand, heavy taxes prevented the rise of a robust domestic consumer market.

This close relationship between the state and a capitalist economy worked to consolidate each. A capitalist economy by its very nature divides society. Yet the “anarchy” that capitalism sponsors can be amplified by government policy. Marx was aware of the difficulties in unifying individuals in such a society, and says, “Competition separates individuals from one another, not only the bourgeois but still more the workers, in spite of the fact that it brings them together. Hence it is a long time before these individuals can unite, apart from the fact that for the purposes of this union—if it is not to be merely local—the necessary means, the great industrial cities and cheap and quick communications, have first to be produced by big industry. Hence every organised power standing over against these isolated individuals, who live in relationships daily

126. For a useful study of the role of government in the textile industry, see Janet Hunter, Women and the Labour Market in Japan’s Industrialising Economy (London: RoutledgeCurzon, 2003), ch. 7.

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reproducing this isolation, can only be overcome after long struggle.”

When, in addition, economic power was quickly absorbed into the state through an expansionist ideology, government spending policy, and the general practices of business, workers’ conditions inexorably deteriorated and solidarity movements were severely disadvantaged. Ill-equipped to affect the new social and economic structures which appeared to be sponsored by government, the people became even more atomised than before, and exposed to the various forms of alienation Marx had described (and some he had not anticipated). Sakai’s thought is provoked both by his responses to capitalism in general and by his responses to the peculiar stresses of its Japanese variant.

Crucially then if Japan’s industrialisation may be characterised by its rapid state-directed implementation and “unique partnership between public and private entrepreneurship,” it also created highly unfavourable conditions for solidarity movements. Nevertheless the idea of a “civil society” was most definitely present, as Sakai’s career testifies. Undeterred by the extreme solutions of right and left, or by the largely unaccountable policies of government, Sakai continued his quest for a middle way inspired by his commitment to Parliament and the liberal tradition.

In the next section we will examine two social groups with whom he particularly identified, Japanese working women and the rural poor.

OBSTACLES TO EGALITARIAN SOCIETY: THE CONDITION OF WOMEN AND FARMERS

For Sakai, socialism meant the emancipation of the individual from the material conditions that prevent him from achieving his fullest development. Throughout his life he was committed to socialism’s regenerative power and the ideal of economic equality. Such egalitarianism, however, was antithetical to the genesis and operation of Japanese state authority, to the progress of a “capitalist” economy, and to the then general perceptions of national advance, all of which promoted and rested on social divisions. This section will focus on two of those divisions, those involving the status of women and agricultural workers, in an attempt to

further define some of the key sources of Sakai’s commitment to radical social change.

In Sakai’s Japan women and farmers were conspicuous for their lagging behind in the general process of industrialisation. For instance, in the manufacturing industry, the ratio of men’s average wages to women’s was 1.7 in 1882. The figure failed to improve during the pre-war period: instead the gap steadily increased to 2.1 in 1930, 2.8 in 1935, and 2.9 in 1939, excepting minor fluctuations.\(^\text{132}\) On the other hand, the ratio of male factory workers’ wages to male farm workers’ was 1.2 in 1882, 1.3 in 1925, 2.1 in 1935, and then went down to 1.4 in 1939.\(^\text{133}\)

An obvious reason for these disparities may be found in the development of heavy industry, which employed more male workers and realised more value. Indeed production in the heavy and chemical industries, which began to grow rapidly during World War I, grew in value from 2,450 million yen in 1929 to 4,061 million in 1934.\(^\text{134}\) On the other hand production in the textile industry, which employed mostly female factory workers, remained stagnant, going from 2,998 million yen to 2,918 million yen during the same period. The ratio of agricultural and fishery production to the net national product dropped from 30.2 percent in 1920 to 17.6 percent in 1930 and to 18.1 percent in 1935, while the corresponding figures for the mining and manufacturing industries rose from 24.1 percent in 1920 to 30.3 percent in 1935.\(^\text{135}\) These statistics clearly signal a structural shift of the Japanese economy from terrestrial sectors (farming, fishing, and forestry) to heavy manufacturing, in terms of production.

However, the growth in production of heavy industry appears not to be complemented by other statistics of the same period. For instance, it is still the textile industry, including silk production, and cotton

\(^{132}\) Kindai Nihon Keizaishi Yōran, ed. Andō Yoshio et al., p. 12. The figures are based on the Long-Term Economic Statistics (LTES) initially gathered by Ohkawa Kazushi and others in the 1950s and 1960s. These are not always exact figures, but involve estimates, in particular for earlier data. Despite criticisms of the way the estimates were made, the LTEs are now widely regarded as “reasonably reliable and comprehensive” (Sydney Crawcour, “Industrialization and Technological Change, 1885–1920,” in The Cambridge History of Japan, vol. 6, ed. John W. Hall et al., 1988, p. 385). Subsequent figures used in this section are based on the LTEs, unless separate information is provided.

\(^{133}\) Kindai Nihon Keizaishi Yōran, p. 12.

\(^{134}\) Ibid., p. 119. Source: Nihon Tōkei Kenkyūjo.

\(^{135}\) Ibid., p. 8.
spinning and weaving, that earned more yen in foreign trade than any other industry in the pre-war period.\(^{136}\) Thus in 1929 the textile industry exported goods worth 1,474 million yen, compared with the chemical and heavy industries’ 148 million. In 1934 the figures were 1,117 million yen, and 345 million yen.\(^{137}\) Also in 1929, the number of workers in the textile industry was twice as large as that in the chemical and heavy industries, although the ratio dropped to 1.25 in 1934. Thus the textile industry remained a key industry, and female workers were a major workforce, even during the supposed development of heavy industry.

As for terrestrial production, its decline does not need to correspond to the growth of heavy industry, unless a large workforce shifted from the terrestrial sectors. Indeed, when industry made its first leap during World War I, agricultural and fishing production also jumped. However, when industry grew again in the first half of the 1930s, agriculture and fisheries did not follow. Their production remained stagnant, far below the peak of around 1925. Meanwhile, a large workforce remained within the farming communities: the proportion of the workforce engaged in farming was 51 percent in 1920, 47 percent in 1930, and 42 percent in 1940.\(^{138}\) Female workers’ declining salaries and farmers’ declining incomes cannot be discussed in the same vein, yet these statistics reveal problems of income distribution amid supposed “industrial expansion.”\(^{139}\) These divisions characterise Japan’s industrialisation and state-making in general. For this reason economists’ responses at the time remain highly instructive, especially those of the left.

\(^{136}\) Cotton yarn, cotton textiles, silk, and silk cloth still made up 48.1 percent of Japan’s total exports in yen value for the period 1930 to 1934, compared with the 1900–4 average of 51.5 percent and the 1915–10 average of 48.2 percent. See, ibid., p. 118.


Thus possible causes for Japan’s “uneven” development were long debated by the Japanese Marxists. The most celebrated debate took place between its two wings, the Kōza-ha and Rōnō-ha, in the 1920s, when the economy appeared highly vulnerable. Following a serious recession after the boom during World War I, the economy worsened in the wake of the Great Kanto Earthquake of 1923. In 1927, the government of Prime Minister Wakatsuki Reijirō was forced to resign after it had failed to stop widespread bankruptcies among the financial institutions. Against this background, debate centred on the underlying causes, which were clearly structural. Thus the Kōza-ha tended to look to feudalism, local backwardness, and other “traditional” aspects of Japanese society, while the Rōnō-ha emphasised the inherent problems of capitalism.

Their different interpretations notwithstanding, the Kōza-ha and Rōnō-ha were united in their criticisms of state power, which to them appeared to be a major culprit rather than a mitigator. Thus Yamada Moritarō, a leading economic theorist of Kōza-ha, insisting that state power not based on the common interests of the people is illegitimate, differs little from Sakai when he asserts that state power monopolised by the bourgeoisie is incapable of running a civil society. Both are tackling what appears to be intractable authority operating in the name of the state. Where they differ is in how to describe such power, either as a single entity attributed to “absolutism” or as a more complex expression of the “bourgeoisie.”

Thus, some Kōza-ha historians attributed the genesis of absolutism to indigenous Japanese “traditions.” For them the Restoration was an incomplete revolution with basic feudal elements intact, including landownership and the emperor system. They assumed that Japan had not experienced a “bourgeois revolution” that “aimed at freeing producers from the system of constraints (feudal land property and guild regulations)” as in Britain and France. In Japan the introduction of a capitalist economy did not destroy “feudal absolutism.” Instead it created an amalgamation of feudalism and capitalism, that is, an Absolute State, which they described as emerging from “the close alliance between

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the mercantile capital of the zaibatsu, encouraged by the state, and the feudal forces in the countryside.”142 The Restoration had ensured “the unification and reinforcement of feudalistic force in order to contain farmers’ revolutionary power.”143 Hence the next revolution must oust the Absolute State.

The Rōnō-ha disagreed. For them what might appear as a single force of absolutism was in fact a collection of different elements present in the various institutions, such as the Sūmitsuin, the House of Peers, and the Army General Staff Office, together with the survival of obsolete practices such as the military’s customary privilege of petitioning the emperor directly (iakujōsō). According to Inomata Tsunao, a leading economist associated with the school, the proletariat should fight against this “modern absolutism with its various discrete elements.”144 Sakai’s own position, as seen in his advocacy of solidarity, was close to such a view. Nevertheless, despite their different emphases,145 both the Kōza-ha and the Rōnō-ha saw that the country’s social and economic problems were closely linked to the political system, and the term absolutism was common to both.

We have already observed how the legal concept of “taiken,” the constitutional immunity of the military and the bureaucracy, and irregular spending practices underpinned the Meiji Absolute State. In the remainder of this chapter, I hope to show, based on Rōnō-ha argument with which Sakai was in sympathy, that “strategic social hierarchies” formed another principle of Japanese absolutism. For as with discretionary power, these divisions were found necessary for the country to

142. Ibid., p. 289.
143. Tōyama Shigeki, Meiji Ishin (Tokyo: Iwanami Shoten, 2000, initial publication in 1951), pp. 32–3. The Rōnō-ha, on the other hand, insisted that the Restoration had eliminated the feudal, and Japan had become a capitalist state run by the bourgeoisie.
145. The Kōza-ha was eager to locate structural and symptomatic problems, while the Rōnō-ha focused on the actual dynamics of power and relationship. Thus, for Hoston, the Kōza-ha is “structuralist” and the Rōnō-ha “instrumentalist.” See Hoston, Marxism and the Crisis of Development in Prewar Japan, p. 221.
pursue simultaneously national unity and substantive reform, including the introduction of a capitalist economy. However, these hierarchies weakened the political and economic system from within. For they not only created an unequal distribution of income, inviting persistent public criticism, but they also prevented genuine national integration. Women and farmers were among the most prominent victims of this absolutist hierarchy.

Centralisation and unity were the crucial aims that the Meiji leaders set out to achieve when they launched their efforts at modernisation. Yet the creation of a centralised state without an all-powerful ruler involved the exploitation and modification of selective traditions and customs so as to create a new, flexible, hierarchical network. The authorities strove for the creation of that network by creating various hierarchical orders. Such a process was by no means straightforward, as recent work demonstrates. Nevertheless, new and old hierarchies played a key role in the creation of the modern state in Japan.

This combination of strategically installed hierarchies and the exercise of non-accountable power were the key mechanisms of government. Thus, as demand for unity grew, the strategic social divisions had to be reinforced. Sakai’s socialist critique targeted this process of political and economic “modernisation,” which he believed was deeply antagonistic to personal autonomy. Manipulative contextual forces made his socialism genuinely combative.

The genesis and evolution of expedient hierarchy is clearly recognisable in the family system and the treatment of private property. Women and farmers were at the bottom of these newly intensified divisions. Here inequality was a necessary means to carry out the country’s modernisation, for economic development was also accompanied by the calculated reinforcement of existing social arrangements.

Especially relevant to the pre-war family system was the all-inclusive authority of the head of the family. This familial authority was endorsed

146. See, for example, Gluck, Japan’s Modern Myths.
in the Civil Code of 1898.\textsuperscript{148} The head of the family alone was entitled to inherit family assets, and only the head could decide where the other family members lived and whom they married. The code also regarded the wife as legally incapable of carrying out independent public duties, including the management not only of family assets but also her own.\textsuperscript{149} In this way the Civil Code both perpetuated and reinforced inequalities already existing, and was in a direct conflict with the Constitution.\textsuperscript{150} Such discrimination may not be unusual. The German Civil Code on which the Japanese Civil Code was modelled was also discriminatory.\textsuperscript{151} However, the family system that gives the head of the family such all-inclusive power is peculiar to Japanese law.\textsuperscript{152}

Such inequality within the family is often described as contributing to the weak liberal tradition of Japanese society. For instance, based on the works of Japanese anthropologists and social scientists, Robert Scalapino concludes not only that primogeniture resulted in the creation of the absolute, paternal power of the head of the family, but also that such power was at the centre of the system of fixed unilateral rights and duties within the family, as its relationships were governed by Confucian on-giri (indebtedness and obligations). In turn such hierarchical rela-
tions would not nurture a modern sense of personal responsibility, since people were connected with each other through on-giri, not through their own will. Thus he sees “the system of irresponsibilities” at work in the family system and attributes it to the feudal aspects of Japanese society.

There seems to be no denying that traditions associated with the Japanese family tended to circumscribe individual freedom. Thus before the Meiji Restoration a rigid status system was in place, and most people had to engage in work determined by birth. Among samurai families, women’s status was especially subject to the authority of the head of the family. These traditions clearly shaped the installation of the newly endorsed “hierarchical” structures. However, the family system that the Civil Code came to embody was also affected by many factors contingent on the priorities of the new government. For instance, primogeniture had been by no means the most popular form of inheritance among the commoners, who made up more than ninety percent of the population at the time of the Meiji Restoration. And Commodore Perry, after his arrival in 1853, observed that farmers’ wives were on a more equal footing with their husbands than the wives of the samurai, because of their full participation in work. Patently, the institutionalised Meiji family system was a political construct to a significant degree.

Under the new Civil Code the head of the family did not need to be a man. Yet the traditionally low status of women was now “legally” confirmed by the combination of primogeniture and the wife’s subordinate role (Article 801 assumes that the husband manages the assets of the wife), and by other discriminatory clauses. In effect many women could not own their own property, partly because they were rarely the heads of household, but also because their profitable work opportunities were limited. No financial independence meant subordination was


perpetuated, and this subordination was justified by the constraints on the family embodied in the Civil Code.

Clearly then at a time when globally women’s rights were expanding after World War I, and when domestically some Japanese women were gaining political rights, the status of Japanese women as a whole was regressing. This too was a mirror of the evolving relationship between state and society, and of the genesis and evolution of the family system in conjunction with state power.

Hence the creation of a centralised network of administration was a central part of the Meiji leaders’ state-making. The introduction of the register system in 1871, which shaped the modern family system, was a most decisive measure in this direction. It worked as a census, and at the same time introduced the family as the new unit of administration. The heads of family were given special responsibilities for administering the rest of the family. This was necessary for the nascent central government, which could not control the whole population. That role was “delegated” to the heads of families via municipal leaders who were chosen from family heads. This “delegation” was part of the creation of a hierarchical network of political power. Thus the new government anticipated that the chain of orders, from municipal leaders, to family heads, and then to individuals would be at the centre of administration, when it introduced the first comprehensive system for local administration, Sanshinpō (three new laws), in 1878.156 Families were linked to administrative local communities, municipalities, and prefectures, then to central government. Various new programmes initiated by the government were implemented through this network, such as land tax reform, conscription, new local and national taxes, the educational system, and health programmes. At the same time, the modern concept of the family was disseminated through those programmes via the network. “[At first] commoners would have had difficulty in accepting the new family system. … However, when they were told that the heads of households were exempt from conscription, it taught them the role of the family

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as the basic unit of reproduction.”157 State power entered the people’s consciousness when they accepted their new “status” within the system.

Relevant here is Michel Foucault’s emphasis on the inseparability of power from knowledge. For power does not come from “outside,” but is capable of creating knowledge that convinces the individual what should be done. “Power is not caught in the alternative: force or ideology. In fact every point in the exercise of power is at the same time a site of where knowledge is formed. ... There is no opposition between what is done and what is said.”158 Thus the exercise of power synchronises with our subjecting ourselves to that power. The dual role that family heads were expected to play demonstrates such “subjectification,” as well as the process by which a hierarchical network of powers was created. For within the network heads of family had to be both subordinate and superior. Thus, as Fukushima Masao points out, the head of the family was “the subject of registry compilation [for the government], and at the same time he would subject other family members to his order. In the latter role, which was linked to the role of municipal leaders, he too would turn himself into a subject.”159 Thus state power consolidated itself “out of society,” when the people began to identify with the new “imagined” network.

The incapability clauses regarding wives, and the subordinate roles of women in the Civil Code, were a reflection of this new hierarchical network of administration. For this network to function, the traditionally weak status of women had to be reinforced. Thus the formation of the administrative structure coincided with what Sheldon Garon calls the government’s efforts to isolate women from “politics.”160 For the government, which was initially indifferent to women’s political activities, now banned women from attending public debate, when it revised the shūkai jōrei in 1890.

The basic tenets of this method and ideology had a lasting effect, even as the initial administrative network began to change in response to the evolution of the family. For despite the constraints, more families were moving to cities, the number of nuclear families grew, and also women began to engage in professional jobs. Thus in 1918 nearly thirty percent of teachers at primary schools across the country were women: the new mobility could embrace women also.\(^{161}\)

Yet simultaneously the family increasingly became an ideological symbol of social order for administrators and “ideologues,” when economic and social changes began to break down what they saw as the traditional lifestyle.\(^{162}\) “The home, the home (katei katei), everywhere in the country people are paying attention to it now,” commented a magazine article in 1906. “Whether one talks of state or society, the foundation is the home, where social reform must organise.” Quoting this, Carol Gluck points out that “The argument continued that the ‘spirit of love and duty’ was the essence of the authentic meaning of family. Indeed, as the absolute patriarchal authority of the household head ebbed, this appeal to sentiment as the wellspring of obedience was heard more frequently.”\(^{163}\) This emphasis on the family coincided with the educators’ growing rearguard coercion, the call that women should be “good wives and wise mothers” (ryōsai kenbo).

Sakai observed such increasing social and political pressure on women with considerable disquiet. In his earlier utopian vision, the home was the archetype of communal living, where its members would engage in labour according to their own ability, where profits would be shared evenly, and where care and support would be mutual. He believed that socialism could be better realised if each home anticipated it.\(^{164}\) At this stage, however, he still assumed that women were “natural” managers of the home and men should work outside it. Yet once again his reading of the Marxist classics, including Engels’s *The Origin of Family* and

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163. Ibid., p. 189.
August Bebel's *Women and Socialism*, changed the way in which he saw existing social arrangements. He quickly identified *ryōsai kenbo* as the “ideology” of a male-dominant society. So in 1906 he wrote, “It is widely believed that the aim of educating women is to create *ryōsai kenbo* ... which is nothing more than propaganda for keeping women within the home and perpetuating their 'slave’ status.”165 “Hitherto, every form of society has been based on the antagonism of oppressing and oppressed classes. But in order to oppress a class, certain conditions must be assured to it under which it can, at least, continue its slavish existence.”166 So says *The Communist Manifesto*. Sakai recognised such a mechanism of oppression in the *ryōsai kenbo* campaign.

More essential to his socialist thought, however, was his attachment to the personal freedom that would allow the individual to pursue his legitimate private activities. Thus Sakai says in this same article that human activities transcend both production and reproduction. The division of labour between men and women will remain, but free cultural activities are essential regardless of sex. “Both men and women should be able to engage in higher levels of activity than the quest for food, clothing and shelter according to their own talent.”167 His sympathy towards those who could not control their own lives remained throughout his life, and made him always alert to coercive pressure.

After World War I the government began new attempts to incorporate women even more closely into the network of administration. Thus, as part of the Campaign to Foster National Strength (Minryoku Kanyō Undō), it encouraged wives to form their local associations (*fujinkai*) and to play an active role in the Daily Life Improvement Campaign (Seikatsu Kaizento). So in 1919, Sakai observed the plight of young women “caught between two contradicting trends, the emphasis on maternal responsibilities and femininity on the one hand, and more vocational responsibilities and the need to assert their rights on the other.”168 Sakai clearly sympathised with the women’s moves towards greater autonomy, for the family was always at the centre of debate about administration.

and women’s supposedly subordinate role was thought to be indispensable for this second pillar of social order. However, women’s subordinate role was not only required for administration but was also exploited economically. It is this combination of state and economic power which exploited the most vulnerable. Hence divisions continued to exist not only between men and women, but increasingly among women.

Sakai was well aware that the nominal “improvements” in women’s status coincided with the further falling behind of some women workers. For the impact of legal restrictions and recession were overcome by further exploitation of their cheaper labour. So after night work was banned, the ratio of female workers in the spinning industry increased to 87 percent in 1937 from 78 percent in 1929. And the 1929 Stock Market Crash resulted in sharp salary falls from an average of 1 yen per day in 1929, to 0.81 yen in 1931, and 0.68 yen in 1933. Mechanisation and stricter quality control measures also worked to cheapen women’s labour. This pattern of exploitation was most prominent among those working in silk production, who had to endure worse working conditions than those working in the cotton spinning industry, and whose factories were often located in provincial areas. Those working in large factories in big cities could move to a new factory seeking better pay and working conditions, and participate in labour movements. But those who worked in small factories in the countrywide were isolated. In effect they could not participate in the capitalist system as autonomous actors, but were tied to it as providers of cheap labour.

Reinforced inequality and family poverty made the status of unmarried women especially vulnerable. So Sakai repudiated the commonly held prejudice against women “entertainers” who had no choice but to take up any job available in order to support their families. In his view, they were no different from women “reporters, telephone switchboard

170. Ibid., p. 11.
171. For example leading factory owners in the Sawa region, Nagano Prefecture, introduced a registration system for their employees in 1903, aimed at preventing workers from moving so that the owners could ensure a stable workforce. An employment contract was signed between the employer and the head of the family, normally the worker’s father or husband. See ibid., pp. 19–20.
operators, and teachers who had to work on very low wages.” All were victims (and survivors too) within the new capitalist society.172

Thus as Engels had pointed out in his Origin of Family, Private Property, and State, from which Sakai understood the structure of women’s subordinate status in Japan, the combination of economic structure and state power made those at the bottom of the prevalent hierarchies most vulnerable to economic and political exploitation. Women’s low wages were concurrent with the emergence of the “dual structure” of the Japanese economy as the result of “rationalisation” and the concentration of capital. A planned revision of the Civil Code became impossible (perhaps unsurprisingly) when persistent financial crises, and problems of farming communities, began to shake the credibility of the government in the late 1920s. Fearing that state authority was being eroded, government leaders and “ideologues” once again began to strengthen the family system and the authority of family heads.173

In addition the nascent women’s movements melted away after the outbreak of the Manchurian Incident, when “national endurance” was again called for. A bill intended to give women voting rights at the local level was also abandoned when party politics ended with the assassination of Prime Minister Inukai Tsuyoshi.174 In this way the very evolution of the Japanese absolutist state did not allow for gender equality: inherited inequalities of status were encouraged rather than diminished, and radical disadvantage continued.

A similar pattern can be found in the status of agricultural workers. In both cases, women and farmers were incorporated into the hierarchical structure of administration and also forced to participate in the operation of a “capitalist” system but not as its beneficiaries. In the case of the agricultural sector, the role of government fiscal and monetary policy was crucial.

Compared with his analysis of the situation of women, Sakai’s grasp of farming conditions was sketchy. In fact, the petite bourgeoisie that he envisaged, in his earlier utopian vision, as the social class that would promote socialism, did not include farmers.175 Nevertheless Sakai had to

175. See Mitani, Taisho Demokurashiron, p. 266.
alter his initial neglect in the light of worsening conditions in the countryside. The plight of the farming communities, responsible for nearly fifty percent of the total workforce, began to receive wide attention in the 1930s, when the price of two major products, silk and rice, plunged after the Crash in 1929, deepening the general indebtedness. These financial difficulties persisted, even while manufacturing was making a swift recovery thanks to the devaluation of the yen.\textsuperscript{176} Thus “After 1931, Japan’s industrial production and exports recovered perhaps more rapidly than those of any other industrial nation.”\textsuperscript{177} But “Rural indebtedness, which had been increasing during the 1920s, rose in 1932 to an average of 846 yen per household, a figure roughly equivalent to the annual income of many farmers.”\textsuperscript{178} It was this acute and growing disparity that alarmed many Marxist economists. Those hardest hit were the tenant farmers, and how to assess their plight in the context of Japanese capitalism engaged the economists particularly. For them the agricultural crisis provided even further proof of “strategic inequality” and “discriminatory” capitalism.

As we have seen in Chapter 2, Japan adopted various concepts that derived from Roman Law, such as that of the legal person and the notion of contracts, to help introduce a capitalist economy. One of these was that individuals could now buy and sell land. Financially, however, the government now needed to turn to land as the only reliable source of tax revenue. Thus one of the earliest government measures was land tax reform. Now farmers’ conventional ownership of land was legally recognised, but farmers had to pay a fixed rate of tax in cash, regardless of how much profit they made from their crops.\textsuperscript{179} This tax system made the

\textsuperscript{176.} Cocoon prices on the Yokohama Exchange dropped nearly 47 percent in the spring of 1930 from the previous year’s level. Rice prices plummeted from 30.5 yen per koku in August 1930 to 19 yen in October a day after the Agricultural Ministry announced its forecast of a bumper harvest that year. These prices were below the estimated cost of production. The agricultural depression was aggravated by severe crop failures in northern Japan in 1931 and 1934. See Ann Waswo, “Japan’s Rural Economy in Crisis,” in \textit{The Economies of Africa and Asia in the Inter-war Depression}, ed. Ian Brown (London: Routledge, 1989), pp. 115–36.


\textsuperscript{178.} Waswo, “Japan’s Rural Economy in Crisis,” p. 116.

\textsuperscript{179.} During the Tokugawa period, farmers paid taxes in kind, rice. Although the rate was high, the amount depended on the harvest. After the Restoration, the rate was fixed at 3 percent of the value of land which was calculated beforehand based on government estimation of
financial base of most farmers extremely fragile. Rice prices fluctuated violently not only because of unpredictable harvests but also because of government monetary and fiscal policy. For given the smallness of individual plots the conditions for profitable farming were very slim, and it might almost be said that the tax system destined independent farmers to fail. In fact, many farmers had to sell their land, unable to pay the taxes. Big landowners faced similar problems, but they could transfer their losses to their tenants. In each case they consolidated their landholdings by buying out plots owned by smaller-scale farmers.

The nature and genesis of the high rents tenants had to pay to the landowners was intensely debated between the Kōza-ha and Rōnō-ha. As Hoston says, their debate reflects the difficulties that Japanese Marxists faced in interpreting the country’s economic structure. For it clearly diverged from the capitalism Marx had described in his observations of the British economy. As ever the Kōza-ha emphasised the remains of the past, and Noro Eitarō, a leading Kōza-ha economist, noted, “Our country’s land taxes, both in their traditional conception and in reality, could not be essentially different from the form of ground rent [i.e. feudal rent].”

From this perspective the tax system remained feudal, because it taxed land, not products. However, the taxpayers themselves were also embedded into a developing capitalist economy, and this concurrence of “feudalism” and “capitalism” was reflected in the farmers’ insecure

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180. Yamada Moritarō has calculated the fluctuation between 1881 and 1883. During the period, both market and selling prices of rice almost halved. The average profit of a landlord per tan (1,000 sq. metres) dropped from 7.16 yen to 2.97 yen. The profit of an independent farmer dropped from 9.92 yen to 0.34 yen. The decline was sharper for the independent farmer because the landlord could transfer the loss to his tenants by raising the rent. See Yamada, Nihon Shihonshugi Bunseki, pp. 205–7.


183. Ibid., p. 247.

184. Quoted by Hoston, ibid., p. 212.
position as producers. Thus Yamada Moritarō recognises the relevant role of state power (kōryoku), and describes Japanese capitalism as “a militarist, semi-serf” variant. He also sees “extra-economic coercion” as responsible for the creation of an exploitative system, and cites the government’s opposition to any measure to create large-scale farmers.185

The legal status of tenants as stipulated in the Civil Code was clearly another such “politico-juridical apparatus.” Here the landownership recognised by the Civil Code enhanced the rights of the landowner but by the same token weakened the customary cultivation rights of tenants. From now on tenancy became associated not so much with the right to cultivate land, but with the incurring of debt, for the Civil Code stipulated that it was the tenants who had to pay land taxes, not the landowners. Also rents continued to be paid in kind (rice), which meant tenants did not have the freedom to decide on the kind of crops to grow or to trade their products without interference. In this way tenancy bore the brunt of the system of national financial burdens.

Accordingly, until 1917, land tax outstripped income tax as the main source of government revenue, and by contrast the government was slow to introduce tax on interest gained from bonds. It was not until 1920 that the tax law was changed so that such interest became taxable. Nakamura Masanori concludes that this tax system was discriminatory, since it treated favourably those who could invest in bonds (so that capital could be secured to build strategic industry), while keeping land tax intact.186 In these and other ways agriculture was deliberately exploited under government policy.

Yet not only the tax system but also the whole economic system made the position of farmers insecure. Most small-scale farmers concentrated on the production of only a few items, silk cocoons and rice, and thus they were exposed to the macroeconomy. In the cultivation of cocoons, capital was controlled by wholesalers. Thus in 1934 Inomata Tsunao remarked that “A large number of silkworm producers are exhausted. They are cut off from the market, with little power or knowledge to affect it. They cannot compensate for the decline in price


by improving quality nor can they turn to new products, because they
do not possess enough capital, technology, and expertise to find an
alternative.” Based on his field studies in various parts of the country, Inomata likened Japanese villages to colonies because of the way capital
circulated. For farmers were incorporated into capitalism as taxpayers
and consumers, and yet were also victims of what Inomata describes as
an uneven economic boom “induced by inflation” in which the prices of
their products remained stagnant or fell while the costs of production
increased. This lopsided economic system also began to hit landowners,
when farm prices, which were already low, fell after the Crash in 1929.
Many landowners also went under. The government could no longer
ignore the farm problems, and introduced measures to control price
fluctuation and also public works projects. However, the situation was
so intractable that Inomata found such measures ineffectual.

In all of these ways the peculiar forms of Japanese capitalism were
distinctly flawed. A properly functioning, self-sustaining domestic
market had clearly failed to emerge. The process of capitalism that
Marx described, in which capital is returned to producers so that they
can continue production, did not emerge. Instead, there flourished the
prompt formation of monopoly and the separation between large capital
and small companies. Large capital began to link up with the military in
the 1930s, since the latter was the only provider of capital at a time of
recession. This growing collusion between large capital and the military
coincided with the growing gap between agricultural production and
industrial production. The plight of the agricultural sector increased.
When manufacturing production increased sharply during World War
I, agricultural production also increased. But when manufacturing pro-
duction sharply increased again during the 1930s, agricultural produc-
tion no longer did so. In fact, it dropped sharply away from its previous
performance.189

188. Ibid., pp. 114–5. In his study of the Minamata pollution case, Timothy S. George likens the
town of Minamata in the 1920s to an “internal colony” (George, Minamata: Pollution and
the Struggle for Democracy in Postwar Japan [London: Harvard University Asian Center,
2001], p. 40). Kevin M. Doak also discusses “internal colonialism” in connection with
102, no. 2, April 1997, pp. 288–89.
Despite such negative conditions, both farmers and women began to assert their rights in the late 1920s and early 1930s. In both cases, Sakai’s role was that of spokesman and defender, alert to their political and economic disadvantages and to their need for freedom and knowledge.

The 60-point platform of the Taishūtō, which Sakai endorsed, included full gender equality, encompassing law, political rights, and social customs, and also measures to help working mothers, such as free nursery care. These ideas were originally propagated by Marxist women, such as Yamakawa Kikue, who in 1925 had advocated the abolition of discriminatory clauses in the Civil Code against women (including the regulations defining the rights of family heads and the “incapability” clauses). Yet most Marxists were indifferent to these demands, since they assumed that gender consciousness was a matter for the bourgeoisie and was thus a hindrance to class struggle. Accordingly Inumaru Giichi sees in their attitude “an odd mixture of dogmatic adherence to class struggle and prejudice.”

Sakai, however, was one of the very few Marxists who saw women’s issues as an essential part of the solidarity movement, and for him sexual equality and individual need were indispensable components of socialism. Understanding that free decision-making activities were essential for all, he was able to transcend narrow social divisions and connect to a wide range of “the under-privileged.”

However, in contrast to his attention to women’s issues, Sakai tended to conflate the condition of farmers with that of other kinds of workers in the proletariat. Nevertheless he understood very well the attendant need for autonomy, and it is in this context that he helped to run a farmers’ “school” in his hometown at the very end of his career.

The school was established by local supporters of farmers’ movements at the peak of the proletarian solidarity movement. Sakai’s efforts to bring together various proletarian groups into a single party had been partially realised with the establishment of the Taishūtō in July 1931. At this time the residents of Toyotsu, northern Kyushu, who were politically close to Sakai, began to organise a series of public lectures known as the Sakai Toshihiko Nōmin Rōdō Gakkō [Sakai Toshihiko Farmers Labour School]. The “school” was one of many similar groups

then established, designed to promote learning outside the formal educational system. The first two-week term was held in February 1931 in three six-mat rooms above a rice-polishing factory owned by one of the group’s supporters. There were more than 100 “students,” including graduates of middle school (the local elite), ordinary citizens, miners from the neighbouring Chikuhō coal mines, and small-scale independent farmers. One fifth were “very poor tenant farmers from burakumin communities.” The school offered a meeting place for “people who lived so closely but had never had a chance of communicating with each other.” Sakai gave a lecture about socialism and the socialist movement in Japan each night before returning to Tokyo. Most of his lectures, however, were interrupted or suspended by policemen present at the meetings.

Nevertheless, despite such small signs of unity, the public mood had now begun to change. After the Manchurian Incident, various national associations began to organise public meetings to support the government’s expansion policy, such as the Reservists’ Association and the patriotic women’s associations “fujinkai,” together with some local newspapers and municipal governments. In 1934, a number of communists publicly announced their “recantation.” The Zenkoku Nōmin Kumiai, which gave ideological and strategic support to local farmers, was also disbanded following increasing government opposition to “social” movements after the outbreak of the Sino–Japanese War in 1937. These developments were symptomatic. For it was not the direct impact of the country’s economic difficulties but changes in government policy, and the related change in public mood, that eventually terminated spontaneous movements among farmers and workers. In a country at war, or on the brink of it, such domestic “discord” was no longer acceptable.

By contrast Sakai’s socialism was founded not just on a belief in equality but on a universal vision. His egalitarianism respected individual aspiration, but his confidence in humanity addressed a broader public that transcended the nation-state. This outlook helped to give his thought consistency. Most importantly Sakai’s emphasis on personal

191. For such grassroots activity, see Minoru Hanaka, “Osaka Rōdō Gakkō no Sōritsu ni kansuru Ichī Kōsatsu,” Bulletin of the Faculty of Letters, Hosei University, no. 31, 1986, pp. 143–70.
193. Ibid., p. 12.
judgement was always at odds with narrow political dogma. So in his thought, as with the other two subjects of this study, the early Meiji emphasis on personal freedom clearly survived: it was the early Marx who inspired him, while the distortions of later Japanese Marxism were distinctly alien. Accordingly the platform of Taishūtō (with which he clearly identified) provided not only a comprehensive, social democratic vision of a civil society, but also enshrined Sakai’s characteristic search for a balance between individual rights and the common good. This search was sustained by his sense of history, the sense he had that he was not only witnessing fundamental social change but was also part of it. Hasegawa Nyozekan, one of his contemporaries, saw him as “a man who took personal responsibility for his time.” He could not be indifferent to the course of his society or to its future. Throughout his career, Sakai targeted the various shortcomings of strategic hierarchy. He saw that, like the operations of discretionary power, such hierarchy weakened the system from within.

Japanese experience shows that a successful society requires a mechanism that allows its members to make their own rules and to modify them according to their needs and circumstances. This capacity for self-renewal requires a process by which consensus can be created. For this process to function, the recognition of a fundamental equality is essential, as well as freedom of speech, since consensus will emerge only through negotiation between notions of individual freedom and the public good. Sakai’s career shows us that attempts to create a civil society in Japan were frustrated not just by a weak juridical system, but by strategic inequality. In the following chapter, we will discuss the related problem of decision-making, and the equally problematic concept of *min’i* (popular will), through a consideration of the thought and career of the parliamentarian Saitō Takao.

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CHAPTER 4

Saitō Takao: Party Politics, Regimentation, and Resistance

In my final study of the politics of dissent, we will examine the thought of Saitō Takao in terms of an active, pre-war politician’s attempts to confront the exercise of governmental power. Saitō was a conservative politician who despite colonialist leanings criticised government war policy, and who, in an incident which coincided with the “voluntary” disbandment of all political parties, was expelled from Parliament in 1940. Saitō was neither an anti-war pacifist nor a socialist sympathiser, but his criticism of government policy derives from his resolute political scepticism and his adherence to ideas of liberty inherited from the Meiji Enlightenment. His career, when seen against the background of the growing support both for the drastic reform of the domestic political system (an end to proper parliamentary politics) and for a new Asian order (under Japan’s hegemony), represents an all too rare plea for alternative policy.¹

In dealing with the lives of politicians there is an especially acute problem of assessment, for they act within a complex dynamic of power, based on calculation and expediency. Saitō is no exception.² However, even despite his very real inconsistencies, there is no denying that Saitō furthered the principles of constitutional and representative government throughout his life, as Minobe did. In this sense, Saitō, along with Minobe and Sakai, provides (to use a phrase of Raymond Williams) “indicative features” of what the Japanese hegemonic process “has in

2. Cf. Berger who says of politics in imperial Japan: “The large majority of politicians who associated themselves with party organizations did so not out of ideological commitment but rather as a means of pursuing power and implementing policy objectives” (Berger, ibid., p. ix). Barshay dissents, however, saying that such an approach is to “disengage the vicissitudes of party influence” from the democratic tendencies of the Taisho years (Barshay, State and Intellectual in Imperial Japan, p. 264).
practice had to work to control.” But unlike his two contemporaries, Saitō made his points more publicly and on immediate and particular issues as a member of the House of Representatives. In his case, therefore, the tension between national goals and free government was more publicly manifested. Nevertheless he was a relatively minor politician whose professional pinnacle was to become head of the Cabinet Legislation Bureau in 1931. At the same time he was a highly assiduous parliamentarian, and even if he is now remembered chiefly for his parliamentary speech of 1940, his many other public speeches, memoirs, and published writings testify to a remarkable capacity for resistance.

In this chapter I will therefore be concerned with party politics and the role of Parliament between 1910 and 1940, a period when party government gained momentum and then was sidelined by the military bureaucracy (this period coincides with Saitō’s political career before his expulsion). Carol Gluck finds that after the 1880s Japanese government was “the most deliberate agent” in the devaluation of politics within Japan. Nevertheless, traditions of party and the role of an opposition most definitely emerged. Hence I will discuss why at this time government and institutional politics were so often at odds, why despite that opposition parties were born, and why they nonetheless failed to lead social and liberal movements. These questions are also related to the ambiguous character of the pre-war Parliament as a representative organ of the Japanese body politic. In the process I hope to answer questions about the origins of Saitō’s political pragmatism, and to show how his views were able to expose the limitations of government of the time. In my final section I will deal with his contentious position as a proponent of Japanese imperialism.

THE SELF-MADE MAN, AND THE LEGACY OF THE MEIJI ENLIGHTENMENT

Saitō Takao was born in 1870, the last of six children of a small village farmer in Hyogo Prefecture. As indicated earlier, Maruyama Masao highlights the strong desire for social ascent of post-Restoration Japanese

4. Carol Gluck, Japan’s Modern Myths, p. 239.
5. The biographical information provided in this section is based on the following: Saitō Takao, Kaiko 70 nen (Tokyo: Chūō Kōronsha, 1987), Kusayanagi Daizō, Saitō Takao kaku

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youth. Saitō too was driven by restlessness in a society conducive to social mobility. After farming for three years, he went to Tokyo in 1889, walking all the way. Here he became a shosei (live-in student helper) at the house of a bureaucrat who came from the same district as he, taking a typical route to further education for ambitious but poor young men. In 1891, he entered the Waseda Senmon Gakkō, a school for advanced study, which later became Waseda University. The school was founded by Ōkuma Shigenobu in 1882, a year after his dismissal from government. The decision to enter Waseda was decisive for Saitō’s political affiliation, as he would always side with a party which had personal and historical ties with the Rikken Kaishintō founded by Ōkuma in the same year. Saitō graduated in 1894, and became a lawyer the following year. He then became a trainee at the office of Hatoyama Kazuo, soon to be prominent in politics. In 1898, Saitō set up his own office after Hatoyama joined the Okuma Cabinet as vice-Foreign Minister. Still ambitious, Saitō decided to study abroad, and in 1901, following Hatoyama’s footsteps, he entered Yale University’s law department. But his tuberculosis, diagnosed while he was still a student at Waseda, worsened, and he returned home in 1904, without finishing his degree.

Nevertheless, his two-and-half-year stay in the United States provided him with crucial formative experience. Relatively free from the nationalistic sentiments to which many of his fellow countrymen succumbed after encountering racial discrimination, Saitō witnessed at first-hand how the American legal system functioned. With support from one of his teachers at Yale who happened to be a judge of the state supreme court, he sued for professional negligence the Grace Community Hospital that had treated his illness.
In 1905 Saitō married, and he began to aspire to become a politician. His political career began in earnest in 1912 when he was elected to Parliament as a candidate of Kokumintō, an offshoot party of Ōkuma’s Kaishintō. He joined the newly formed Dōshikai in 1913, and when the party merged with other smaller parties to become Kenseikai in 1916, he joined the new party. In 1920, he lost his seat in the first general election held under single-seat constituencies since 1900. He was re-elected in 1924, and his party, Kenseikai, became the ruling party from 1924–27. Kenseikai merged with another non-Seiyūkai party Seiyū Hontō in 1927 to become Minseitō. Saitō belonged to Minseitō until 1940, when he was expelled from Parliament by a majority vote, which included votes by members of his own party.

The years between 1927 and 1932 are widely regarded as a period when a conventional two-party system functioned in Japan, in which Seiyūkai and Minseitō took power alternately. This brief period is also characterised by a drastic oscillation in Japan’s foreign policy between expansionism and international co-operation. Thus in 1927 the Seiyūkai government led by the Army general Tanaka Giichi sent troops to Shandong to support the Manchurian warlord Zhang Zuolin, who was fighting against the Army of the Chinese Nationalist Party led by Chiang Kai-shek. As Chiang appeared to be succeeding in unifying China, Japanese political leaders began to differ in their appreciation of the national interest. The sense of crisis over the possible loss of influence in China, particularly in Manchuria, was acute among military personnel, while civilian elements of government sought international co-operation.

Generally Seiyūkai was the party of expansion, while Minseitō advocated international co-operation. Thus it was the Minseitō government led by Prime Minister Hamaguchi Osachi that had signed in 1930 the London Naval Limitation Treaty despite strong criticism from the Navy. In fact however the conflict between the two policies reflects the persistent battle between the military and civilian government, whichever party was in power.

When Minseitō governed from 1929–31, Saitō was a vice-Home Affairs Minister, assuming his first “bureaucratic” post. In November 1931 he was appointed head of the Cabinet Legislation Bureau, a key office responsible for drafting laws, and whose thirteen official advisers
included Minobe Tatsukichi. However, Saitō had barely been in office for a month, when the Minseitō government headed by Prime Minister Wakatsuki Reijirō was forced to step down, unable to stop the escalating military confrontation in China after the Manchurian Incident.

Minseitō then supported the Cabinet led by Admiral Saitō Makoto, a national unity Cabinet created after the assassination of Prime Minister Inukai in 1932, which aimed to restore constitutional government. Saitō was again a vice-Home Affairs Minister. When the Saitō Cabinet collapsed in 1934, Saitō again lost his post but resumed his role as a parliamentary opponent of government.

The climax of Saitō’s parliamentary career came in February 1940, when he condemned the government’s prosecution of full-scale war in China. He spoke with extreme urgency, alert not only to the Chinese situation but to both the outbreak of World War II in Europe and Japan’s worsening relationship with the United States, which had just informed Japan of its intended termination of the bilateral commerce treaty.

Two and a half years after the outbreak of what was now the Sino-Japanese War, Saitō’s confrontation with the government, now led by Admiral Yonai Mitsumasa, was uncompromising. Powerfully and with great lucidity he criticised the government’s haphazard pursuit of the war and its “holy war” propaganda to justify an increasingly incomprehensible conflict. The war, which had begun on 7 July 1937, with a clash between Japanese and Chinese troops on the outskirts of Beijing, dragged on with no end in sight. The Japanese government’s attitude towards the war, as Saitō pointed out, was in fact highly inconsistent, as is demonstrated by a sequence of policy statements issued by the then Prime Minister Konoe Fumimaro (1891–1945) in 1938. First after German mediation for a peace settlement failed, the government made a belligerent demand in January to the Chinese Nationalist Government led by Chiang Kai-shek to recognise Manchukuo as an independent state. When the demand was rejected, the government issued a non-recognition statement of the Nationalist Government in less than a week. Then on 3 November, the government ramped up its war effort, declaring that the aim of the war was to create a New Asian Order, eliminating Western imperial powers from Asia. Yet this statement was followed the following

month by a reconciliatory statement emphasising “neighbouring amity, common defence against communism, and economic co-operation” between Japan, Manchukuo, and China. The last statement reflected Wang Ching-wei’s defection from Chiang’s Nationalist Government earlier in the month and the Japanese government’s ambition that Wang might establish a pro-Japanese regime replacing Chiang. Saitō questioned the soundness of the judgement to support Wang. Given the growing anti-Japanese sentiments in China, Saitō asserted that Wang was unlikely to succeed in unifying the country, as the government claimed. For Saitō, the government’s statements revealed only a flawed war policy and wishful thinking.

Saitō’s one-and-half-hour speech reflected his acute distrust of a policy which he saw as lacking in both substance and moral authority. His persistent references to the “law of the jungle” (yūshō reppai, tekisha seizon) were meant to remind his listeners that any plan that omitted bilateral assessments of power relations was destined to fail. Saitō criticised Konoe’s “New Asian Order” as “vague and incomprehensible.” He saw its vagueness both as a symptom of political malaise and as a strategy to override critical debate. A policy that required such a high degree of rhetoric, and which had already resulted in a sequence of inconsistent actions, was not only unachievable but morally untenable. Most importantly, however, Saitō detected in government policy the presence of forces within the military determined to intensify aggression at any cost, and he was clearly sympathetic to the right of Chiang Kai-shek to defend his country.

In retrospect, Saitō’s diagnosis of the war was well founded and close to that now provided by many historians of our time. Thus Akira Iriye speculates that Konoe’s confused way of handling Japan’s confrontation with China was largely responsible for the country’s eventual entry into the Pacific War. The New Asian Order declaration of 1938 was Japan’s “formal rejection of the Washington system” and “the bridge of no return.” Yet Saitō’s view was undoubtedly that of a minority and had no effect on government policy. In this sense, his stance was that of isolated dissent ignored in a political world increasingly bent on military aggression and encouraged by calls for national unity. In terms of the

political developments that followed, Saitō's speech merely facilitated the disbanding of all political parties in Parliament and gave further momentum to military ambition. He was expelled from Parliament by his fellow members a month later. But his career did not end there, and it testifies to the presence of continuing grass-roots defiance of government orthodoxy. Saitō received nearly 600 letters and postcards from the public shortly after the speech, most of which were overwhelmingly sympathetic to his position, despite the fact that the government deleted two-thirds of the speech from the official transcript. And in 1942, his rural constituency elected him back to Parliament. In 1946, he joined the first Cabinet to be formed after the first post-war general election, invited by Prime Minister Yoshida Shigeru to become a State Minister. He retired from politics in 1948, and died a year later at the age of 79.

As a subject of academic enquiry, Saitō remains a neglected figure. Itō Takashi attributes this neglect to two main reasons. One is that access to primary sources is relatively difficult. The other more important reason is the prevailing uncertainty among historians about how to define Saitō's position. Although he is seen as a liberal critic of the military bureaucracy in the 1930s, his speeches can also project an image of a “conservative” critical of “reformers,” a bourgeois politician indifferent to the plight of ordinary workers, and a passionate patriot and imperial loyalist who despaired of pacifism. How to integrate these various images remains a challenge for historians, according to Itō.

11. Of the 477 members, 296 voted for Saitō’s expulsion, 7 against, 121 abstained, and 23 were absent. Thus Saitō’s case “provided the Army with an opportunity to discover who in the Diet were its strongest allies, and the Diet’s response proved remarkably gratifying” (Berger, *Parties Out of Power*, p. 247).


13. Saitō published 10 books in his lifetime, some of them privately. But most are not easily available, except in a few selected libraries. The diary, which he kept from 1906 until his death in 1949, has so far appeared in only a few extracts. For these extracts, see “Saitō Takao Nikki (Shō),” ed. Itō Takashi and Watanabe Yukio, *Chūō Kōron*, December issue 1990, pp. 314–29, and January issue 1991, pp. 147–63.


Earl Kinmonth on the other hand attributes the neglect of Saitō and his parliamentary speech of 1940 to an inadequate assessment of Japan’s military expansion. He criticises Ienaga Saburō and Maruyama Masao, “two of Japan’s best-known academics,” for dubious and undiscriminating characterisations of Japanese fascism. In his view they pay scant attention to Saitō’s presence or the speech, because the relative freedom that the parliamentarians clearly enjoyed, as evidenced in Saitō’s delivery of the speech, and also the public support that he received afterwards, do not fit their portrayal of Japanese fascism as a matter of state repression and popular obedience. For Kinmonth the prime motor of Japan’s expansion policy was the civilian and military elite, because such state enterprises provided them with better opportunities to demonstrate their talents, better job prospects, and better salaries. In Kinmonth’s view, Saitō challenged this “mixture of socialism and careerism” in an elite who spearheaded the country’s mobilisation for the war. Saitō’s outspokenness is therefore of crucial importance for any revision of prevailing assessments of Japanese fascism.

Kinmonth is surely right in pointing out some key issues left unexamined by the scholars he contests, in particular the active role of intellectuals opposed to Japanese militarism. However, Ienaga’s and Maruyama’s assessments of supposedly relevant trends and social mores are, I think, still valid, albeit subject to modification, because such approaches allow us to define a more inclusive overview. While Kinmonth emphasises specific economic factors supposedly underlying Japanese fascism, the academics he challenges attempted to identify certain perspectives and modes of behaviour that facilitated it. Their assessments and Saitō’s intransigence complement each other, as I hope to show. The circumstances surrounding Saitō’s intervention were in fact more complex than Kinmonth implies, and they allow us to formulate a fuller synthesis.

Especially important is that the freedom Saitō enjoyed as a member of Parliament was significantly greater than that of other contemporary critics, such as Sakai and Minobe. When he stood at the rostrum of Parliament in February 1940, these men had already been silenced by the military-led government. Hence although the form and degree

18. Ibid., p. 357.
of Saitō’s public defiance were remarkable, his case alone does not invalidate the important questions Ienaga and Maruyama were trying to answer. Among these questions were: what were the exact forces of mobilisation, without which the government could not go to war; how did state power work in this process; and why did the Japanese as a nation fail to stop their descent into what Saitō described as an “incomprehensible” conflict. The challenge is how to relate the presence of recalcitrant individuals such as Saitō to the larger play of social and political forces. The ambitions of a bureaucratic elite are important in the genesis of Japanese totalitarianism but only in as much as they act in tandem with other elements.19

Thus Kusayanagi Daizō, Saitō’s biographer, characterises Saitō as a “seironka” (common-sense critic).20 By seironka, Kusayanagi means that Saitō was a “mirror,” reflecting in his criticism the problems of governmental decision. Alternatively, in a phrase recently used by Peter Burke but coined by the Italian historian Edoardo Grendi, his was a case of “the exceptional normal,” that of a particular figure who while in some ways quite conventional also exposes the contradictory aspects of state and society, and who demonstrates the possibility and predicament of individual choice in extraordinary circumstances.21 My interest in Saitō is as a dissenting voice, one which allows us to link historical events and individual response, and to understand more clearly the operations of hegemonic power.

Saitō then, adhering to the principles of parliamentary debate, was a liberal polemicist. Various conditions hindered that debate, and one aim of this chapter is to examine Saitō’s criticism of specific inhibiting institutions and policies. Some factors may have been insurmountable, but others were clearly rectifiable, as he tells us. Saitō reveals the limits and potential of Japanese parliamentary politics at his particular moment.22


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Much of Saitō’s criticism of existing institutions and practices derived from his training as a lawyer and his knowledge of the British parliamentary system. Yet his initial propensities already embraced such principles as the rule of law and equality under the law, and he owed his general worldview to the early Meiji Enlightenment. Of the Enlightenment thinkers, he was most conscious of Fukuzawa Yukichi (1834–1901) and Katō Hiroyuki (1836–1916). Repeatedly he would refer to them as a source of confirmation or as a frame of reference. Thus although its influence is subtle compared to his more specific exposition of constitutionalism and party politics, the Meiji Enlightenment was largely responsible for sponsoring Saitō’s thought.

Clearly the Meiji Restoration was not simply a matter of the replacement of one political system by another. It was also a cultural “revolution” spurred from both within and without, a time of the reorientation of society as a whole. The historical significance of the period was well understood by late Edo and early Meiji intellectuals such as Fukuzawa and Katō. They understood that the mere importation of new technology and institutions from the West was not enough to modernise their country. They took it as their mission to change the modes of thought of the Japanese. As Carmen Blacker puts it, “Like the philosophes of the French Enlightenment of the eighteenth century, they set out to educate their countrymen to an entirely new kind of learning, a new view of man and his place in nature.”

They favoured science against Confucianism, freedom against submission, and pitted parliamentary politics against the bakufu system.

Many of these intellectuals were international scholars who had gained first-hand experience of Western societies and political systems through their visits to Europe and the United States as members of the bakufu missions or as students. When the introduction of Western thought became urgent, they produced a series of books intended to disseminate the new knowledge and to educate the public. Fukuzawa wrote Seiyōjijō (1866–1870) aimed at introducing Western political systems and culture to the Japanese, based on Chambers’ Educational course, Political Economy for Use in Schools of 1856, and also on his own

experience of staying in England. He also published the equally influential *Gakumon no Susume* (1872–76), whose opening sentence, “Ten wa hito no ue ni hito o tsukurazu, hito no shita ni hito o tsukurazu (Heaven does not create one person above or below another person),” celebrated the new individualism. He also wrote *Bunmeiron no Gairyaku* (1875), the aim of which was to introduce Western history and the genealogy of civilisations, based on the writings of Buckle and Guizot, and also to criticise feudal traditions embedded in Confucian teaching. Fukuzawa was not alone. Katō Hiroyuki wrote *Rikken Seitairyaku* (1868) and *Shinsei Taii* (1870) to introduce Western constitutional systems. Nakamura Masanao’s translations of Smiles’s *Self-Help* and of Mill’s *On Liberty* were enormously influential. Nakae Chōmin’s translation of Rousseau’s *Social Contract*, Baba Tatsui’s *Tenpu Jikenken ron*, and Ueki Emori’s *Tenpu Jinken ben*, published in the early 1880s, all defended the idea of inalienable rights, either by directly quoting from Rousseau or by combining elements of his thought with such Confucian notions as *ten* and *tendō* (roughly translated as heavenly way). The assertion that each person has inherent rights, and that government exists in order to protect those rights, sparked a lively public debate about the relationship between government and the individual (aided in turn by the new mood of reform as some of the feudal barriers to social mobility and communication were removed).

Hence the Western thought introduced into Japan by these *keimō* intellectuals in the early Meiji period was overwhelmingly Anglo-American and French, emphasising liberty, equality, and laissez-faire, rather than the German *Staatslehre*. Japan’s modern liberalism found its first voice among these intellectuals, and among them Fukuzawa was a leading figure. Through his observation of British and American societies, Fukuzawa understood the strength of a nation to reside in the spontaneous activities of independent individuals. Thus his primary concern was to change people’s attitudes towards the prevailing social order. To break the pattern in which people followed the established norms, Fukuzawa analysed and criticised those aspects of society he thought hindered the successful path to modernity.

He articulated his critical assessments most fully in *Bunmeiron no Gairyaku*.\(^{25}\) As Guizot had used the German word *Einseitigkeit* to criticise “the fault of only seeing one side of things,”\(^{26}\) Fukuzawa used the Japanese word *wakudeki* to criticise the inertia in Japanese society. This was evident to him even in the samurai’s adherence in the Edo period to the habit of carrying his sword without practical purpose. In more general terms, the ruler’s claim to divine right irrespective of ability also revealed *wakudeki*, the habit of thought that could attribute value “to things in themselves irrespective of the way in which they functioned.”\(^{27}\)

For Guizot, intransigent adherence to “any single principle or any particular organisation” is the antithesis of freedom, the major driving force of progress, that separates European civilisation from the past and from other civilisations. “While in other civilisations the exclusive, or at least the excessively preponderating domain of a single principle, of a single form, has been the cause of tyranny, in modern Europe the diversity of elements which constitute the social order … have given birth to the freedom which prevails in the present day.”\(^{28}\)

Inspired by such an analysis, Fukuzawa launched his enquiry into the exercise of power in everyday life. Thus in Japan Fukuzawa saw the operations of power that stifled individual freedom in a hierarchical social order justified by the *meibunron* discourse of Confucianism. In *meibunron* people were expected to act not according to reason but according to others’ anticipations and to their prescribed roles. For Fukuzawa, the social order built on such principles was incompatible with a society where people might act spontaneously and rationally. For if the *meibunron* principle was maintained, “we have to accept that the emperor is superior to court nobles and therefore he can order them to do certain things freely … and that court nobles are superior to *han* lords and thus can manipulate them at their will, and that the lords can

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25. For how Fukuzawa incorporated Guizot and Buckle into his thought, see Maruyama Masao, *Bunmeiron no Gairyaku o yomu* [3 vols], especially vol. 3, pp. 1–76 (Guizot) and vol. 2, pp. 4–48 (Buckle).


27. Blacker, op. cit., p. 177.

manipulate their subordinates ... and that the lowest ranks of samurai can exploit peasants.”

Fukuzawa rejects this system, where power is transmitted through rigid hierarchy.

Here Fukuzawa’s analysis of power complements Foucauldian sociology. For Foucault, power should be understood as “the multiplicity of force relations immanent in the sphere in which they operate and which constitute their own organization.” Fukuzawa himself recognised a Foucauldian “grid of intelligibility of the social order” in Japanese society justified by *meibunron* discourse. But where Foucault saw “enmeshed” power as modern, for Fukuzawa the similar forces of Japanese society were feudal. Hence for Fukuzawa, “The evils of *meibun* and its corollary of ‘preponderance of power’ were just as marked in the relation of ruler and subject as they were in the more intimate family relations of parent and child and husband and wife. Rulers, just as much as parents and husbands, were thought to be justified in wielding virtually unconditional power over their subjects.” Such criticisms of the “preponderance of power” were strongly at odds with the norms of behaviour prevalent among the Tokugawa elite. Hence for Maruyama Masao, Fukuzawa was the first person to analyse the “pathology” of power in Japanese society.

Fukuzawa envisaged a radically new society where people could pursue their goals as freely as possible. In such a society, the role of government was to protect people’s rights rather than to control their behaviour. He was interested in the formation of spontaneous social force, a new public sphere capable of steering its own course. Thus he emphasised the roles of public opinion, of freedom of assembly, and of political parties in shaping such a public. For a political system to function, common rules, which were agreed by the members of society,

33. “If protecting people’s rights was its sole task and function, it followed that the government’s legitimate sphere of authority was strictly circumscribed. It did not possess the limitless scope of power of the Confucian ruler, for such power would contradict the very reason for its existence” (Blacker, op. cit., p. 107).
not ‘morality’, were necessary. Thus Fukuzawa was vitally concerned with how to encourage exchange of opinion (kōsai). Kāigi (conference, meeting, assembly) and enzetsu (a public speech) were among many words that Fukuzawa introduced into Japanese and which became part of the Japanese vocabulary. In this way a new public was to be formed of freely acting and communicating individuals. Fukuzawa saw such a public as a valid alternative to the absolute power that characterised the feudal system, and believed that any form of government should play an auxiliary role.

In consequence a critical view of the power that stifled individual freedom survived in Saitō’s thought. Thus he says in 1906: “Because the state is composed of the people … the interest of the state is their own interest. Therefore, when they are involved in politics, they are involved in their own affairs. This is a necessary condition for them to fulfil their lives.” In Saitō’s case Fukuzawa’s efforts to transform the principles governing social organisation clearly continue.

As for the role of government, Saitō says, “The ultimate aim of constitutional government is to make the common awareness of the people the engine of politics. … A Constitution and Parliament are merely ‘machines’ intended to realise this goal. It is public opinion that reveals the common awareness of the people.” Of course the precise route by which Parliament and political parties might be linked to public opinion is another matter, and we will investigate later, through his defence of such principles, the difficulties of implementing such a process. Yet Saitō’s views of a “civil” society and a suitable political system for it again link him to the traditions of Meiji liberalism.

Adherence to concepts of progress and individual freedom do not, however, guarantee one’s rejection of imperialism. Thus Fukuzawa’s emphasis on national progress led him to start supporting an expan-

35. Thus Fukuzawa criticised Confucianism for confusing politics and morality. Maruyama quotes Fukuzawa as follows: “Morality may be very useful for the individual to act on his own, but virtue exists inside the person, and thus does not affect external objects. In a natural and chaotic society where people are not much involved in each other’s affairs, morality may be convenient to consolidate the people. But it must lose its power as society becomes more civilised” (Maruyama, ibid., p. 63).

36. Maruyama, Bunmeiron no Gairyaku o yomu, vol. 1, p. 82. For the transmission of political ideas through translation during the Meiji period, see Howland, Translating the West.


38. Ibid., p. 1.
sion policy in the 1880s. Maruyama attempts to explain Fukuzawa’s “apostasy” as a classic example of a dilemma faced by intellectuals in a developing country, the conflict between universalism and particularism.39 For while they are exposed to new ideas from a world beyond their immediate circumstances, at the same time they are expected to accommodate these ideas to both the specific needs of their country and the sensibilities of their fellow countrymen. Placing themselves within a perceived hierarchy of knowledge and power, they are obliged to juggle with nationalism and internationalism simultaneously. Fukuzawa felt this dilemma acutely, and his concern for the future of his country eventually overwhelmed his initial detached assessment of state power. Something of this legacy also enters into Saitō.

Nevertheless from the strand of the Meiji Enlightenment represented by Fukuzawa, Saitō inherited the spirit of sceptical independence. And from Katō Hiroyuki, Saitō absorbed the seemingly contradictory scientific approaches of “evolutionary materialism,” of which Katō was “the most systematic and influential keimō advocate.” According to Carmen Blacker, this creed sought to solve the problem of the relations between man and Nature “by denying the existence of moral principles altogether,” arguing “that not only external Nature but human nature and conduct as well were governed entirely by mechanical and regular laws.”40

Yet it was Katō who also introduced into Japan the concept of the modern state articulated by Hobbes. Following Hobbes’ justification of the state, Katō distinguished a political unity from a state of nature. Thus in nature, people are savage and fight for survival. Yet they also have inalienable rights, and to preserve those rights they should agree to form an artificial association, which is the state.41 Saitō retained an acute awareness of the dynamics of the “fictional” state, even as Katō himself abandoned his support for inalienable rights late in life. In Saitō’s case, however, his staunch royalist position never overshadowed his attention to the tension between political authority and individual freedom, and

40. Ibid., pp. 58–9.
this awareness allowed him to remain critical of any force attempting to impose “unity” on society.

Saitō was also not entirely persuaded by evolutionary materialism, although it clearly influenced him. Thus he used the phrase “yūshō rep-pai, tekisha seizon” in his writing and speeches throughout his life. The phrase is a Japanese translation of “the survival of the fittest,” first used by Herbert Spencer. It was Katō himself who introduced the phrase in the late 1870s and made it popular among Japanese intellectuals. Katō’s embrace of Social Darwinism, however, marked his departure from his initial adherence to the concept of inalienable rights. For him, social evolution meant that “All organic beings were endowed with an energy which, obeying fixed causal laws, sought for its possessor’s preservation and advantage, but which manifested itself in different forms according to the stage of evolution of its possessor. Reason, conscience and will ... were simply evolved forms of this energy.”

Like his conservative counterparts in England, Katō understood Spencer’s theory as “a mechanism by which a social and natural hierarchy was preserved by the distribution to places in it of the ‘fittest.’” Thus Katō began to criticise those minken (popular rights) activists who called for representative government, finding the concept of inalienable rights unscientific and mistaken. Katō’s own “apostasy” came shortly after the government’s dismissal of Ōkuma in 1881, after he had submitted his private opinion calling for the early establishment of Parliament. Katō, who had become the first president of Tokyo University in 1877, publicly retracted his previous publications in which he had advocated the concept of inalienable rights.

Saitō by contrast used the phrase “the survival of the fittest” not to justify the new practices of government but to probe their legitimacy. He also used the phrase to emphasise his Hobbesian worldview (“bel-lum omnium contra omnes”) and his complementary view of human nature (“homo homini lupus”). However, while these viewpoints had prompted Hobbes to call for the establishment of a strong state that
could provide security and yet demand the submission of individuals to that power, Saitō used the term to emphasise the temporary, expedient nature of government within an evolutionary framework. Thus, like Walter Bagehot, Saitō used the concept to support parliamentarianism, saying that that system was the most suitable form of government for social evolution.

Meanwhile, when the original aim to dismantle what they saw as feudalism was superseded by the perception that the country had succeeded in building a state, keimō advocates, most prominently Katō, changed their positions to protect the fledgling state institutions and the accompanying statist ideology. Yet in a clear sign of rebellion, Saitō in 1908 would criticise Katō for his attack on the Emperor-as-Organ theory, saying that the country’s sovereignty did not belong to the emperor alone. As in Britain and other constitutional monarchies, it should be exercised jointly by him and Parliament. Saitō adhered to this principle throughout his life, as we will find in his parliamentary speeches.

Hence the rational spirit in which Saitō attempted to adapt Spencerian theory represents a clear antithesis to the new holistic views of the state, which had become increasingly orthodox. For him, political power was temporary and thus could not be absolute, a view shared by Minobe and Sakai. More importantly, the spirit of intellectual and political independence once propagated by Fukuzawa was central to his worldview. That spirit had become increasingly threatened not only by the formation of the bureaucratic state but also by the regimentation of society.

Saitō then, as did Minobe and Sakai, inherited the original inspiration of the Meiji Enlightenment and of nineteenth-century liberal thought in general. In Saitō’s case, the influence is most recognisable. His detestation of the bureaucracy came straight from Fukuzawa, yet behind Fukuzawa is an entire tradition of radical European social thought. As an ambitious outsider, an enlightenment concept of progress that celebrated both individual ability and a common social good provided him with an attractive and comforting intellectual foundation. And his recurring references to the concept of the survival of the fittest, seen not as acquiescence in “the hegemonic process” but as a critique of it, reflect

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45. The article appeared in the magazine of his alma mater, Waseda Gakuhō, October 1908, and is quoted by Matsumoto Ken’ichi, op. cit., p. 138.
the lasting influence of early Enlightenment thought and precept. Such a legacy remained in sharp contrast to the later generations’ perceptions of state power, when Saitô’s unbridled individualism began to seem increasingly remote.46

Saitô’s speech of 1940 was therefore a criticism of imposed holism in the name of distorted patriotism. Eighty years after the Restoration, Saitô repudiated the forces that were stifling freedom. Criticising the irrationality of policy, he also questioned its legitimacy. For him, if policy required such a high degree of coercion, it could not be sound either in theory or in practice. Following Fukuzawa’s efforts to free the individual from the “preponderance” of power, he opposed the new forms of hierarchy and the false cohesion that was being imposed on the people. We will now examine the genesis and evolution of these forces as they relate to Saitô’s dissenting views.

PRE-WAR PARTY POLITICS: THE CHALLENGE TO GOVERNMENT AND INSTITUTIONAL POWER

The main emphases of Saitô’s political career involved the defence of Parliament and of party politics. If we follow Habermas’s formulation of the nature of a civil society, the key function of politics (or Parliament) is to mediate between conflicting interests, and the role of Parliament is to select and legitimise such initially private opinions so that they become “common.” Saitô’s understanding of the role of Parliament and the function of politics, based on his knowledge of the British parliamentary system, points at such mediatory arrangements.

However, Japan’s state-making clearly involved various factors that hampered such a process, including the inhibiting of a self-regulating mechanism for both politics and Parliament. Thus before analysing the strengths and weaknesses of Saitô’s thought, I will examine why politics and government in the pre-war era were so often in conflict. In this section I will follow the birth of opposition parties, the ensuing antagonism between them and the government, the establishment of the quasi-party

Cabinet, and its demise. The formation of the state bureaucracy will also be examined as a counter force to debate. Saitō’s career is rooted in the inadequacies (as well as potential) of the relevant state institutions.

Full-fledged political parties did not emerge in Japan until Parliament had become a reality. Nevertheless, modern political awareness was formed through early nationalist movements, hostile to aspects of Meiji reform, which became known as the Jiyūminken Undō.47

As a political movement, however, the Jiyūminken Undō had lost its momentum by the end of the 1880s. Its more radical elements had helped local farmers to stage violent protests against local banks and money lenders, and also against heavy taxes, as in Fukushima and Chichibu. Yet the government’s intensifying oppression and the gradual debilitation of independent farmers, who were the mainstay of the Jiyūminken Undō along with former samurai, weakened the movement as a whole. Its leaders also faced the dilemma of whether to rejoin the government or stay outside it to effectively influence government policy, and they began to distance themselves from the more radical members. Their gradual withdrawal from the forefront of the protest movement also began to unravel the movement as a whole.

Although these factors contributed to the general decline of the protest movement, it became clear that the Jiyūminken Undō would not continue as a popular force when the centre of political debate shifted to the newly created national assembly. Nevertheless, the eclectic Jiyūminken Undō was essential for the creation of modern political awareness among the Japanese. Although the new government was desperate to instil national sentiments, it was not through its programmes but through spontaneous movements such as the Jiyūminken Undō that the Japanese gained real opportunities to define their own political community.48 In this respect, it seems appropriate to see the Jiyūminken

47. For previous and recent work on the movement, see Kim’s The Age of Visions and Arguments, “Introduction.” For the movement and the growth of parties, see Jiyūtōshi, ed. Tōyama Shigeki and Satō Shigerō, 3 vols.

48. At least 137 petitions, signed by 320,000 people in total, were submitted to the government between 1874 and 1881, demanding the opening of Parliament, according to Emura Eiichi, “Bakumatsu Meiji Zenki no Kenpō Kōsō,” p. 455. Emura speculates that about one-fourth of the whole population (37 million as of 1881) may have been involved in the nation-wide movement, given the various restrictions in place, such as only heads of households being signatories, the various obstacles to women’s political activities, and the poor communications and transport infrastructure. See also Kim, The Age of Visions and Arguments, passim, esp. pp. 5, 10.
Undō not just as the first effective vehicle of organised political dissent but as the first national movement.

Anthony Smith in this regard defines nationalism as “an ideological movement for attaining and maintaining autonomy, unity and identity for a population,” and he argues that these aspirations “have placed at the centre of the political stage the sovereign, united and unique nation, and have made over the world in their image.” In Japan however the fact that the initial political movements coincided with a national awakening had complex and contradictory effects. The emphasis on the nation as ultimate value, based on the prevailing notion of progress, profoundly affected modern Japanese consciousness and sense of entitlement. Even opposition parties could not distance themselves from it, and invariably their platforms contained an emphasis on national growth and expansion, even when they were discussing political liberties. Irokawa Daikichi thus points out the diverse consequences of a Japanese national awareness stimulated by the Jiyūminken Undō, which ranged from an increased awareness of civil liberties, to a hegemonic expansionism that supported the imperial system, and even to fascism.

Saitō’s career reveals the degree to which it was impossible to distance oneself from the attendant ideology, at a time when the nation was not only the prime authority but also a source of inspiration and patriotic incitement.

Nevertheless, despite such an inclination to embrace national well-being at the expense of the individual, the Jiyūminken Undō undoubtedly paved the way for constitutionalism, for the movement provided the catalyst for the formation of a new political system based on Parliament and elections. Yet “Strictly speaking, the politics that began in 1890 was not parliamentarian. It did not lay down a clear path towards party politics.” What it did do, according to Baba Yasuo and Banno Junji, was to undermine the powers of “inclusive oligarchy” by promoting the principle that even the ruler had to obey agreed rules. Without this “spur,” neither party politics nor parliamentarianism would have been

50. Ibid., p. 46.
51. The ubiquity of notions of progress is remarked by Gluck, Japan’s Modern Myths, p. 16.
possible. “Without the Jiyūminken Undō, there would have been no such take-off in Japan.”

If however the opening of Parliament in 1890 ushered in a new political structure, party politics was handicapped from the very beginning. In the long run, the discriminatory election system introduced with the Constitution alienated the masses. Because of the tax-based eligibility restrictions, only 1.1 percent of the population could vote. From now on the general perception of party politics would be associated more with the operations of power than with the needs of ordinary people. Admittedly this was at a time when very few countries in the world had introduced universal suffrage. Restrictive qualifications, based on landownership and tax payments, or educational achievements, were common. Nevertheless, in Japan, this restricted popular representation created a serious handicap for Parliament in establishing its “worthiness” as a representative of “min’i” (popular will).

More immediate obstacles were soon erected by the government to block the advance of parties into power. In course of time these obstacles became responsible, directly and indirectly, for the demise of party politics and constitutionalism in the 1930s. Thus in anticipation of the new opposing forces, so detested by Saitō, Itō Hirobumi’s government of 1885 introduced what Takahashi Susumu and Miyazaki Ryūji call strategic “non-elective bodies” which had strong political influence. This involved the creation of the peerage system, creating a well-designed employment structure for bureaucrats, and introducing the Sūmitsuin (Privy Council). Both the House of Peers and the Sūmitsuin were seriously inimical to the operation of parliamentary politics. Itō, explaining the aim of the Sūmitsuin in 1889, told Inoue Kowashi: “If government and Parliament disagree, only one of two steps will be possible, the resignation of ministers or the dissolution of Parliament by an imperial order. In such a case, we need advisers who can discern the general trend of the state and the sentiments of the people and who can make good decisions.”

54. Ibid., p. 18.
55. In 1843 France introduced modified universal male suffrage, followed by Belgium in 1893 and Norway in 1897. However, full universal male suffrage was not introduced in most countries until shortly before and after World War I. See Carstairs, A Short History of Electoral Systems in Western Europe.
judgements [on which step to take]. ... This role should be played by none other than the Sūmitsuin.”

Itō here envisages a political structure that is inherently fragile. Aware that some procedure is necessary to justify government action, since it can no longer claim legitimacy automatically, he is unable to foresee that the Sūmitsuin can never provide it. For it cannot be seen as neutral, because its members are appointed by government. In fact, the Sūmitsuin came under severe criticism as “a meddling force,” manipulated by government, when parties were gaining strength. And when political parties actually began to govern (1924–32), they often clashed with the Sūmitsuin, as in the cases of the latter’s refusal to endorse the government’s plan to rescue the financially strained semi-governmental Bank of Taiwan in 1927, and to ratify the London Naval Treaty.

Equally the House of Peers, which was given constitutionally equal status with the elective lower house, often blocked the latter’s bills, thus becoming a serious internal obstacle to the implementation of parliamentary decision.58 In this respect, the Constitution’s omission of the Cabinet’s joint responsibility aggravated the weakness of the government by depriving it of the ability to maintain policy co-ordination.

In the early years, however, those running the government, including Itō, keenly felt the need for their Cabinets to have unrestricted coordinating powers in order to carry out administrative reform, including reductions in military spending. They made serious efforts to introduce a Cabinet led by a Prime Minister who had ultimate authority, after Itō had returned from negotiations with China over the Treaty of Tianjin in April 1885.59

Thus the new Cabinet system of 1885, which was modelled after Prussia’s state councillor system of 1810, gave strong authority to the Prime Minister. Article 1 of the new decree concerning the Prime Minister’s jurisdiction says: “The Prime Minister advises on policy [to the Emperor] as Chief Minister and outlines general policy and supervises each office of government.” And Article 5 stipulates: “Laws, impe-

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58. Of the 53 bills proposed and passed by the lower house between the first and sixth sessions (1890–94), only 13 were passed by the House of Peers. See Banno, Meiji Kenpō Taisei no Kakuritsu (Tokyo: Tokyo Daigaku Shuppankai, 1971, reprint 1986), p. 62.
rrial ordinances and imperial rescripts require the countersignature of the Prime Minister and of a State Minister in charge of the affair.” Under the system the Navy and Army were also under the Prime Minister’s general supervision. Thus Article 7 says: “Each minister has to report to the Prime Minister. Even military affairs assigned to the head of the General Staff Office (Sanbō Honbu) in order to report to the Emperor directly must also be reported to the Prime Minister via Army and Navy Ministers.”60 However, the Constitution, which came into force five years later, dropped such references to the Cabinet and the Prime Minister, and effectively substituted “the Emperor” for “the Prime Minister” in the above provisions.61

Thus the Constitution undid the initial aim of a Cabinet, which was to ensure policy co-ordination and effective leadership. Instead power was dispersed, embracing the military, the bureaucracy, the Cabinet, and also the newly introduced Parliament. The omission of joint responsibility resulted in a weak Cabinet incapable of holding together political power. At the same time it created a procedural framework whereby any one governmental body could claim ultimate authority. Continuous bickering over the meaning of sovereign power ensued, as witnessed in the precarious treatment of Minobe’s Emperor-as-Organ theory. As a result, the inherent instability surfaced each time government leaders had to formulate a national policy, most notably but not exclusively in the cases of war or of signing a treaty with another country. Budgetary considerations, diplomatic relations, and other non-military demands also required that a civilian government assume precedence over the military, which the latter resented.62

In 1907 Itō and other civilian leaders successfully reversed the previous regulations concerning the issuance of imperial orders. Now all such orders, including military initiatives hitherto issued unilaterally by the Army or the Navy, required a countersignature of the Prime Minister. Behind the move was again the need for a Cabinet to be able

60. The decree is reprinted in ibid., p. 746.
61. Government leaders debated over the inclusion of joint responsibility during the final stage of writing the Constitution, but it was dropped as non-essential. See Inada, op. cit., vol. 2, pp. 705–9. Berger, on the other hand, attributes the creation of a weak Cabinet to the early leaders’ pragmatic attempt to prevent any faction from gaining the upper hand. See Berger, Parties Out of Power, p. 7.
62. For such conflict between the Cabinet led by Itō and the military during the Sino–Japanese War of 1894–95, see Masuda, Tennōsei to Kokka, p. 62.
to exercise leadership in policy-making, including military spending and deployment. However, the military quickly introduced its own decree (gunrei) that excluded military orders from the new rules. This consolidation of the military side of the imperial system (tennōsei) further undermined parliamentary politics, for civilian control could never be achieved under such dispersed arrangements.

Similarly the diffuse spheres of jurisdiction in the bureaucratic structure also made it difficult for party government to function, according to Tsuji Kiyoaki. State Ministers, he points out, ran their ministries directly, and were constitutionally independent of the Prime Minister. “Thus, even if a party Cabinet emerged, it would not be possible for it to totally rely on parliamentary politics in order to function effectively, because it would constantly need bureaucrats’ support and endorsement.” This structure prevented the Cabinet from developing into an independent decision-making body, and seriously inhibited the growth of party politics.

Bernard Silberman also relates the operation of the Japanese bureaucratic state to historical causes. Applying Max Weber’s definition of bureaucracy as “a legal–rational” form of domination, Silberman asserts that the Meiji government as a revolutionary authority lacked firm grounds for justifying its rule. Accordingly the Meiji leaders had to create legitimacy and authority. Yet ironically they had to rely on bureaucratic form and expertise, because the bureaucrats could produce “neutrality,” “predictability,” and an “authority” that could be seen as serving the good of the whole.

“In short, where unrestricted development of legal–rational norms occurs in the bureaucratic role it tends to produce a structure which claims autonomy and primacy because of its efficiency, universalistic values, and commitment to national rather than special interests. When this occurs, as in the case of Japan, political parties cannot confront the bureaucracy directly without leaving themselves open to the charge of

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63. For the content and the background of the new regulations (kōshikirei), see ibid., pp. 49–72.
64. Inoue Kiyoshi, Nihon Teikokushugi no Keisei, pp. 317–40.
65. Tsuji, op. cit., p. 111.
selfishness and self-seeking. The parties are thus forced to remain subordinate, and from this lack of equilibrium evolves the pattern of politics exemplified by the Japanese case.” Here the absence of legitimacy of the initial Meiji government, and the real and perceived demands of a form of state-making that emphasised efficiency and expediency, again created an environment inimical to party politics.

Relevant here too is Karl Mannheim’s distinction between “substantial” and “functional” rationality. Substantial rationality entails “acts of thought which reveal intelligent insight into the inter-relations of events in a given situation.” Functional rationality means “a series of actions organized in such a way that it leads to a previously defined goal, every element in this series of actions receiving a functional position and role.” Yet functional rationality cannot substitute for substantial rationality in providing the authority that can deal with the whole structure.

Thus in a bureaucratic state, unity and central authority become constant problems, since the bureaucracy cannot provide them. “It was precisely this flaw—the absence of authoritativeness in the basis of legitimacy—that was, I would suggest, the source of the crisis of authority that accompanied the new century in Japan.” Weak parliamentary politics was both a symptom and a cause of the absence of authority that could claim a “common” legitimacy.

“Common” legitimacy thus became a fundamental problem of the pre-war political system precisely because the system had prioritised the bureaucracy and undermined the procedural framework of decision-making. For Habermas however the legitimation of political action is a two-stage process. First, people have to agree on the meaning of legitimacy, and then based on that common understanding they have to agree on the “worthiness” of political action. Therefore, “The procedures and presuppositions of justification are themselves now the legitimating grounds on which the validity of legitimation is based.” Thus Habermas asserts that without procedural guarantees no real common legitimacy can be assured for political action. Here Habermas

69. Ibid., p. 253.
is discussing the general democratic decision-making process, not exclusively parliamentary politics. Nevertheless, this two-stage process of justification is applicable to parliamentary politics, because it underlines the importance of appropriate “procedures and presuppositions” for justifying political action. For politicians to assert that they are indeed legitimate policy makers, they need an accountable procedural framework to work in. Saitō’s contribution as a parliamentarian stemmed from his awareness that effective politics needs such endorsement.

Discretionary power on the other hand has no form, being free from “legal constraints.” Restrictions on the bureaucratic role are therefore essential. Thus, as Silberman puts it, “High levels of political development can be reached in the long run only when there are limitations placed on the development of legal–rational norms in the bureaucratic role and structure.” 71 In the absence of such, party politics in Japan became the victim of a system incapable of substantial rationality. Saitō’s ostracism therefore signals not only the ejection of substantial reality from politics, but also the demise of already fragile formal arrangements.

Despite such handicaps, party politics did begin to function in Japan immediately after the opening of Parliament. Yet the government’s immediate reaction was to create obstacles preventing the parties from gaining power. Shortly before the opening of Parliament Prime Minister Kuroda Kiyotaka told a group of prefectural governors that the government was determined to stand outside parties in order to ensure its own course and fairness. Itō Hirobumi also issued a statement that the country would not adopt such measures. 72 Nevertheless Japan’s first party government appeared in 1898, led by Kenseitō, which was formed through a merger between Itagaki’s Jiyūtō and Okuma’s Shinpotō, although the merger ended in four months because of policy differences. In 1900, Itō Hirobumi chose to establish his own political party, absorbing the Jiyūtō. Parties steadily grew, and in 1912 a popular magazine was able to hail the party era. 73

Mitani Taichirō attributes the rise of political parties in pre-war Japan to both domestic and international forces. Domestic develop-

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72. See Banno, Meiji Kenpō Taisei no Kakuritsu, pp. 29–37.
ments meant that the people had begun to express their wish to participate in decision-making more forcibly. The two wars from which Japan emerged victorious, the Sino–Japanese War and the Russo–Japanese War, had reinforced popular sentiment. The government had sought the people's sacrifice through higher taxes and conscription, and this closer tie between state and people not only strengthened their feelings of national identity but also their demands to play a more prominent role. The local suffrage movements began shortly after the Sino–Japanese War.

Rapid industrialisation also meant the emergence of private entrepreneurs and thus diverse private and local interests. Policy co-ordination became all the more necessary. Also, the increasing prominence of Japan’s regional position after the victories of the two wars necessitated unified diplomatic policy. In other words, Japan was now in urgent need of policy based on substantial inter-relatedness rather than on functional (mis)direction.

Mitani’s study focuses on Hara Takashi (1856–1921) who for him symbolises a significant shift in government. Hara became president of Seiyūkai in 1914, and four years later was the first Prime Minister to be chosen based on his party’s strength in Parliament. Possessed of a flexible vision and the bureaucratic skills needed to organise and run a party, Hara appreciated the transience of political power, and was relatively free from imperialist ideology. Simultaneously he took Parliament and the role of parties highly seriously. Such flexibility and fundamental adherence to parliamentary politics were common among his generation. Party politics had gained in momentum as a generation which had known the Jiyūminken Undō responded to the new political realities. Nevertheless, Japan’s era of pre-war party politics was short-lived. Its symbolic ending came in 1932, when the civilian Prime Minister Inukai was assassinated by military officers. This end of party politics coincided with the departure of a generation either by retirement or by force.74

74. Berger asserts that the pre-war Japanese political parties achieved neither financial independence nor ideological autonomy, and had to rely for survival on the support of such non-party elites as local leaders (meibōka), the genrō, the military, and senior bureaucrats. When these groups, the military and bureaucrats in particular, turned against them as happened in the 1930s, their fall from power was inevitable. See Berger, Parties Out of Power, pp. 21–2.
By now however party politics had also experienced its own internal problems. Although the parties gained in momentum in the early 1910s, they soon appear to have lost public confidence, because they could not align politics with the populist domain. Most importantly they could not define policy priorities sufficiently distinct from matters of expansion, national unity, and economic “progress.” The failure of party politics in these years was (as now) in significant measure a failure of vision.

As a major cause of stifled party organisation, Mitani also cites undeveloped social organisations outside Parliament. There are two major reasons for this. One reason of course was the government’s constant attempts to check social movements through various measures, such as the press laws and police regulations. Hara had himself resisted the introduction of universal male suffrage, and when it was finally introduced in 1925 it came with the Peace Preservation Law. The government, then run by a political party, had refused to modify the country’s policy priorities.

Extra-parliamentary organisation may also have been affected by the speed of Japan’s social regimentation, as Maruyama explores. A capitalist economy had quickly penetrated into people’s everyday lives, intensifying alienation. Within the general disaffection politicians were seen to be more and more detached from ordinary people, to be aligned with the ruling class in general. The suppression of socialist and communist movements also demonstrated how government, led by parties, could frustrate demands for public participation in government decision-making. At the same time, associative individualism, as Maruyama pointed out, was nonetheless anathema for many. In all of these ways matters of national development were allowed to proceed at the expense of adequate representation, with party politics beset by institutional weakness, its own inertia, and a dispirited populace. All of this acted on Saitō as a kind of provocation, and we will now examine his attempts to bring political parties closer to the centres of power.

SAITŌ AND THE CONTAINMENT OF POWER

“The absence of authoritativeness in the basis of legitimacy”—the unsettled question about who had ultimate authority in decision-making—was keenly felt by members of Parliament, including Saitō.

75. Mitani, Nihon Seitō Seiji no Keisei, p. 213.
They had not only to discuss immediate issues but also to grope for a source of legitimacy that could justify their arguments. Aware of British political thought and the British parliamentary system, and faced with the embryonic stage of his own country’s political structure, Saitō also felt the need for such definition. For this project, he took up the term “kokumin seiji” as his conceptual tool.76

The phrase kokumin seiji (national or popular politics) recurs in his writings and speeches throughout his life. In one sense it implies parliamentary politics and the British two-party system, to which he adhered. In a broader sense it echoes Saitō’s life-long concern with the nature of political power permissible in a free society. Phrases such as “kokumin seiji” were crucially important to reformers such as Saitō, because there were then available very few such terms capable of linking the people to government.

In this section therefore we will examine two themes that Saitō understood as key principles of parliamentary politics: the limitation of government power, and political accountability. We will trace these principles in his support for a two-party system and for universal male suffrage, and also in his criticisms of the discretionary powers of the Sūmitsuin, of the genrō, and of the powerful House of Peers. He was also alert to the frequent misuse of the imperial prerogative (taiken).

In the formation of his political views, Saitō was clearly indebted to nineteenth-century British liberal thinkers and constitutional scholars, in particular to John Stuart Mill, Walter Bagehot, and A.V. Dicey. The Hikaku Kokkairon, which he published in 1906 privately, echoes his reading of their works, particularly Mill’s On Liberty and Dicey’s classic study of English constitutionalism An Introduction to the Study of the Law of the Constitution of 1885. From Mill Saitō absorbed the justifications for representative government, and from Dicey how it could be achieved. In the opening page of his Hikaku Kokkairon Saitō defines the common awareness of the people as “the engine of politics.” Thus any political force that does not command common consent is illegitimate, because it does not have authority over the people. “Authority that pro-

76. “Kokumin” became a key term in Japanese political discourse from the late 1880s, alongside “kokkai” (the state). See Gluck, Japan’s Modern Myths, p. 23. For the usage of “kokumin,” as opposed to “minzoku” (a race or ethnic nation), and the former’s problematic acceptance in early twentieth-century Japanese political discourse, see Kevin M. Doak, “What is a Nation and Who Belongs?” p. 287.
duces power does not occur accidentally. ... It is based on the will of the people. ... Any authority not based on the will of the people will eventually dissolve, however strong it may look.”

At this stage, however, Saitō by no means endorses the principles of equality or universal suffrage. On the contrary he accepts inequality in talent and motivation. Yet he understands that the will of the people is a legitimate and necessary concept in the defence of personal freedom.

The liberty of the individual is central to Mill’s thought. He believes that social progress is possible only if people are free to engage in their own activities. Mill also believes that men are capable of “rational choice” in the collective attempt to conduct their own affairs. Representative government is better than despotism, because the former provides the people with a chance to develop their own abilities, while the latter stifles such development.

According to Mill, there are two schools of thought concerning the origins of political institutions. One school insists that government is “strictly a practical art, giving rise to no questions but those of means and an end.” The other school thinks that forms of government are not a matter of choice, but “a product” of a people’s “habits, instincts, and unconscious wants and desires, scarcely at all of their deliberate purposes.” Mill is opposed to both schools. He wants to see the participation of self-conscious individuals in the deliberate formation of a nation’s political institutions.

“Let us remember,” Mill observes, “that political institutions (however the proposition may be at times ignored) are the work of men; owe their origin and their whole existence to human will. ... In every stage of their existence they are made what they are by human voluntary agency. ... On the other hand, it is also to be borne in mind that political machinery does not act of itself. As it is first made, so it has to be worked, by men, and even by ordinary men. It needs, not their simple acquiescence, but their active participation; and must be adjusted to the capacities and qualities of such men as are available.”

77. Saitō, Hikaku Kokkairon, p. 11.
79. Ibid., p. 206.
80. Ibid., p. 207.
tion of a people, three conditions are necessary: their acceptance of government, willingness to accept change, and practical commitment. Representative government is the most acceptable variant, if not the best, to realise these conditions.

Directly echoing Mill, Saitō says, “Human thought and activity must be actually used. They can be developed only when they are used. They will not grow otherwise. ... Under despotism, the people’s freedom of speech and activity will be prevented, and there will be no chance that they will develop.” With this end in mind, Saitō approves the British-style parliamentary system wholeheartedly. The influence of Jiyūminka Undō and Fukuzawa notwithstanding, his reading of Mill and others made his vision of an ideal, consciously constructed, inclusive, and developing political system much more specific.

From Dicey, Saitō also learned the working principles and mechanisms of a constitutional system. For the aim of Dicey’s constitutionalism was to limit monarchical authority so as to safeguard personal liberties. This principle made a lasting impression on Saitō. He imagined political power as the expression of a fictional agreement of a people not to stifle their liberty in any fundamental way. This understanding was to underpin his enquiry into legitimacy and accountable government.

Saitō also learned, from Dicey, the evolution of the English constitutional system. It had evolved and was still evolving, based on the principle of liberty. The fact that constitutional conventions were as important as law for its operation testified to the indispensability of a common understanding of that principle. He quickly applied Dicey’s claim to his own country’s Constitution, and concluded that an untramelled application of the Constitution would result in despotism:

Without the help of conventions, a constitutional system cannot function. It becomes apparent if we think of the Japanese case. Under the Constitution, the emperor can dissolve the House of Representatives as many times as he likes. He can reject a bill passed by Parliament. If Parliament refuses to pass a law, the emperor can avert the crisis by issuing an emergency order or an independent order. If Parliament refuses to pass a budget, he can implement the previous year’s budget, and also

81. These are “the three fundamental conditions of the adaptation of forms of government to the people who are to be governed by them” (ibid., p. 211).

82. Saitō, Hikaku Kokkairon, p. 19.
POWER AND DISSENT IN IMPERIAL JAPAN

spend irrelevantly to a national budget. The emperor can appoint state ministers freely. They are responsible to the emperor alone, and not to Parliament. This means [theoretically] that those ministers will keep their posts even if they act against the will of Parliament. If we actually apply these principles and assume that that is the way of conducting constitutional politics, constitutional politics and Parliament will have no meaning in our country.83

Thus in Japan restraining conventions were essential in order to ensure constitutional politics, precisely because the Constitution did not guarantee their continued existence.

Clearly therefore the idea of political evolution encouraged Saitō. The English system was advanced, and his own country’s system still in its infancy. But there was no reason why the country could not reach the English stage, if progress was made based on the principle of limiting unqualified power. Thus Saitō expounded his own Emperor-as-Organ theory: “The monarch, who may be called normally absolutist, is in fact a mere organ of the people.”84 By highlighting the organic relationship he insists that any political power exercised by the monarch has to defer to a limiting agreement, enshrined in law or through convention.

Here Saitō shares with Minobe the challenge of how to create a political creed in tune with constitutional principle. In Saitō’s case, the challenge was more immediate as it was combined with everyday politics. Constitutional matters recur in his parliamentary speeches and writings, in an attempt not only to discuss immediate issues but also to create enabling political conventions. This emphasis was central to his career as a parliamentarian.

Saitō’s support for a two-party system exemplifies his efforts to combine a political creed with everyday politics. Thus in early 1914, as a member of the opposition Dōshikai, he urged his colleagues to work towards joining other parties so as to create a single party strong enough to compete against the ruling Seiyūkai, which held 203 seats, compared with Dōshikai’s 93 seats. During a speech he delivered soon after, at a party meeting, Saitō proclaimed that Japan was most highly suited to two-party rule. Quoting Lawrence Lowell’s Governments and Parties in Continental Europe of 1896, in which Lowell analysed why a two-party

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83. Ibid., pp. 46–7.
84. Ibid., p. 23.
system failed in many European countries, Saitô cited several conditions detrimental to the system: multiracial tensions, strong socialist parties, diverse regional differences, religious conflicts, and persistent differences about national polity, as in confrontations between monarchists and republicans. Following Lowell he also cited unhelpful national temperaments. In a simple but forceful manner Saitô told his colleagues that Japan had none of these problems, and was suited to a two-party system.

The real aim of the speech however was to criticise other members of Parliament for their inability to work together based on shared opinion. According to Lowell, achieved consensus “is the foundation of all political authority,” and in France those who do not accept “the consensus on which the political authority of the day is based are termed ... Irreconcilables.” Saitô blamed Japanese Irreconcilables for blocking the prompt formation of a two-party system in Japan. He further criticised his fellow politicians’ inability to formulate policy based on a thorough examination of the issues as well as on shared political belief. Such articulation he felt essential for the active exchange of opinion that ought to sustain a two-party system.

Saitô also saw the two-party system as a “mode of limitation,” affecting the individual and the community, and as a self-regulating mechanism whereby power was transferred from one party to another based on public support. Here he has clearly incorporated Mill’s distinction between legitimate and illegitimate power vis-à-vis the liberty of the individual. For no power is permanent and absolute, and rulers must be “elective and temporary.” Saitô’s support for a two-party system springs from this understanding of authority and legitimacy, in which Mill’s influence is palpable. Saitô went on to develop these arguments in his Kenpō oyobi Seijironshū of 1915, his meditation on and enquiry into Japan’s party politics with reference to the British system.

Here he emphasised the role of opposition, not just that of an opposition party but also of public protest. Both were indispensable parts of the self-regulating mechanism. “If Parliament does not represent the popular will (min’i), popular movements are inevitable. By so doing they are merely exercising their political rights.” Saitō at this time as a lawyer was defending those who took part in a mass demonstration in Hibiya Park against the Yamamoto Cabinet over a bribery scandal involving naval officers and the German firm of Siemens and the British firm of Vickers. The pressure of contemporary events had clearly reinforced his commitment to principle.

Saitō, as a member of the opposition Dōshikai, always found it easy to attack the Cabinet. Yet he also remained alert to any force that tried to reduce personal freedom, and as with Minobe and Sakai his alertness to social change always made him ready to modify his position. One such change is seen in his support for universal suffrage.

Until 1919 Saitō had been opposed to universal suffrage. Yet in a speech on 26 February 1920 he explained why he and others submitting a bill now supported it. The post-war world was embracing democracy, and universal suffrage was fast becoming a common practice in the West. He saw the victory of Britain and its allies as a victory for democratic forces. Germany, the loser of the war, epitomised “bureaucratic, military government” where constitutional representation was merely nominal, and it was now defeated by the “democracies.” The results of the war

89. Saitō, Kenpō oyobi Seijironshū, p. 110.
90. Ibid., p. 113.
91. Immediately after The London Telegram had reported those firms’ corrupt contractual agreements with the Navy, the scandal was widely reported by newspapers, instigating many anti-government demonstrations, including violent confrontations between demonstrators and the police in Hibiya Park on 10 and 14 February 1914. The Dōshikai took the lead in the protest movement against the government led by Seiyūkai-backed Yamamoto Gonnohyōe, who was an Admiral. The Yamamoto Cabinet resigned en masse on 24 March 1914.
92. Saitō’s concern was always with the global trend in which male universal suffrage had become a norm, with women’s suffrage to follow. See the Teikoku Gikai Shūgūin Gijī Sokkirioku (transcripts of parliamentary debates at the House of Representatives, the Imperial Diet, reprinted by Tokyo Daigaku Shuppankai, from 1985, hereafter TGSGS), vol. 46, p. 480.
thus reinforced Saitō’s adherence to “kokumin seiji.” In his speech, Saitō reiterated the principle that only a government that had popular support was capable of the authority necessary for national politics. Universal suffrage was now essential so as to strengthen the link between the popular will (min’i) and national decision-making. “Without universal suffrage, it will be impossible to … help the people demonstrate their political abilities, and promote popular national unity, and impossible to solve the country’s domestic problems.”

Equally, without such genuine national unity, it will be impossible for the country to cope with recent global changes and to maintain its regional leadership. Saitō insists that government which is not based on popular support is weak, and sees the strengths of Britain and its allies in the form of governments based on fuller endorsement. He criticises the Hara Cabinet, saying that it cannot solve the problems confronting it because it is influenced by “invisible” forces that derive from the present restrictive elections. If it wants to tackle inflation or solve labour and other social issues, “the capitalist and propertied class will oppose it.” “In short the government is weak because it is not based on the masses but based on a minority. This weakness hurts the government, and eventually hurts the people as a whole.”

Later that year, in the general election of 1920 that took place under the first single-seat constituencies system, Saitō lost his seat. In 1924 he regained it, and in March 1925, he delivered a speech supporting male universal suffrage as a member of the ruling party. In this two-hour address to Parliament, he surveyed past attempts to extend the suffrage and the arguments surrounding it. In 1903, a bill for introducing universal male suffrage had been submitted to the House of Representatives for the first time, and in 1911 it was passed by that house, but rejected by the House of Peers. Saitō asserts that “It is an unarguable fact that the present constitutional countries have passed the stages of oligarchy and bureaucracy, and moved to democracy (tasū seiji) and kokumin seiji. The ideal of universal suffrage stems from the principle of political equality: asset-based privileges should be no longer recognised. The state should be removed from the monopoly of a minority and made into something common among the people, thus making state and people identical, and

94. Ibid., p. 316.
their interests also.”95 Here Saitō’s adherence to kokumin seiji is highly explicit, and once again he echoes Mill: “The rulers should be identified with the people. ... Their power was but the nation’s own power, concentrated, and in a form convenient for exercise.”96

Saitō in this speech summarises two main sources of opposition to the introduction of male universal suffrage. One is that universal suffrage is incompatible with the country’s constitutional principles. To refute this argument, he invokes the Constitution and also the Charter Oath, whose first article called for public debate on policy decisions. As we have seen already, “public debate” in the Charter Oath did not necessarily mean bona fide public debate. Yet Saitō uses the article, as other political reformers do, to promote wider political participation, thus reinterpreting the very meaning of “public” (kō) to justify his position. He was able to do so because both the Charter Oath and the Constitution touched upon the question of legitimate authority: in the very phrase “public debate” in the former, and in the legislative role of Parliament ensured by the latter. Saitō, as a member of the ruling party, confidently claims that universal suffrage reflects the basic principles of the country’s constitutional system.

Another major criticism of universal suffrage was that it was linked to “dangerous” thought, and such radical change would disturb the social order. After the Russian Revolution and the global trend of democracy, all kinds of thought were introduced into Japan, Saitō confirms. Thus when Morito Tatsuo, a junior professor at Tokyo Imperial University, introduced Kropotkin’s theories in an academic journal in late 1919, he came under fierce criticism from the nationalist student organisation Kōkoku Dōshikai as an advocate of anarchism.97 The university authorities yielded to such pressure, and suspended Morito and Ōuchi Hyōe, editor of the journal, from the university. They were prosecuted for violation of the Press Law. In 1920 the Supreme Court ruled they were guilty.

Implicitly referring to such cases, Saitō repudiates what he sees as misguided sensitivity on the part of the authorities. Echoing Mill's

97. Kōkoku Dōshikai was one of several organisations formed around this time to counter such reformist organisations as Reimeikai (see Saitō, Ōshū Shokoku no Seitō Jijō, p. 23, and Kenpō oyobi Seijironshū, p. 94). Among its sympathisers was Uesugi Shinkichi.
endorsement of diversity and plurality of thought, Saitō proclaims that there is no such thing as dangerous thought when people are allowed to express their opinions freely. “Dangerous thought begins to grow only when the popular will is oppressed and rights are threatened.”

Saitō also feels he has to defend universal suffrage against the fear of change, which he asserts is irrational. Some also reject universal suffrage as a foreign import. Yet according to Saitō, Japanese history is full of such imports, and its political system will not function if some aspects of it are rejected as “foreign.” The use of such concepts reduces necessary debate, and politicians should not exploit Japanese particularism.

Saitō also took the opportunity to attack a proposal made by one of the opposition parties, Seiyū Hontō, for giving voting rights only to family heads. “The basic unit of the state is the individual,” Saitō says, echoing Fukuzawa. “National progress will be possible only when the individual can act spontaneously and exercise his political abilities as much as possible.” Saitō’s speech transcends its immediate purpose and suggests his entire embattled programme.

Thus when Saitō made his parliamentary speech of 1925, male universal suffrage was widely supported, even among nationalists such as Uesugi. For them, extending the suffrage would allow the people and the emperor to become closer and thus strengthen national unity. However, for Saitō, national unity derives from individuals who act freely and spontaneously. Unity should not and cannot be imposed on the people. People need to be persuaded rationally before they support a policy: politicians are responsible for such persuasion, and only universal suffrage will allow this process of rational persuasion to develop. Thus, says Saitō, “To direct a people, factual and logical substance is necessary. Any attempt to create the opinion of the people by abusing radical language, without presenting objective facts and logical substance, is destined to fail.”

Saitō therefore supported universal suffrage as a step towards creating an “agreed” national unity. For this purpose open discussion was

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98. TGSGS, vol. 46, p. 479.
99. Ibid., p. 480. For the traditionalists’ attack on political parties as “organizations of alien origin,” see Berger, Parties Out of Power, pp. 28, 58.
100. TGSGS, vol. 46, p. 481.
101. Ibid., p. 481.
essential. Countering the criticism that universal suffrage would damage family unity, he affirmed that discussion should be encouraged even between father and son. The very aim of Parliament was discussion, and difference of opinion did not damage the system.

However, in this same speech of 1925 Saitō surprisingly dropped his previous support for a two-party system. Again global trends provided the mainstay of his claim. “Given social progress and the complexity of society, politics based on confrontation between two parties is impractical and unachievable.” Now he supports proportional representation, but thinks that its introduction requires more study. For the present Japan should be content with multi-seat constituencies because they offer a kind of proportional system. So, during this session, in addition to the passage of male universal suffrage, the single-seat constituency system introduced by the Hara Cabinet was replaced by the new constituencies. Saitō’s apparent volte-face is that of a political pragmatist still inspired by open debate.

Kamizawa Sōichirō regards this 1924–25 parliamentary session as an “epoch-making moment” in Japan’s parliamentary history with regard to the depth and breadth of public discussion. In this regard, Saitō made a strong contribution, adding his voice to a movement well under way. Calls for universal suffrage had grown after World War I. The Rice Riots in 1918 were a catalyst for an outburst of public grievance against restricted political rights: already in early 1919 students and workers were demonstrating in various parts of the country seeking universal suffrage. Kenseikai, to which Saitō belonged, began to discuss a possible suffrage bill in that year. In February 1920, public meetings calling for universal suffrage were common, attracting large numbers of people on a “scale that had never been and would never be seen in the pre-war period.” Saitō’s 1920 speech was made in such an atmosphere. Nevertheless his party’s later proposals included a clause that only men who were economically independent could vote. Saitō was clearly listen-

102. Ibid., p. 484.
105. Ibid., p. 152. On 11 February alone, more than 30,000 people attended such meetings in Tokyo.
ing to people outside Parliament, for he was one of the few radicals who advocated male universal suffrage without such a clause.\textsuperscript{106}

After Saitō’s defeat in the 1920 general election, local youth had gathered around him to support his return to Parliament. From now on, his main supporters were voluntary and local. All were influenced by more or less socialist thought, and they became Saitō’s lasting support base in the constituency even after his expulsion from Parliament.\textsuperscript{107} Hence Itō Yukio is able to attribute Saitō’s 1924 victory to the dissemination of liberal thought during the Taishō period. The people had become more aware of their rights because of better education and the growing circulation of socialist and liberal magazines. Also there was general discontent with Seiyūkai’s economic policy amid the post-war recession.\textsuperscript{108} On returning to Parliament, Saitō pushed through the introduction of male universal suffrage as the leader of the supra-party parliamentary committee that drafted the bill.\textsuperscript{109}

However, Saitō had to be content with a significant watering down of the bill because of power relations. When the government finally adopted the bill in December 1924, it included a clause that eliminated those who received public financial support from eligibility. Matsuo speculates that the government did this under pressure from the Sūmitsuin.\textsuperscript{110} More damagingly, the passage of the bill was accompanied by the introduction of the Peace Preservation Law. Intended to suppress communist sympathisers, the law, as we have seen, allowed the authorities to prosecute anyone on the grounds that they had “the intention” of denying private property and overthrowing the national polity. It is believed to have worked most effectively in the containment of dissent both within the country and in its colonies, and in the political disablement of the population as a whole until its repeal in 1945. Largely the work of the bureaucracy, it was supported by the government to placate the conservative forces hostile to universal male suffrage. The support Saitō gave to the Peace Preservation Law, even despite the elements of strategic compromise involved, stands in uneasy relation to his liberal


\textsuperscript{107} Kusayanagi, Saitō Takao, pp. 231–6, and Matsumoto, op. cit., pp. 168–70.

\textsuperscript{108} Itō, op. cit., p. 274.

\textsuperscript{109} Ibid., p. 309, and also Matsuo, Futsūsenkyo Seido Seiritsu, p. 307.

\textsuperscript{110} Ibid., p. 307.
creed and “kokumin seiji” ideals. For clearly, the introduction of another oppressive law also expanded the domain of discretionary power, which would bear down upon him increasingly.\textsuperscript{111}

Nevertheless, despite his pragmatism, Saitō had long understood that the exercise of power and responsibility were inseparable. Thus, “As long as they take the whole responsibility politically, State Ministers must be allowed to exercise their expertise freely.”\textsuperscript{112} Yet out of this power–responsibility linkage, Saitō is quick to criticise the Sūmitsuin and genrō for being unaccountable, and thus unconstitutional. “State Ministers’ responsibility may be questioned by Parliament, but no one questions that of the Sūmitsuin. ... In reality the Sūmitsuin is not a constitutional advisory organ, but an institution that prevents the normal operation of constitutional politics.”\textsuperscript{113} The genrō were also above the Cabinet and unaccountable for their own decisions: Saitō notes that the genrō will play the important role of choosing the next Prime Minister as long as political parties are not capable of transferring power themselves.\textsuperscript{114} Accordingly Saitō found the House of Peers another unaccountable source of Parliament’s disunity, and a further obstacle to democratic politics.\textsuperscript{115}

Typically then, Saitō frequently used his parliamentary speeches to criticise the country’s political system for lacking an appropriate framework in which those who exercised power could be held accountable for their own actions. Hence in 1920 he told Parliament: “Our government does not have central force. But that is not the only problem. There are various kinds of force, which are unconstitutional and unjust, which operate here and there, and which compete with each other both openly and secretly. There is no national power that can overcome and unify these disparate forces. This is a major defect of this country’s politics.”\textsuperscript{116} Saitō hoped that the introduction of universal male suffrage, despite the

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\item\textsuperscript{112} Saitō, \textit{Kenpō oyobi Seijironshū}, p. 25.
\item\textsuperscript{113} Ibid., p. 28.
\item\textsuperscript{114} Ibid., p. 34.
\item\textsuperscript{115} Ibid., p. 36.
\item\textsuperscript{116} TGSGS, vol. 36, p. 317.
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watering down, would help to solve this problem, creating a solid platform on which government could claim both authority and legitimacy.

However, the first application of universal male suffrage in 1928 did not lead to any significant resolution. On the contrary, the Home Affairs Ministry responded to the first general election held under the new rules with a large-scale crackdown on communists. Meanwhile, the growing anti-Japanese sentiments in China and the move led by its Nationalist Party to unify the country threatened the Japanese military establishment. So, in May 1927 Prime Minister Tanaka Giichi sent troops to Shandong to support the pro-Japanese warlord Zhang Zuolin. Throughout 1928, Japanese and Chinese troops clashed on various occasions. It was this beleaguered government, aggressive both at home and abroad, that Saitō saw as blatantly undermining parliamentary politics. For by acting in this way, the government was abandoning a key prerequisite for the operation of constitutional government: the need to assert its authority through the demonstration of its legitimacy, through the trust of the people, and by an adherence to parliamentary procedure. For him a government incapable of claiming legitimacy except through “expediency” was inherently weak.

Saitō articulated his concern about the misuse of ideology and the deliberate undermining of constitutional conventions in a parliamentary interpellation targeting Prime Minister Tanaka, made on 22 January 1929. In his speech Saitō frequently invoked the theme of accountability in order to criticise Tanaka. He drew attention to it in the following areas: the government’s intervention in election campaigns, Tanaka’s decision to appoint a controversial businessman-turned-politician to be Home Affairs Minister, the government’s spending practices without parliamentary sanction, and the use of an imperial ordinance to revise the Peace Preservation Law. It was this last issue where Saitō’s arguments were most convincing. For “expediency,” he said, must be objectively explained, and the use of an emergency imperial ordinance (chokurei) was only acceptable in order to maintain the public safety, to cope with a truly urgent situation, or when Parliament was in recess.

In fact the government had not submitted its bill to amend the law until the fifth day of the previous two-week extraordinary session, leaving little time for debate. Saitō alleged that the government could have extended the session so that Parliament could discuss the bill, but it had
decided not to do so because “It was concerned with the widespread opposition that encompassed the public (kokuron), some members of the government and the ruling party [Seiyūkai], and also the Sūmitsuin.” The government had then dithered for two months, before finally invoking chokurei to revise the law. “Given the circumstances,” said Saitō, “it is hard to believe there is an urgent situation.”

Saitō was not convinced by the government’s explanation that a tighter law was necessary in order to prevent communists from gaining power, because he did not believe in such a danger. Certainly communists did not have the influence to overturn the fabric of society: “Observing the country’s situation now, we cannot agree with the government’s propagandistic statement warning us against the arrival of an era of terror because of the unstoppable dissemination of communism.” Instead by invoking an imperial ordinance to tighten the law, the government was causing far greater damage, undermining the very foundation of constitutional government. Knowing that Parliament would oppose the bill if it was normally presented, “The government has ignored public opinion and Parliament, and enacted a law that allows it to charge people with the death penalty. This is nothing but autocracy in the guise of constitutional government.” Saitō warned that such a law would promote neither a complaisant people nor the public peace. On the contrary oppressive government would alienate the people, and foment radical resistance. Nevertheless, despite his and others’ criticisms, the Seiyūkai-dominated Parliament approved the revision retrospectively when the government sought its approval as the Constitution actually required.

However this use of an imperial ordinance to tighten the Peace Preservation Law reflected the government’s loss of authority on all fronts. Frustrated by Tanaka’s reconciliatory policy, the Japanese Kwantung Army assassinated the Manchurian warlord Zhang Zuolin in June 1928. Saionji, a former Prime Minister and the sole remaining genrō, told Prime Minister Tanaka that it was necessary to impose severe punishment on the military in order to maintain international trust in Japan, to remind the military that its undisciplined behaviour would

117. TGSGS, vol. 56, p. 28.
118. Ibid., p. 29.
119. Ibid., p. 29.
be punished, and to improve the country’s relationship with China.\footnote{120}
Persuaded by Saionji, Tanaka demanded stronger punishments for those involved in killing Zhang, but those supporting the military, including even some members of his own party, resisted strongly. Confronted by a hostile Parliament, Tanaka was helpless to assert his authority.\footnote{121}

Thus, without clarifying the question of responsibility, Tanaka was forced to resign because neither the military nor Parliament supported him. Masuda Tomoko speculates that if Tanaka had brought the issue to Parliament and the latter had supported the Prime Minister’s position, the practice of subjecting the supreme military command to the Cabinet’s jurisdiction might have taken root.\footnote{122} With Tanaka’s resignation, his demand that those involved in the killing of Zhang be tried by court martial was ignored. Thus a crucial opportunity for the government to assert its authority based on the backing of Parliament was lost.

Some semblance of party government survived when Saionji appointed Minseitō’s Hamaguchi Osachi as the next Prime Minister. However, the problem of divided government continued to grow, and Japan’s position in Manchuria became all the more fragile in the face of growing Chinese resistance. The Hamaguchi government managed to sign the London Naval Treaty in 1930 despite fierce opposition from the military, but the degree of manoeuvring to which it had to resort—even invoking the emperor’s discretionary power (\textit{taiken})—reveals the further crumbling of constitutional government. For the Cabinet was no longer able to contain the competing forces unless it too invoked the emperor’s all-inclusive authority. Masuda asserts that such manoeuvring only exacerbated the existing ideological and institutional divisions, prompting calls for the termination of constitutional and parliamentary government altogether.\footnote{123}

Thus pre-war party politics in Japan could not survive the ideological and institutional divides of government, and the pervasive reliance on discretionary power. Nevertheless the parties themselves were also

\footnote{120}{See Masuda, \textit{Tennōsei to Kokka}, p. 139.}
\footnote{121}{His Transport Minister Ogawa Heiichi advised Tanaka not to disclose in Parliament Japanese involvement in the killing of Zhang, because it would trigger a widespread attack on the Cabinet. “Punishment of the Army is not worth such a sacrifice.” Quoted by Masuda, ibid., p. 141.}
\footnote{122}{Ibid., p. 141.}
\footnote{123}{Ibid., p. 178.}
complicit in their own decline. In fact the Japanese parties bickered with each other constantly. And Saitō was not immune to such behaviour. Thus in a speech of 22 March 1932, he censured Prime Minister Inukai for staying in power despite the Sakurada Gate Incident earlier in the year, a failed attempt to assassinate the emperor by a Korean resident resentful of discrimination. Inukai had tendered a letter of resignation, which was rejected by the emperor’s aides, concerned for the discipline of the military. Saitō was strongly partisan, and unusually emotive. He criticised Inukai for failing in his responsibility to support the emperor. The speech was intended to oust Inukai, whose government was already facing serious internal problems. Yet Inukai’s chief priority had been to end the escalation of the Manchurian Incident, as he explained in his reply to Saitō. His Cabinet had decided not to recognise Manchukuo, based on international law, ten days earlier, although a major faction of his party was calling for recognition and also for the country’s withdrawal from the League of Nations. Saitō in his speech inadvertently contributed to the undermining of Inukai’s efforts to contain the runaway military and to resume civilian control. Although Saitō was critical of the “non-elective forces” that tried to bring down the Cabinet, in this instance he appears to have been too little aware of his own role in that process (Inukai was assassinated two months later).

Saitō’s contribution, however, was by no means as important as the procedural deficiencies of the parliamentary system as a whole. According to Takahashi Susumu and Miyazaki Ryūji, it was the elimination of Parliament and thus the electorate from the procedures concerning the transfer of power that was primarily responsible for the eventual fall of parties. For in pre-war politics it was extremely rare for a new Prime Minister to be selected as the result of a general election. Normally, most general elections were held several months after a new Cabinet was formed. After the formation of a Cabinet, its leaders would replace many local governors with their supporters in preparation for an election, and the new governors would interfere in election campaigns.

As a result, it was very difficult for an opposition party to take power through elections. Thus for the opposition it was important not only to exaggerate any blunder that the ruling party had made but also to collude with those non-elective bodies hostile towards it. This practice continued even during the time of the two-party system of Seiyūkai and Minseitō. Once again the most serious consequence was the loss of public trust: “Both Seiyūkai and Minseitō attacked the other party for any error that it had made to the extent that such an attack would appear to be a total denial of the other’s governing ability. In the eyes of the public, such mutual in-fighting created the impression that both parties were incapable of governing … thus alienating the electorate.”

In addition, amid the prevailing pettiness, the parties failed to contest each other’s policies within sufficient rigour. “This failure prepared for the decline of party politics. It may not have been linked directly to the rise of an anti-party force, but it diluted public support.”

This process was also affected by the rapidly expanding role of government. For when the state was expanding as an ideological and material force, as the planner and financier of various local projects, parties as a spontaneous unity of individuals who shared a political creed found it difficult to develop. With “no great organised parties” candidates had to secure “local influence and personal interests” in ways that directly recall Lawrence Lowell’s account of the French situation (as Saitō must have realised). This primacy of local interests clearly militated against the formation of parties based on national needs and priorities.

In this way parties were both culprits and victims in a dysfunctional system. Saitō, however, refused to take up specific local interests, unlike other politicians. Instead, he discussed national issues such as electoral laws, protection of human rights, and constitutional procedures. His constituency clearly supported him, but not for the local interests that he might promote.

Nevertheless “kokumin seiji,” popular politics, was always at the heart of Saitō’s political creed. It was this vision that survived throughout his
life, and prompted him to confront the government in his crucial speech of 1940. In 1941, when he was out of Parliament, he returned to the same theme: “The most natural and safest way of conducting politics to ensure social and intellectual progress is to allow the people to take part. It is an undeniable fact that human history is moving in that direction, and no force can stop it. In time of war or when rapid deployment of national force is necessary, a political system antithetical to that direction may emerge, but it is merely temporary. Anyone who aims at becoming a politician should not forget this fact.”132 His vision was born of deep conviction and based on a fundamental faith in accountable representation. Yet when he wrote this passage, he had witnessed the transformation of government into an enormous self-referring system of administration with unmitigated power over people’s lives. Now the government was intent on tightening its grip in response to the expanding possibilities of war. The National Mobilisation Law, which was introduced in 1938, was revised to increase government autocracy, the Peace Preservation Law was also revised to allow the authorities to detain civilians in “preventing crime” (yobō kōkin), and in 1941 the National Defence and Security Law (Kokubō Hoanhō) was newly introduced. Parliament was still in operation, but the parties were defunct. Saitō had witnessed the annihilation of the constitutional framework which he had tried to build throughout his life.

But pre-war parliamentary politics in Japan was not without some positive achievements. It owed its fragile existence to members such as Saitō who clearly understood the tension between national goals and individual liberties, and the role of Parliament in negotiating that tension. Saitō’s political behaviour was sometimes flawed, yet precisely because the Japanese parliamentary system was so clearly threatened, commitment such as his was indispensable in the search for acceptable representative government.

By the late 1930s the fragmented military-led Japanese government had taken the whole nation towards full-fledged war. How did Saitō, who was by no means totally opposed to the use of force, become one

132. Saitō, “Hijōji ni shosuru Gikai Seiji no Tokushitsu,” in Saitō Takao Seijironshū (Tokyo: Shinjinbutsu Ōraisha, 1994), p. 119. He wrote the article in May 1941, but it was published only posthumously.
of the staunchest critics of its policy? The next section will attend to this question.

SAITŌ AND AUTHORITY: THE TOTALITARIAN CHALLENGE

In 1940, the German legal expert Ernst Fraenkel attempted to explain how the German totalitarian regime had grown out of the constitutional arrangements of the Weimar Republic. He observed the gradual and systematic abandonment of the rule of law in various court rulings and legal procedures, a process whereby the Rechtsstaat (legal state) was subverted by political expediency. Traditional “rational” Natural Law and idées générales were denied. Instead, “people’s” law and ethnicity became the central principles of legal order, thus subjugating that order to particularist German interests. Law became a “measure,” applied for immediate political purposes rather than for protecting people’s rights, which were no longer regarded as universal. “There are no legal rules governing the political sphere. It is regulated by arbitrary measures (Massnahmen), in which the dominant officials exercise their discretionary prerogatives.”¹³³ Fraenkel called such a system the “Prerogative State.” In National-Socialist Germany, the “Prerogative State” co-existed with the “Normative State,” which was “an administrative body endowed with elaborate powers for safeguarding the legal order as expressed in statutes, decisions of the courts, and activities of the administrative agencies.” In this dual structure the “Prerogative State” subverted the “Normative State,” facilitating the rise of Nazi dictatorship.¹³⁴

Saitō observed a similar development in Japan: the incremental collapse of the state structure. The driving force of this development was the military, whose expansionist ambitions received a significant boost from the Manchurian Incident. The military was by no means united,
yet its ideological and organisational outlook steadily overtook the existing state in a variety of ways.

In Japan the practice by which the largest party in Parliament formed the government came to an abrupt end in 1932, with the assassination of Prime Minister Inukai. A Cabinet led by elected members of Parliament did not re-emerge until the end of World War II. During the nine-year period between the assassination of Inukai and Japan’s attack on Pearl Harbour in December 1941, nine men became Prime Minister, six of them being army generals or navy admirals, two bureaucrats, and one a member of the non-elective House of Peers. The supposedly non-partisan Cabinets led by those men were all weak, and they were ousted or forced to resign when they failed to rein in the military’s ever-radicalising assertiveness.135 The frequent turnover of leadership implies both the disappearance of a firm locus of power and increasing incoherence in policy, which Saitō exposed in Parliament.

Saitō’s decades-old warning that government not based on popular support was ill-founded and unable to command the necessary authority had become clear to many critics. Thus in January 1935 Minobe Tatsukichi, just a month before his Emperor-as-Organ theory was attacked in the House of Peers, had observed the absence of centripetal power capable of commanding authority as a fatal weakness of the political system of the day. The Manchurian Incident was the decisive event, for it consolidated the new forces, led by the military and the “new” bureaucrats, that denied party politics.136

Recognising decline, Saitō made several important speeches during this period, warning against the consequences of destroying the political system that he and others had striven to build and preserve. None of the speeches altered the general course of the country’s erosion of democratic precedent. Nevertheless, they record the steady growth of a totalitarian system eclipsing the constitutional framework.

In a speech of January 1935 Saitō severely criticised a crucial policy statement issued by the military three months earlier. The military’s 57-page pamphlet addressed many aspects of everyday life, including

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135. Even Tōjō Hideki, the last of these men who took the country to war, was unable to survive conflicting forces. He stepped down when Japan began to lose the war, his resignation coming a year before Japan’s surrender in 1945.

the destructive aspects of capitalism. Capitalism, it argued, was the root cause of the plight of the farming communities, which were exploited by the cities, capitalism's embodiment. The gap between rich and poor was caused by the laisser-faire economy, and the people's selfish pursuit of material profits undermined the commonweal. Echoing national socialism, which was then gaining support in Japan, the pamphlet called for the state's further intervention in economic affairs and for civic education in order to rectify social malaise. It appeared when the plight of the farming communities was being hotly debated in Parliament. Poor harvests caused by a succession of natural disasters had increased the difficulties of agricultural communities, which had not recovered from the global recession. What angered and alarmed old-guard liberals such as Saitō and Minobe was the military’s implication that military force was more effective than any other means to solve such flaws in society. The pamphlet portrayed military expansion as the final panacea of all society’s ills, both material and spiritual, and elevated the role of the military to that of chief guardian of the necessary national endeavour.

In the speech, Saitō attempts to counter the military’s demands for a militarily expedient state with his formulation of three threats that the people now face: a threat to their economic well-being, a threat to their freedoms, and a threat of war. He begins by acknowledging that the present economic system has created various forms of inequality and misery in society. Poverty, he feels, is inevitable under a free economy, but government has obligations to support those who fall into it because of unavoidable circumstances. Yet he is opposed to the pamphlet’s call for drastic reform of the economic system, which he finds untenable. Like any other aspect of society, the economic system is complex. Policy ought to be practical and achievable. “It is a pipe dream to think that a better system can be implemented quickly.”

His alternative measures include the reduction of military spending, and a tax reform so that wealth will be more fairly distributed. It is a contradiction, he goes on, to call for a fairer economic system and more military spending simultaneously. In fact, government revenues allocated to the Army and Navy go to a small number of manufacturers, leaving small-scale independent entrepreneurs short of funds and work. Attacking this military-sponsored “siphoning” structure, Saitō says, “We cannot deny that at least several millions of yen each year are spent on
manufacturing warships, weapons, and ammunition. Where does the cash go? It goes to a very small number of businessmen and manufacturers although the majority of the people share the burden of military spending. … That is, a very small minority is making huge profits, which does not help to alleviate the widespread poverty at all.”

For Saitō, military leadership is unacceptable, because his vision of government entails active engagement between people and authority. He sees the source of national stability to exist in the people’s trust, in their sense of security in everyday life, and in their spontaneous feelings of solidarity. A change in government policy, or any forced ideology, cannot produce such fundamental components of national unity. Thus, “No nation is stable without a people feeling secure in their daily living. … It is a mere dream to try to mould national morale without providing the people with food, clothing, and housing.”

Accordingly Saitō saw the emergence of authoritarian government in the military’s new assertiveness. In two months’ time (March 1935), Japan’s withdrawal from the League of Nations would come into force. The government, now led by an admiral, was also proposing Japan’s departure from the London Naval Treaty at a forthcoming conference, unless the country was given full parity with Britain and the United States. With the anticipation of the lifting of all international constraints on Japan’s military capabilities, some military leaders were eager to secure government favour and realise a sharp increase in military spending. Such demands met strong resistance from the Finance Ministry as well as from some members of Parliament. The pamphlet had appeared when the military was propagating the idea of an “imminent crisis” in order to assert its worthiness.

This new military assertiveness, boosted by Japan’s increasing international isolation, accompanied a similar assertiveness in the bureaucracy. In 1934, in the so-called Teijin bribery case, government prosecutors arrested a group of financiers, cabinet ministers, and officials of the Finance Ministry for alleged insider trading of shares in the

137. TGGS, vol. 64, p. 68.
138. Ibid., pp. 68–9.
textile company Teijin. The case dragged on amid rumours that the arrests had been made unfairly in order to cripple the incumbent Cabinet and to prompt the formation of one that was more military-friendly. Just a day before Saitō’s speech of January 1935, Minobe, a member of the House of Peers, had questioned the government about the treatment of suspects in the case. Echoing such an attack, Saitō also mentions it and says: “Dictatorship is a primitive form of government, not a civilised one. If it abuses its authority and suppresses people’s freedom, government is uncivilised.”

Saitō concludes his 1935 speech with his defence of a party Cabinet: “The Cabinet is the central institution of politics, and the highest organ. It may not be so under despotism, but it is so under constitutionalism. In other words, only a Cabinet that enjoys the support of the largest party in Parliament, which represents the people, can conduct politics. … In our time political opinion has no credibility if it does not have the support of the people and has no engagement with the people. Such opinion is mere noise.” Saitō sees the pamphlet as noise also. In real terms, populist clamour may have a strong influence. Yet Saitō is fearless in condemning the negation of proper procedure and the increasing intervention by “non-elective” bodies.

Saitō’s concern with the preservation of the country’s constitutional system intensified after an attempted government coup by young army officers on 26 February 1936. In an extraordinary parliamentary session in May he questioned the military’s self-discipline. He blamed the dissemination of radical thought, especially of the right, among these officers, and also the military leaders’ failure to punish those involved in similar incidents in the past.

140. The case led to the resignation of the Cabinet of Prime Minister Saitō Makoto, which still included many party members, in July 1934. Yet in December 1937 the Tokyo District Court found all 16 defendants in the case not guilty, there being “no evidence whatsoever.” The prosecution did not appeal. Historians believe that the case was most likely fabricated by government prosecutors instructed by the pro-military former Justice Minister Hiranuma Kiichirō, although they have not found clear evidence to support the claim. See Sasaki Takashi, “Saitō Naikaku kara Okada Naikaku e,” in Nihon Rekishi Tsūkei, vol. 5, Kindai 2, ed. Inoue et al., pp. 486–7. Berger speculates that the case nevertheless badly damaged the image of the parties as “legitimate organs of political leadership” (Berger, Parties Out of Power, p. 58).

141. TGSGS, vol. 64, p. 69.

142. Ibid., p. 72.
Since the Manchurian Incident, Saitō says, young officers have begun to advocate a radical reform of the country’s political system. They honestly believe in the urgent need for change. But they are ignorant of the complexity of society. Saitō by contrast asserts that the country’s constitutional system is sound. What the country needs is not radical change in the system itself, but in the way people operate it. Although he carefully avoids straightforward repudiation, he implies that party politics needs to be restored in place of military leadership. Furthermore, under the present system, the Cabinet should be able to command authority, but only if it possesses a unified, coherent policy. In this respect, the government’s policy is revealing clear contradictions. For it is calling for the peaceful settlement of international disputes, while it continues to increase military spending. As a result, more pressing and basic domestic issues, such as educational reform, are neglected. Saitō identifies the assertive military as the source of such imbalance. Linking inconsistency and the neglect of domestic problems, Saitō again confronts the emerging totalitarian regime, which he sees as wresting politics away from society.

Such disengagement, Saitō says, is also taking place in the application of the law, thus undermining the judiciary as a whole. Along with the destructive influence of radicalism on young officers, some leaders’ tacit support for their activities is responsible for their subversions of the law. The country has experienced a series of attempted coups or assassinations by officers, including the March Incident and October Incident in 1931, as well as Inukai’s assassination. The military’s failure to mete out heavy punishment in the original case has resulted in the outbreak of others, perpetuating the cycle of violence. Here the military as a whole is sponsoring the demise of normal constitutional procedures by treating itself as above the law.

Saitō points out that after the assassination of Inukai, a public prosecutor had demanded the death penalty for the three main culprits, who were all military officers. They were tried by a military court, and sentenced to a maximum of fifteen years in prison, although military law demanded the heaviest punishment if it is recognised as treason. On the other hand, civilian collaborators, who were involved in a failed attempt to blow up a power station as part of the group’s concerted attempt to unseat the present government, were given a life sentence. “They were
all involved in the same plot. ... Some were given light sentences because they were military officers and tried by a military court, although they had assassinated the Prime Minister. Others were given heavier sentences because they were civilians and tried by an ordinary court, although their crime was that they had helped to place a bomb which never exploded."143

Thus, Saitō argues, military and civilian courts can operate totally differently. But both are under state law, which defines treason as one of the most serious of crimes, punishable with the death penalty. Handing down such lenient punishment to its own members, the military is rejecting general law and subverting the existing legal order. “Trials, which are carried out in the name of the emperor, must be independent, sacred, and fair. ... If the ruling depends on the status of the defendant and the court, can the state properly implement the workings of the judiciary?”144

Saitō was also concerned with the discipline of the military as a whole. He asks, “Are there any military leaders who psychologically supported those rebellious officers? At least the public suspect such involvement.”145 In fact the military had promptly removed from active duty seven generals thought to be close to the young officers.146 But even as it exposed the military’s serious disunity, the February 26th Incident also helped that group within the military which was behind the 1934 policy statement to consolidate its power.

Studying the emergence of the Nazi dictatorship within the framework of the Weimar Constitution, Fraenkel says that there are only two ways for such groups to take power in a constitutional system: “Either (a) to establish praeter legem a political power outside the legal order and to revise the constitution with the aim of establishing the authoritarian Machtstaat, or (b) to substitute contra legem a dictatorial state for the rational constitution of the Rechtsstaat. This dictatorship would have to be detached from the traditional limits of the monarchy and from the rational limits of the republic.”147 Nazi Germany took the second way. In

143. TGSGS, vol. 66, p. 46.
144. Ibid., p. 46.
145. Ibid., p. 47.
Japan, when Saitō made his speech, hegemonic power was also emerging in a similar fashion.

In this respect, the February 26th Incident was a watershed. The failed coup was staged by a radical faction of the military, the Kōdō-ha [Imperial Way Faction], which tried to realise military leadership through direct action. After their failure, the Tōsei-ha [Control Faction], which favoured military leadership through “legitimate” control of the existing institutions, gained power. The Hirota Cabinet backed by the Tōsei-ha faction quickly executed those involved in the February 26th Incident, after a swift court ruling. Yet this trial was conducted behind closed doors, unlike the previous military courts, which had been open to the public and which had allowed Saitō to quote the prosecution statements amply during his speech. After the February 26th Incident, interventions by Parliament became all the more difficult.

Thus when Saitō delivered his speech in May 1936, political parties were clearly in retreat. The February 26th Incident had taken place shortly after Minseitō, to which Saitō belonged, became the largest party in Parliament after a general election. But the Okada Cabinet was a hotchpotch of various members from the two main parties and the House of Peers, bureaucrats, and business representatives, which the genrō Saionji hoped could check the military. The incident forced the Cabinet to resign en masse. Saionji and other senior statesmen then appointed the diplomat Hirota Kōki as Prime Minister, yet once again the election results were ignored, further sidelining the parties.

Military intervention now increased, thus further weakening the Cabinet’s ability to command authority. To maintain unity, the Hirota Cabinet had to comply with the military’s demands that Japan’s vested interests overseas, particularly those in North China and Manchuria, be preserved. Yet to achieve this became increasingly difficult in the face of Chinese unification and rising anti-Japanese sentiment. Dealing with the Soviet Union was another problem. The government was expected to take measures to prevent the spread of communism and also preserve the country’s interests in Manchuria and Mongolia, as Japanese and Soviet armies began to clash in areas where the borders between the Soviet Union and Mongolia were not clear.

Japan’s exports were booming, thanks to the depreciation of the yen, but the boom was also causing friction with other industrial countries. At the very moment when the country needed skilled diplomacy, the Cabinet could not demonstrate it because of its rigid adherence to expansionist principles, and its subjection to the military. The Cabinet resigned in January 1937, when the Army, which had demanded an immediate dissolution of Parliament, was at loggerheads with the Navy, which had wanted to see a budget passed to boost its own spending. Hirota may have tried to check the military, yet his regime had also presided over its further advance.

In this steady undermining of party politics, bureaucrats continued to play a central role. In May 1935 the Home Affairs Ministry launched a nation-wide campaign for “clean” elections (senkyo shukusei), issuing an ordinance that stipulated that each prefecture set up a committee to supervise them. Such a trend was already discernible when the election law was revised by the House of Representatives in 1934 to tighten the restrictions on campaigns. The revision was criticised not only by professional politicians but also by liberal intellectuals such as Minobe as discouraging public participation in politics. Although he had had to compromise with the bureaucrats as vice-Home Affairs Minister when the law was revised, Saitō now joined his parliamentary colleagues in criticising what he saw as overly rigid bureaucratic interference. “The law is now used to produce criminals rather than to defend people’s freedoms,” he complained.

This dominance of the military in government and further weakening of parliamentary control culminated in the introduction of the National Mobilisation Law in 1938, which Gordon Berger describes as “the central plank in the national defense state platform.” The measure allowed government, by means of issuing an ordinance (chokurei), to control not only the production of weapons and ammunition, but also a wide range of civilian issues, including prices, exports and imports, and the right to private property, in order to “maximise national mobilisation of personal and material resources” during a war or an


equivalent situation. For a country which had launched a full-fledged war against China several months earlier, such mobilisation was thought necessary. The bill was drafted by the Planning Board, a newly created inter-ministerial bureau directly attached to the Cabinet now headed by Konoe Fumimaro.151

Once more Saitō was angered by the attempt to bypass the constitution’s fundamental mechanism for negotiation between collective goals and individual freedoms. Article 31 of the Constitution encapsulated such a fundamental balance, and for him, the law, if passed, would effectively alter the Constitution by rejecting the balance altogether.

Thus he launched a lengthy constitutional exposition during a parliamentary debate on the proposed law of 24 February 1938. Article 31 of the Constitution says that civil liberties guaranteed by the Constitution can be curtailed in the case of emergency by the means of imperial ordinances.152 Yet this does not mean that civil liberties can always be restricted by an ordinance, according to Saitō. It merely means that in the case of a national emergency ordinances, instead of law (hō), can be used to curtail civil liberties, whose restriction is only possible by law in a normal situation. Thus the article defines “a shared area of jurisdiction” by law and ordinance. And yet the bill, he said, is intended to eliminate law entirely, and thus Parliament’s intervention, from this shared jurisdiction. It demands that Parliament give “a blank letter delegating its legislative power” to government. Such a step is tantamount to suspending the Constitution. Saitō warns that the degree of discretion the bill accords to government will dissolve the whole constitutional framework. “The bill is intended to curtail civil liberties guaranteed by the Constitution which only law can restrict, at the government’s discre-

151. For the role of the Planning Board and of the Showa Research Association, a private advisory body to Konoe in his national unity movement, see Ito Takashi, “Kyokoku Itchi Naikakuki no Seikai Saihensei Mondai” (part II), Shakai Kagaku Kenkyū, vol. 25, no. 4, 1974, pp. 59–147. For an in-depth study of this influential association, see Miles Fletcher, The Search for a New Order: Intellectuals and Fascism in Prewar Japan (Chapel Hill: The University of North Carolina Press, 1982).

152. Nakano Tomio says that Article 31 is peculiar to the Japanese Constitution. “Though the Prussian Constitution gave the king power to suspend the constitutional guarantees, the articles to be suspended were specified in the fundamental law. Under the Japanese Constitution the emperor is vested not only with the power to declare a state of siege, but also with the power to suspend any of the constitutional guarantees without the declaration of a state of siege” (Nakano, The Ordinance Power of the Japanese Emperor, p. 18).
Saitō also challenged the bill’s claims for efficiency. According to the government, “It is necessary to introduce a single law in order to mobilise the people when necessary, and total control of the populace and materials remains ineffective if the government has to ask Parliament to enact a law on every occasion, thereby preventing the government from dealing with a national crisis.” But Saitō thinks that the total control envisaged by the bill is impossible. On the contrary the bill, if passed, will aggravate disunity in government, further obscuring the centre of power. According to Saitō, it will also require a number of new ordinances to actually carry out national mobilisation as stipulated by the bill. “This bill is without the benefits of a single law. It will create an uncontrollable and complex legal muddle.”

Behind such criticisms lay Saitō’s views of law and order, sharply antagonistic to those hegemonic forces now agitated and ready to act after the outbreak of war, and within which increasing numbers of the military, bureaucrats, and vociferous politicians were beginning to interact with “patriotic” sections of the public. Saitō remained unimpressed, and was perturbed by the acceleration of such collective zeal, which was clearly self-propagating. For him what was convenient for the government “is not necessarily convenient for the people and the country as a whole.” Efficiency too was a relative quality, and if it was imposed on the people, it could become coercion. Furthermore, he said, “imposed” patriotism does not work. Law cannot nurture patriotism. Many people are already sacrificing their lives for their country, not because law has forced them to do so, but because they believe such a contribution is necessary. It is a sign of a bad government if it has to use “law” to exploit such attachment. In a way that reveals the forces at work, Saitō’s views were then bizarrely described as both “liberal” and “conservative,” as opposed to the “progressive” and “modern” policies of Konoe.

Saitō made his speech at a time when constitutional debate had become all the more difficult after the Minobe Affair. He clearly avoids Minobe’s name, and instead mentions the late Hozumi, the former’s arch-

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153. TGSGS, vol. 70, p. 347.
155. Ibid., p. 349.
rival, as a leading constitutional expert who was opposed to the delegation of legislative power, although he must have known that Hozumi’s motive in doing so was to preserve the unity of imperial authority, not to defend the legislative power of Parliament.\textsuperscript{156} Saitō’s passing remark on Hozumi’s theory is nonetheless in line with the prevailing strategy of invoking imperial authority among the politicians who tried to defend Parliament against the encroachment of the military–bureaucratic government. Although one historian regards such logic as feeble—invoking imperial authority so as to defend parliamentary politics\textsuperscript{157}—Saitō was motivated by his familiar vision of a participant nation in which people would conduct their affairs spontaneously.\textsuperscript{158}

On 16 March 1938, after being cajoled by the government, Parliament passed the National Mobilisation Bill with an overwhelming majority, despite the protests of Saitō and others.\textsuperscript{159} On that day Saitō left Parliament without casting a vote. In his diary he wrote: “The political parties are a very poor lot.”\textsuperscript{160} He was now acutely aware of his own isolation.

By this time then the full delegation of legislative power to government signalled a clear departure from the country’s constitutional agreements. Saitō had long denounced such arbitrary powers, as in the case of his criticisms of Prime Minister Tanaka Giichi’s use of an emergency ordinance to revise the Peace Preservation Law in 1928. Yet with the introduction of the National Mobilisation Law, Saitō sensed constitutionalism’s actual demise, as it terminated, at least legally, the contest between imperial ordinances (chokurei) and law (hō), which had sustained constitutional debate both inside and outside Parliament since the introduction of Parliament. By so doing, Saitō registered the rise of a Japanese totalitarian system, as Fraenkel was to do for National-Socialist Germany.

In fact Saitō saw explicit similarities between the National Mobilisation Law and the Enabling Law that the Nazi party had introduced in March 1933, shortly after Hitler was appointed Chancellor. “Since the Nazi gov-

\begin{itemize}
\item \textsuperscript{156} For Hozumi’s views on the delegation of legislative power, see Masuda, \textit{Tennōsei to Kokka}, especially p. 35 and p. 135.
\item \textsuperscript{158} For Saitō’s criticism of the “reformers,” see his \textit{Kakushinron oyobi Kakushin Undō o isamu} (Tokyo: Nihon Hyōronsha, 1934).
\item \textsuperscript{159} Berger, \textit{Parties Out of Power}, p. 156.
\item \textsuperscript{160} Kusayanagi, \textit{Saitō Takao}, p. 105.
\end{itemize}
government secured this law, it has enacted many laws at will. As a result, the German constitution has been effectively revised. … In a similar fashion, [The National Mobilisation Law] will revise or suspend our constitution,” says Saitō.

For Fraenkel judicial “arbitrariness” and unaccountable administrative “efficiency” were two major characteristics of the National-Socialist dictatorship. Saitō recorded a similar process in Japan, where “weak” unaccountable government with incoherent policy was yet able to steer a whole country into war. As with Nazi Germany, the collapse of accountability combined with a commitment to a purely local efficiency to become basic features of the regime. Saitō had witnessed the transformation of the Japanese body politic into a dictatorial system. For if discretionary power had once been essential for the new Meiji government and used amply as ordinances, the Meiji Constitution and the introduction of Parliament had changed this situation. Imperial ordinances and legislative power now nominally had to negotiate with each other. Yet when ordinances were again about to overtake the law, Saitō recognised the danger, refused to capitulate, and defended the constitutional evolution that the country had so far achieved.

Saitō understood that any power had to claim its legitimacy. Those who exercised power had to be able to explain their conduct and convince others to obey their orders. A viable political system required due process and open debate. Without such a structure, power, no matter how benevolent it might be, was illegitimate. Saitō acclaimed the rule of law as an expression of indefatigable hope. Inspired by British models, he adhered throughout his life to the principle of constitutional agreement. The will of the people (min’i) was the corner-stone, both conceptual and practical, on which this structure must rely. Saitō saw in weakening government the signs of an emerging totalitarian structure, the decline of liberal thought, diminishing universalism, and the rise of febrile nationalism.

SAITŌ AND ULTRA-NATIONALISM: AN EVOLVING DISTANCE
The core of Saitō’s pragmatic social and political realism lay in his adherence to the liberty of the individual, and in his awareness that the tension between authority and the individual was an essential aspect of constitutional government. Such a stance contrasted sharply with the
totalitarian tendencies of the 1930s. Because of his adherence to individual autonomy, Saitō was capable of identifying the contradictions in the totalitarian logic of the “reformers.” However, his “imperialist” position requires further examination, for in it we can again find possible flaws in his viewpoint.

Some historians have in fact argued for Saitō’s colonialist commitment. According to Itō Takashi, Saitō in his 1940 speech voiced a minority opinion in Parliament, opposed to the “reform” policy promoted under Konoe Fumimaro’s premiership. That policy consisted of support for Wang Ching-wei, who was fighting against Chiang Kai-shek, and of an endorsement of a new Asian Order under Japan’s hegemony and of the new national unity movement. In Itō’s view, the small number of parliamentarians who were opposed to the Konoe policy, including Saitō, were doing so not out of principle but out of strategic concerns. They had a different view of Japan’s long-term interests and advocated a different policy, an alliance with Chiang rather than Wang, with the West (not China) as their country’s ultimate competitor in regional hegemony. For Itō, Saitō and his likeminded colleagues remained staunch supporters of the Japanese Empire. For them, international rivalries and colonial expansion were a fact of life, and his speech confirmed that position.\(^\text{161}\)

Such a view is further elaborated by Arima Manabu. Based on points made at the time by “reformers,” Arima also concludes that Saitō’s view is colonialist. He quotes one such “reformist” who says: “The gist of the speech is that Japanese troops should be stationed in the occupied areas, intervene in Chinese sovereignty and preserve Japanese vested territorial rights. … His opinion is no different from those promoting colonial war in the West.”\(^\text{162}\) Saitō, says Arima, opposes “holy war” ideas only, and his view is that of an old-fashioned colonialist based on primitive Social Darwinism. Arima also finds that Saitō holds a nineteenth-century elitist view of the masses, in which the masses need politicians to “guide” them. Thus Saitō’s political philosophy is “backward,” compared with those reformers who had begun to search for a more “democratic” form of government, different from Parliament, which in their view was inef-
ffective in creating a common opinion. However, the reformers had not yet found the logic to justify their hegemonic policy, and their insistence on holy war was a fig leaf to cover such conceptual deficiency. Saitō's speech is significant in so far as it reveals this limitation in the reform policy, but no more.¹⁶³

There is no denying that Saitō's position has inconsistencies, and that his worldview is strongly affected by the nineteenth-century utilitarianism that also prompted the Western powers to engage in colonialist exploitation. However, we will be better able to appreciate his position, and to evaluate it more fully, if we set it against the national mood of expansion that was prompted by the Meiji Restoration.

Saitō lived in a period when ordinary Japanese began to demand a part in government and the decision-making process. Equally their sense of national belonging was awakened by the new government’s expansionist policies and involvement in foreign wars, first with China, then with Russia.¹⁶⁴ This simultaneous rise of civil society and of aggressive nationalism has been well established by historians. Matsuo Takayoshi, for example, asserts that the series of popular protests and democratic movements, which is often associated with the Taisho period (1912–26), began with the Hibiya Riots in 1905. Here demonstrators were protesting not only against the government’s oppressive policy but also against its concessions to Russia after war was concluded. Their awareness as Japanese citizens had been significantly shaped by the expansionist stance of their political elite.¹⁶⁵

During this time the Japanese were still searching for a common political community, and in this process civic demands and nationalistic sentiments appeared to be intrinsically linked. The expansionism of the period emerged as a superficial yet compelling ideology that provided

¹⁶³. Ibid., pp. 1–9.
the political elite with a justification for its continued domination, and
the general public with a cohesive worldview, a persuasive point of ref-
erence in a period of immense uncertainty. The Japanese search for an
integrated political community was deeply influenced by this composite
ideology of belligerence.  

Saitō's liberalism was a product of this period. It could escape nei-
ther from the nationalistic tendencies of the time, nor from the elitist
perspectives of the ruling class, yet it maintained its defence of civil
liberties. The tension between such collective identification and social
reform, manifested in Saitō, is therefore a record of this process of na-
tional integration at the citizen's level.

Saitō was certainly a nationalist at the start of his career. He joined
the Kokumintō, which was formed in 1910 by members of Ōkuma
Shigenobu's Kensei Hontō, who advocated uncompromising expansion.
Thus in 1915 he says, “The priority of the [Japanese] Empire at the mo-
ment is not to maintain the status quo, but to advance the [overseas]
interests of the country. These should not be entrusted to others. Doing
so would destroy the fundamentals of national policy.” A year earlier
Japan had declared war against Germany based on the country’s alliance
with Britain. In the same year Japan secured German possessions in the
Shandong Peninsula and the Pacific Islands north of the equator. For
Saitō, national expansion was his country’s birthright. He seems to have
been one of the “nationalistic hawks” who for Miyachi Masato became
increasingly active in Japan after the Russian war. According to Miyachi,
these “hawks” included members of the “1868” generation who came
of age while seeing Japan become a regional imperial power. They still
adhered to the traditional expansion policy, which first surfaced in 1873
when a minority of government leaders advocated attacking Korea. At

166. For an analysis of Japanese imperialism in connection with nationalism, see Maruyama,
“Nationalism in Japan: Its Theoretical Background and Prospects,” trans. David Titus, in
Thought and Behaviour in Modern Japanese Politics, pp. 135–56; Beasley, Japanese Imperialism

the same time, they were eager to bring the people into the political process, and to combine constitutionalism and imperialism.\textsuperscript{168}

Thus, while calling for popular politics, Saitō also supported Japan’s advance into Manchuria. In January 1915 the government, now led by Ōkuma, submitted the Twenty-one Demands to China. The government explained that the measure was intended to deal with the unstable situation in China after Japan’s war against Germany, to increase friendly ties between the two countries, and to maintain peace in the Far East.\textsuperscript{169}

However, the demands triggered strong anti-Japanese activity among the Chinese. Yet Saitō had no doubts about Japan’s rights in South Manchuria, which the demands hoped to maintain.

Such attitudes were in fact quite common. Accordingly, up to the late 1930s, there is an undoubted expansionist element in many of Saitō’s statements. For instance, in January 1937 he again supported Japan’s position in Manchuria despite earlier misgivings about the way in which the Japanese military had taken control of the region.\textsuperscript{170} At the same time he attempted to remain loyal to his Hobbesian view that state authority had to be tied to the rights and needs of the individual. It was this awareness, combined with his habitual questioning of authority, that eventually enabled him to condemn Japan’s war against China as a war of aggression, and to distinguish “just” from “unjust” wars in far more universalistic terms than most Japanese nationalists could ever have envisaged.\textsuperscript{171}

So, in October 1939, hard on the heels of the outbreak of war in Europe, Saitō proclaimed that a war was “just” if it was a defence of the interests of the individual citizen. Since the primary role of the state is to protect the security and livelihood of its citizens, every state has the right to fight for this purpose. Thus two nations may fight each in the name of justice; the label just war is relative, and depends totally on each coun-

\textsuperscript{169} \textit{Rikken Minseitōshi}, vol. 1, p. 335.
\textsuperscript{171} It is sometimes assumed that Saitō viewed war as a struggle for power and that only the strongest would win, thereby avoiding the need to engage with the moral argument for war. (See, for instance, Berger, \textit{Parties Out of Power}, p. 246.) However, Saitō’s thought most certainly led him to consider the grounds on which war could be justified. See Ema Shirō, “Saitō Takaō no Hangun Enzetsu o Dō Kataruka,” \textit{Gendai Kyōiku Kagaku}, no. 599, 2006, p. 23.
try’s perspective. What is universal is each nation’s desire to preserve and expand its territory and influence, and to protect the well-being of its citizens.172 This essay may seem to endorse his country’s policies but it is undoubtedly important in that it contains the germ of a universality that will eventually lead Saitō to repudiate them. Preparing the ground for the scepticism about holy war expressed in his speech of 1940, the essay anticipates Saitō’s later arguments that a country’s domestic policy should be left entirely in its own hands, and that other countries have no right to intervene. Chiang Kai-shek, he would say in 1942, has the right to defend his country as much as the Japanese have their own. “Criticising Chiang’s anti-Japanese policy … is a self-centred view on the part of the Japanese.”173 The speech of 1940 is part of a process by which particularist strategic objections are increasingly overtaken by matters of principle.

Thus far from inflexibly aligning himself with “those promoting colonial war in the West,” or promoting “a new Asian Order under Japan’s hegemony,” Saitō moves to condemn his country’s policy as an imperialist project. Konoe’s new order, he says, ignores the sovereignty of others and is thus both impractical and morally repugnant. “It is unclear what the doctrine really means. The only comprehensible thing is that it advocates that the country should conquer weaker nations wherever possible and expand the country’s territories and available resources.”174 Where Minobe had used the idea of power’s limitations in order to assert a domestic legal state, Saitō now uses the same idea to criticise and restrain the country’s external behaviour. By 1942 Saitō’s position had hardened even further: “The real objective of this war is not so much freeing Asian people [from Western colonialism] and giving them independence and freedom, as forcing Japanese hegemony upon the people of East Asia and subjecting their existence to Japanese ends.”175

Admittedly, Saitō’s criticism of wars of aggression was still short of true conciliation, and his support of Japan’s position in Manchuria would not have been acceptable to the Chinese. Nevertheless, his

173. Saitō, “Tenjō yori mitaru Sekai Sensō,” Saitō Takaō Seijironshū, p. 177. The essay, written in 1942, was not published during the war.
174. Saitō, “Kyogi to Meishin no Sekai,” in Saitō Takaō Seijironshū, p. 137. This essay was written in 1941.
ability to recognise the sovereignty of others, tardy and truncated as it may have been, allowed him to become a critic of Japanese aggression “from within.” Once again, even as he was not able to detach himself completely from the dominant political culture, he was still able to speak on behalf of a much larger constituency. Saitō was much more critical of attempts to extend Japanese hegemony than Itō seems to allow.

Saitō was also extremely forthright in apportioning blame. Hence Maruyama Masao has described Japan’s loss of a rational raison d’être at this time as a primary cause of war.176 Saitō, instead of attributing this process of accelerated irrationality to the pressure of the masses “duped” by government propaganda, squarely condemns the military. Quoting an army intelligence report, he concludes that the war has started from mutual misunderstanding. “Many Japanese assumed that China was what it used to be during the Sino–Japanese War, and failed to understand the China of today.”177 Yet this failure of recognition cannot be attributed to the Japanese people as a whole, but is the sole fault of the military.178 For him, political accountability is specific.

Saitō’s opposition to the military stems from the sense that post-Restoration Japan had been successful in implanting a constitutional system, which the military was bent on destroying. At the same time he was challenging the legitimacy of a government which justified its authority by proclaiming its ability to use force successfully. His was the protest of a steadfast and defiant individual refusing to be trapped in an emerging garrison state. Saitō’s recurring themes—the autonomy of law, “kokumin seiji,” and his repeated references to “the law of the jungle”—were central to his scrutiny of an arbitrary power which was increasingly attempting to confine the individual within its rule.

Nevertheless Saitō’s political position incorporated the intrinsic inconsistencies of his time. His opinions could both embrace and repudiate universal perspectives, yet could also contravene the all-consuming nationalist sentiments then prevalent. Arima’s characterisation of him as “an old-fashioned colonialist” is therefore seriously incomplete. Saitō was a nationalist, but in ways he increasingly learned to question.

178. Ibid., p. 172.
Saitō’s mature position therefore differed markedly from those supporting the rights of the nation (kokken), including Fukuzawa, and members of the younger generation who had begun to support Japan’s Asian hegemony. Important distinctions are possible if we compare his position with that of two much more entrenched ideologues of the right, Kita Ikki and Nakano Seigo.

Kita (1883–1937) was “the most important spokesman” for those in imperial Japan who began to call for radical change in Japanese society and institutions, and for Japanese hegemony in “a unity of resurgent Asiatic peoples.”\(^{179}\) Kita advocated the organ theory and social revolution as Saitō and Minobe did. But his views were far from liberal. “For Kita, the state struggle was justified because it contributed to the process of social evolution,” according to George M. Wilson.\(^{180}\) “Based on an optimistic appraisal of the prospects for ‘social evolution,’” he predicted “the ultimate advent of a utopian society made up of all mankind.”\(^{181}\) Distinguishing between “the civilised” and “the uncivilised,” he held that “Imperialism was a step on the ladder of social evolution that led eventually to the goal of world federation. Imperialism … is the precondition of internationalism (sekaishugi).”\(^{182}\) In Kita a millennial vision is combined with a vision of Japanese hegemony.

Reflecting the combined influences of Social Darwinism, positivism, and Soviet-style socialism, Kita was also a child of post-Meiji Japan, where the concentration of politico-economic and military powers became a reality in the name of the state. He took for granted the possibility of systematic arrangements of the common life of the people. As a “fanatic systematizer” and “modernizer,”\(^{183}\) Kita formulated what he thought of as an ideal remedy for the country’s ills in the early 1920s. His programme included the suspension of Parliament, the establishment of an imperial council to discuss state affairs, the abolition of the peerage, and the nationalisation of big business. The plan, entitled An Outline of Measures for the Reconstruction of Japan (Nihon Kaizō Hōan

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181. Ibid., p. 23.
182. Ibid., p. 35.
183. Ibid., pp. 76–7.
Taikō), attracted radical military officers critical of the status quo, many of whom were involved in the series of attempted coups a decade later. Though Kita himself was executed after he had been implicated in the February 26th Incident of 1936, his radical vision of a new state structure began to echo in major government documents, including the Army’s policy statement of 1934 and the National Mobilisation Law of 1938. Like Mill, Saitō would object to such visionary collectivism, and the contrast between Saitō and Kita is stark. Saitō is a gradualist as well as a rational materialist, and for him the idea of “ultimate perfection” is remote. For radical reformers such as Kita, the tension between authority and the individual was a problem to be eliminated. For Saitō, it was a condition that people needed to live with. In this context Saitō understood the role of Parliament and other constitutional institutions as mechanisms for productively exploiting that tension. In 1934, when he saw the rise of the military-bureaucratic government, he said: “Show me if there is an institution that can represent the people which is not Parliament? How can ordinary people trust in a bureaucratic and militaristic clique which has nothing to do with them but has begun to say that it represents the people?”¹⁸⁴ Saitō knew that the popular will was a fiction, but also an indispensable concept for the working of a constitutional system: it was imperative to incorporate it into concrete representative institutions.

Accordingly Saitō’s concept of liberty learns to interrogate, increasingly, the new totalitarian attitudes, while members of the “1905” generation on the other hand had begun to use the idea of liberty to support Japan’s indiscriminate colonial expansion. Nakano Seigo (1886–1943) provides one such example. Nakano is considered as one of the very few Japanese who formulated fascist ideals akin to those of Europe, without referring to the divinity of the emperor.¹⁸⁵ Originally a journalist, Nakano won a seat in the House of Representatives in 1920 as an independent. In 1924, he joined Saitō’s Kenseitō (later Minseitō) and worked towards the introduction of universal male suffrage. In 1931, Nakano and one of Minseitō’s senior leaders, Adachi Kenzō, who was close to Saitō, left the party seeking a pro-military national unity government. The event led to

the collapse of the government of the Minseitō leader Wakatsuji Reijirō, as Adachi was a State Minister. Nakano’s stance became more radical as Japan’s war against China continued. He formed his own group Tōhōkai in 1936, based on Nazi and Italian fascist models. He was also on the planning committee of Konoe’s Imperial Rule Assistance Association when it was launched in 1940. But in less than a year, Nakano resigned from the Association, criticising its bureaucratic control. He committed suicide in 1943 after he had been investigated by police for his criticisms of the Tōjō government.

In his study of the development of extreme Japanese nationalist thought in the early twentieth century, Tetsuo Najita finds Nakano’s concept of “spiritual autonomy” to be a catalyst for fascist intransigence. For Najita, Nakano’s career constitutes “a reaffirmation of the rebellious moral individualism of the Ōyōmei [Wang Yang-ming] tradition.” It testifies to the fact that Japanese individualism “in its uncompromising and extreme form could not be intrinsically related to the modern political framework within which movements were to be launched and sustained. Nakano’s propensity for thinking in the mode of radical spiritual autonomy made it virtually impossible for him to relate this autonomy with legal and organizational concepts, such as definitions of property or concrete mechanisms of parliamentary politics.”

Clearly Saitō’s view of liberty, institutional, contingent, and enabling, differs fundamentally from Nakano’s furious pursuit of political purity. For where Nakano became increasingly intoxicated by visions of national renewal and expansion, Saitō saw only folly and national decay. The differences between the two men lie deep within their time, and can be further brought out by recourse to Isaiah Berlin’s highly relevant essay of 1969, “Two Concepts of Liberty.” Berlin’s formula for preserving a free society was a practical compromise sustained by its members’ unflinching respect for others’ freedom. In his essay two assertions stand out. One is that only rights, not power, are absolute; the individual has certain rights no one can infringe upon. The other is that the scope of such rights needs to be agreed by members of the community. That is, these rights are absolute not in the sense that they are permanently fixed

but in the sense that once agreed they cannot be breached arbitrarily. This is a radically fluid vision of social organisation, taking nothing for granted except the need for personal autonomy and people’s capacity for agreement. If we want to be free, Berlin says, we ought to be capable of organising and managing the common life. In fact Berlin here articulates the essence of a civil society as Habermas and Maruyama have described it: power is no longer a matter of the fixed relationship between ruler and ruled, but a conscientious creation of individuals who are both autonomous and capable of negotiation. Thus Berlin provides two types of safeguard for a free society, the rule of law and the general recognition of basic rights. They constitute the barriers to “the imposition of one man’s will on another” and must be institutionally implemented and morally observed. He believes that these barriers are essential for the creation of a self-regulating mechanism in a free society.  

Saitō’s constitutionalism implicitly complements this vision, even as his earlier colonialism was at odds with it. Nevertheless, loyal to his English mentors, Saitō remained wary of what Berlin describes as positive liberty. Positive liberty, the right to participate in public decisions, had driven him to seek a political career. Yet liberty, for him, was overwhelmingly negative, and it constituted an inviolable area of private life. This attitude grew as he got older, and he felt compelled to confront government when it increasingly overrode negative liberty. Negative liberty, in Berlin’s definition, is the realm of private life and thought that the individual can claim his own and can defend from the intrusions of external forces. Such an attitude sometimes earned Saitō the reputation of being indifferent to social rights. But he was even more hostile to the new patriotism and its attendant jingoism, precisely because he had learned not to believe in the positive concept of liberty as an unchecked force. Thus for him parliamentary politics was indeed a compromise, one essential to a free society, because the very concept of representation was meant to check the misuse of authority. For Nakano, such a compromise entailed corruption, and he sought more “effective” and “efficient” ways to influence social and political change.

Such observations can lead us to a larger assessment of Japan’s totalitarian system in the 1930s, and of Japan’s modernisation and

nation-making in general. For the elite who lived through pre-war Japan, combining Isaiah Berlin’s negative liberty and social engagement was a demanding task. The difficulty derived from the constant interference in one’s life of the state, the extent of social regimentation, and the way in which modern Japanese national identity was formed. The autonomy of society, which Fukuzawa took for granted, had by then become an increasingly alien concept. Aims had become more temporal and immediate, and Japanese society was deprived of the invisible “barriers” whose strength Berlin found a measure of a free society. Japan’s colonial expansion was a symptom of Japan’s modernisation, of its emphasis on specific interests, and of its failure to find universal values capable of transcending its self-serving version of the nation-state.

In Japan’s modernisation process, the erection of the barriers Berlin describes was not only discouraged, but also constantly undermined by the arbitrariness of power. The fragility of the political system became all the more serious in the uncertainty and insecurity created after World War I. Thus in the following passage Saitō clearly observes the post-war world from a Japanese perspective: “The abolition of the monarchy [in many European countries after World War I] has caused the loss of central state power, resulting in battles for power, such as are seen in new presidential elections. The political system is constantly in disarray. If such a condition is unfixed and left to natural development, nations will fall into further confusion, and eventually collapse.” He anticipates dictatorship, with Russia and Germany as the two most likely examples. Nevertheless, people should not follow dictatorial government, because they forsake their own freedom. “The freedom of a people will be lost, and the original ideals of the revolution will disappear amid personal ambition. It will be too late for the people to regret their previous support [for such dictatorial power].” What Saitō warns against here is the rise of the totalitarian spirit, evident to him in the politics of both right and left, in Japan itself.

In the next two decades, faced with its own “development crises,” Japan returned again to the use of military force, aided now by all the

trappings of modernity, high technology, mass indoctrination, and efficient mobilisation. Saitō viewed this process as the gradual erosion of substantial rationality from government policy. By learning to distance himself from the national rhetoric of defence and expansion, he learned to stand both within and outside his time.
Maruyama Masao, reproduced with permission (© Asahi Shinbun)
CHAPTER 5

Conclusion: Dissent and its Uses

Perry Anderson describes the transition from feudalism to capitalism in Western Europe not as “an organic internal succession” but as a “concatenation of ancient and feudal modes.”¹ Likewise in that other period of transition we have been considering, Japan too experienced its own “mesh” of social formations that brought together old and new. Hence in the post-Restoration period extensive changes, generally government-led, were “imposed” on the people in the name of modernisation and the national interest. These changes, however, also involved the removal but also the reconstitution of traditional barriers to free association among the population. Authority and the people simultaneously entered the “public” sphere in ways that were both unprecedented and deeply familiar.²

How, then, could the individual attempt to influence the general course of society when such changes were taking place? Such a question, of course, may seem to exaggerate the role of the individual at a time of drastic social, political and economic upheaval. Yet this same question may also direct our attention away from modernisation as “social engineering” to modernisation as the spontaneous formation of the common life within a vortex of heterogeneous movements.

Maruyama Masao is one of the most articulate social commentators to have dealt with this question, in his study of shutaisei (subjectivity). This enquiry has shared Maruyama’s concern with the role of the individual in political modernisation, and it therefore seems appropriate to

2. This is not to say however that Tokugawa Japan was without that “robust” public sphere recently described by Mary Elizabeth Berry. Berry points to “routine political agitation among peasants and townspeople, heterodox philosophy and social dissent in burgeoning academies, and critique of normative culture throughout the theatre and literary circles.” Even as the paradigmatic separation between ruler and ruled was never openly breached, Berry is still able to define the Tokugawa public sphere “not as the space where popular sovereignty was claimed but where leadership was scrutinized and disciplined by criticism” (Berry, “Public Life in Authoritarian Japan,” p. 139). Here, of course, the principle of individual rights was latent, but not openly or formally advocated.
conclude by returning to a question that Maruyama has addressed so steadfastly.

Rikki Kersten defines a key emphasis of Maruyama’s work as follows: “Maruyama’s analysis of Japan’s history assumed that human agency had been supplanted by a structure of change which precluded a sense that human history was in human hands. This was surely the basis of Maruyama’s pleas for social autonomy in Japan’s political culture.”

Maruyama is therefore counted as one of the “modernists,” who believed that true modernisation could not occur until the people themselves became free and active agents in a political community. For him, social autonomy implies a citizenry alert to the tension between the “private” and “public” spheres of life. Yet, as Andrew Barshay points out, in a country where the conflation between value and reality prompts a traditional mode of thought, there is little room left for the individual to develop such an awareness. Maruyama thinks that the problem is epistemological. Thus, as Fukuzawa did before him, Maruyama engaged in severe criticism of prevailing patterns of Japanese thought and behaviour. Active especially in the years immediately after the end of World War II, he made serious attempts to link what he called the “pathological” aspects of Japanese society to the Japanese fascism he had just witnessed.

Maruyama attributes the dwarfing of social autonomy to the weak traditions of individuality and the “traditional” emphasis on obligation. In 1961 he wrote that despite the country’s dynamic industrial advances, the people still adhered to a status-based hierarchical order, and had not fully grasped the concept of the contributing individual who actively participates in the running of society. The pattern of behaviour that focused on personal loyalty was still omnipresent, and had been chiefly responsible for the consolidation of the emperor system before and during the war.

5. Ibid., p. 374.
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Central to Maruyama’s thought is an idea of progress which blends respect for European modernity and a priori morality. For “unless you commit yourself to values which surpass present reality and which cannot be seen, you will be dragged along by the reality you can see and your way of thinking will be changed. In the end you will become an appendage of circumstance.” Here the connections between Maruyama’s thought and recent Japanese history are especially clear.

However, Maruyama’s stance has been criticised for its “alienation from, even ‘antipathy toward’ the masses.” Seeming to rely on excessive reification of such categories as feudalism, capitalism, and “modernity,” his analysis of Japanese fascism is found not to incorporate important aspects of the inner dynamic of society, such as “the role of technocrats and of the ‘intelligentsia’.”

As a result a major limitation of Maruyama’s work involves (in my view) an insufficient emphasis on the processes of value creation. Questions about institutional procedures, including the reality and role of public debate, are rarely present in his analysis. By underplaying the role of politics in his enquiry, Maruyama fails to deal adequately with the role of the individual in the formation of the common life, which is central to social autonomy even in his own definition. Obviously there remains much of value in his thought (and I will defend his position shortly), but this neglect of situational politics, of what Barshay calls “the peripheries,” is a major weakness of his analysis, because it can neither deal with the relativism of social values, nor cope with the fluid interactions of individual and society.

For Raymond Williams on the other hand, a truly functioning non-conformity is linked primarily not to a set of transcendental values, but

10. Ibid., p. 389.
11. Maruyama, however, was alert to the limitations in this area of Marxist orthodoxies. His frustration with its incomplete enquiry into social autonomy is suggested by Kersten as follows: “But… was there legitimate room for the creative subject in the law of historical materialism? … was it possible to regard subjectivity (shutaisei) as a scientific entity, or one which could be treated in a scientific way?” (Kersten, op. cit., p. 100).
12. Barshay notes: “His [Maruyama’s] concern remained less with social solidarity at the peripheries than with personal subjectivity and political integration at the national level…. Maruyama’s image of the ‘periphery’ was one of traditionalism and irrational attachment” (Barshay, op. cit., p. 394)
to man’s ability to create and share a socially sustained political vision. Thus he rejects the notion of absolute values as a central force in cultural and social development, and emphasises the complex relations between thought and lived experience, private vision and public circumstance. Dissent in post-Restoration Japan relies on such forms of radical subjectivity.

Hence I am reluctant to follow the overly definitive line of demarcation between state and people, to which Maruyama himself adhered. For it neglects the familiar negotiations of public and private, and eliminates value creation from debate about the nature of civil society. As I hope I have shown in this study, Minobe, Sakai and Saitō were all pre-eminently social beings, and consciously so. For them, society was inseparable from what they were and what they thought, and for them the public sphere was by no means synonymous with reified notions of the state.

My own position is that the forces of Japanese social modernisation both challenged and renewed established relations between authority and the individual. Hence “the fatal conflation of value and reality” is certainly an outcome of tradition and a reflection of the conditions imposed by an organic system. Yet emerging from the “peripheries,” and at a time when dissent was being seriously undermined by government policy and hardening social attitudes, the careers outlined here epitomise the making and survival of an alternative tradition made all the more necessary because it was so exceptional.

The pre-war period in Japan is therefore one of great fragility. The abundant use of discretionary power constantly undermined accountable government, and moves to promote so-called “progress,” were repeatedly grounded not on shared values or social consensus but on political expediency. By contrast Minobe, Sakai, and Saitō all strove to strengthen the available mechanisms of state and to promote their acceptance. Each in their different ways worked to define and preserve rational authority within a common framework. But what made them “heretical” was their conflict with both new and inherited forms of national ideology, abetted by the lasting weakness of the new modes of state and their failure to achieve coherence.

If therefore Maruyama was undoubtedly right to emphasise defective standards of social autonomy as chief among the ills of modern Japan,

Minobe, Sakai, and Saitō directly affected those standards, in precept and in practice. Throughout their careers, and against the grain of their society, they upheld liberal pluralistic perspectives based on their own experience of the tension between collective goals and the liberty of the individual.

It must be remembered however that even if Maruyama may have been deficient in not enquiring further into the formation of values, for him also subjectivity was always the necessary ground of active citizenship. Kersten notes that for him “great danger lurked in historical materialism’s claim to objectivity. In this view objectivity meant that ‘responsibility for one’s actions is shut out, as though history was screened off from you, working all on its own.’”¹⁴ For Maruyama, the self fulfilled itself in the ability to judge, act and assume responsibility for its actions as a social being. The system of irresponsibilities he describes is the antithesis of this version of a civil society.

Maruyama then, almost but not quite by default, can serve to remind us of the role of dissent in the formation of the common life. Yet the careers of Minobe, Sakai, and Saitō all attest to the enormous difficulties they encountered in attempting to further that end. For if, as Habermas points out, the emergence of a sense of common governance requires freedoms of speech and association, then Japan’s modernisation did not ensure such conditions. The forms of dissent we have witnessed all spring from the defining limitations of the Japanese body politic.

Government harassment, deliberate attempts to eliminate opposition, and the use of discretionary power all constantly threatened the consolidation of still fragile institutional forms in the political system. The strong emphasis on collective well-being at the expense of the liberty of the individual was also seriously damaging. It not only discouraged the people’s desire to help consolidate the existing structures but also eroded their trust in the embryonic forms as a whole. And when ‘national’ policies were pursued with such rigour, it was difficult for spontaneous social movements to flourish. In this sense, the speed of change, prompted by the collective insistence on social progress, seriously affected political participation.

In addition, the dominant political forces, which included not only members of the military, senior politicians and bureaucrats but also the

intellectual elite, remained largely exclusive in terms of their political outlook, institutional allegiances, and class identities. They took to themselves the task of guiding the nation, and their view of government remained essentially hierarchical rather than egalitarian. “What is missing here [in the process of post-Restoration state-making] is the category of the citizen—some way to represent the individual constituent of the state.”\textsuperscript{15} For these people also, to proclaim a belief in a “common humanity” was quickly to invite suspicion, particularly among those who were brought up to believe that their country was now an imperial power. To affirm universal values while deeply aware of ‘unequal’ international arrangements was therefore a highly ambivalent task. For them, distinguishing between reality and value became a source of frustration rather than a crucial starting point for the creation of organising principles. And as Maruyama points out, their frustrations and divided expectations were transmitted to the rest of society, creating a chronically restless population.\textsuperscript{16}

Nevertheless, despite the prevailing inhibitions, traditions of plurality and tolerance still seem (from our perspective) the most likely mechanisms capable of promoting free government and Japanese political modernisation. For continuous governmental attempts to silence opposition and the increasing regimentation of social life may have contributed to swift “modernisation,” but they also created serious problems of common governance. For such measures not only prevented the development of a self-regulating mechanism of government but also eliminated the self-protecting functions which must be inherent in society in order to check its collective action.\textsuperscript{17}

In Joseph Pittau’s view, creating “a stable, representative decision-making process which provides a legitimate place for opposition—for the rights of those without power to advocate different opinions and overthrow those in office—is extremely difficult in any polity, and is particularly problematic in new states, which must be concerned with the sheer problem of national unity and national independence.”\textsuperscript{18}

\textsuperscript{15} Howland, \textit{Translating the West}, p. 187.
\textsuperscript{17} See Najita, “Introduction: A Synchronous Approach to the Study of Conflict in Modern Japanese History,” p. 10, and Barshay, \textit{State and Intellectual in Imperial Japan}, p. 68.
\textsuperscript{18} Pittau, \textit{Political Thought in Early Meiji Japan 1868-1889}, p. 35.
CONCLUSION: DISSENT AND ITS USES

Yet, even in an emerging polity beset by an acute sense of vulnerability to outside forces, tolerance of dissent seems the only effective means of furthering true autonomy. Politically this means debate, value creation, and the scrutiny of power, both in and outside government. Minobe, Sakai, and Saitō all show the importance of individual intervention in this process. Their careers show that when both government and society begin to eliminate dissent, it may signal the loss of those self-scrutinising mechanisms so essential for social and political health.

All three men found dissent a private and public necessity. They participated, crucially, in the evolution of the political community, and without their intervention political and social debate in Japan would have been seriously impoverished.

Each of the three has his own particular debts: in Minobe’s case, to Anglo-American legal thought via Jellinek, in Sakai to humanistic Marxism, and in Saitō to nineteenth century British liberal individualism. And yet they were fiercely independent, flexibly applying their inheritance so as to grapple with immediate circumstances. What sustained them was a belief that their arguments would connect with the “wider community,” including future generations, and their immediate sense of their historical role.

E. H. Norman, more than a half century ago, spoke of “the complexity of modern Japanese society; a society of which it is easier to describe some characteristic feature than it is to explain its significance to the whole.” For “it is not so difficult to present a brief account, for example of the bureaucracy, of the financial houses, of the armed forces, or of the political parties, but to ascribe to each group its own proper position, its relation to other parties of society, to judge between any of these groups and say this one is master and that one servant, this would be something of a Sisyphean task, but one which none the less ought to be shouldered.”19

According to John Dower, Norman’s self-imposed task was “integration, never to lose sight of the ‘seamless web’ of history.”20 Such integration must remain Sisyphean, in any study of history, and it is really not

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surprising that the kind of work Norman had in mind still seems to be missing. Yet Norman also wrote: “The crucial problem is to distinguish between deceptive surface changes and those that are deep and therefore harder to detect but in the long run of the most decisive character.”

In this task we need to hear more voices from the “periphery.” For voices such as the ones we have heard define as well as confront society: by highlighting society’s ills they also extend its range of possible solutions. Against all the odds their voices sought to provoke debate. Thus, if “Maruyama’s self-appointed task was to serve as postwar Japan’s public ironist,” his texts (to quote once more from Andrew Barshay) “may have sought to awaken in his audience a latent capacity for historical judgement.” We should be grateful to him and the other public critics we have examined for the challenges they issued.

Minobe, Sakai, and Saitō still continue to speak to us of some of the essential dilemmas of modern Japan, and show us that it is still possible to influence society through critical examination and proposal. They show us that some of the permanent dilemmas of social organisation can be dealt with, even in such hostile conditions as were created by “modernisation” and a “world system,” intelligently and humanely. Their proposed solutions—representative government, the rule of law, and the principles of basic rights—remain with us as political legacies and living strategies.

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