

Chapter 17: The Japanese Transition: to Democracy and Back²²⁷

I. Introduction: Japanese Political Institutions in the Tokugawa Era

The previous examples might have lead readers to think that there was something in the European experience that was unique. Perhaps Europe's unusual political and economic culture for ideosyncratic reasons was simply "primed" for parliamentary democracy in 1800. This is, of course, an important implication of the analysis of this paper. The king and council template provides opportunities for peaceful exchange that may be missing in other governmental templates, and both economic and political liberalism played important roles in the gradual transformation of medieval systems of governance to democratic ones. However, the theory is not "European." It argues that opportunities for constitutional exchange may arise whenever the king and council system of governance is employed if ideas or interests change.

This analysis clearly applies to late nineteenth century Japan, which allows the analysis to be extended beyond Europe. Although, the transition from Shogunate to the Meiji Parliamentary system was catalyzed by external events, it is clear that the details of the reforms reflected internal interests and bargaining by those with the power to adopt constitutional reforms. This is not to say that all constitutional developments in Japanese history were peaceful reforms or were motivated by narrow self-interest, but rather to say that the interests of those with the authority to reform the rules of governance had important effects on the course of Japanese constitutional development even at time when changes were not entirely peaceful. Even in cases in which military threats are important considerations, resistance to new procedures can be reduced by choosing reforms that advance mutual interests and minimize unproductive conflict. Consequently,

analysis of potential gains from constitutional exchange sheds very useful light on final constitutional outcomes, whether accomplished through peaceful means or partly through force.

The transition model predict that peaceful adjustments to the balance of policy making authority between the Shogun and his council, between the Emperor and his council, and between the central and regional governments of Japan should occur as economic, cultural and political conditions changed through time. And, when circumstances are favorable (economic growth and the adoption of liberal ideas within the ruling elites) there should also be evidence of a trend toward liberal democracy. This chapter demonstrates that both predictions are evident in Tokugowa and Meiji Japan. Changes in the interests and ideas of senior government officials affected constitutional developments before, during, and after the Meiji restoration.

The King and Council in Japan

The "king and council" template is widely used throughout the recorded history of Japan. Japan's late medieval governments included both a shogun and senior council of advisors (roju). It was succeeded by a government based on the same template, which included the Emperor and his council of advisors. During the Tokugawa period, each regional ruler (daimyo) had his own council and towns were often ruled jointly by an appointed head man and council of elders (Mason and Caiger 1997: 210–11). Contemporary Japanese governance includes a prime minister and an elected parliament. The internal details, of course, vary with the problems addressed by particular organizations and the particular persons who hold positions of authority, but the broad use of the "king and council" template together with formateur rationality implies that this framework for making policy decisions has clear advantages over other forms of

²²⁷ This chapter is based on research presented at the 2006 meeting of the Japanese Public Choice Society, where many helpful comments were received. Thanks are especially due to comments by professors Yokoyama, Oeda, and Suzuki. That research was subsequently published in *Public Choice Studies*, and this chapter draws heavily on material used for that paper..

organizational governance. Of particular interest for the purposes of this paper is its ability to resolve information problems and to reduce unproductive intra-organizational conflict.

Within Japanese political history, such advisory councils are nearly always important factors in government policymaking, and they often included representatives with different interests. For example, during the Tokugawa period, the government of the shogun relied upon a senior council (the roju) consisting of three to six important regional leaders (daimyo). The governments of the Emperor also relied heavily on advisory councils of daimyo. The first three of the Tokugawa leaders were cautious hardworking men who, although they surrounded themselves with capable advisors, nevertheless reserved the right to make final decisions (Mason and Caiger 1997: 193).

As in Europe, a very common solution to the succession problem is to make the current ruler's oldest son his successor. In addition to reducing unproductive conflict, the creation of hereditary posts also tend to induce a more careful consideration of the long-term consequences of policy decisions, because fathers and mothers tend to value the future prospects of their sons and daughters (Tullock 1987; Olson 2000). In cases in which no clear heir exists, the council or childless king can make new appointments. In stable circumstances, the ability to change policies to adjust to new circumstances may not be as important as avoiding losses from conflict about senior positions. As long as other crises are not confronted, hereditary solutions may be viable for a broad cross-section of government positions. Such positions were commonplace at all levels of government were, for example, during much of the stable Tokugawa period (Maison and Caiger 1997: 198—99). By retaining their advisory councils and deferring to past precedents, the

decisions reached by successive rulers will tend to well informed, if not always well judged.

After the first three shoguns, “There successors . . . came to office when the system was already in being. They had to rule as part of the established bureaucracy, abiding by existing laws and conventions and depending on the advice of serving ministers” (Mason and Caiger 1997: 217). It is clear that organizations that effectively solve the secession problem are more likely to be durable, because they avoid unnecessary conflict and make better decisions through time. Such organizations tend to have more surplus available for maintaining its membership and for its productive activities, which makes them more likely to survive temporary external shocks and decision errors.

Authority within a king and council system reflects opportunities for exchange which are partly grounded on informational considerations, partly on conflict reducing, and partly on shifts in the interests of those in positions of authority. These factors provide a good explanation of power sharing within the Tokugawa Shogunate, which ended a long period of civil warfare.

It is clear that policymaking authority was not simply vested in the shogun, but, rather carefully divided between the central government (shogunate) and the regional governments (daimyo). Policies were fine-tuned at regular meetings of the shogun and daimyo in Edo (Tokyo). Each party gave up some autonomy in order to secure something that it valued more. Replacing expensive forms of conflict with a less expensive forms, clearly made all parties better off.²²⁸

Throughout their history as national rulers, the shoguns retained direct control over no more than a quarter of the

²²⁸ It bears noting that this setting departs from the initial position imagined by many contractarian theories of the state, because the parties to the new instrument of governance are not necessarily equal nor are all affected parties necessarily consulted. In nondemocratic regimes, the agreement reached is a pact between political elites and normally involves only a relatively small subset of the most powerful members of the polity—essentially the parties to the unproductive conflict. Consequently, the resulting division of power often lacks the normative appeal of the social contracts analyzed by Buchanan and Tullock (1962), Rawls (1971), or Buchanan (1975). Such contracts among elites (pacts) can nonetheless reduce the deadweight loss of governance and also tend to make the political process more representative than would have been the case had the stronger party “simply” conquered the weaker. This often benefits the wider citizenry as well as elites.

territory and people of Japan . . . the remaining three quarters was parceled out among the *daimyo* to rule as their own domains (han) . . . a *daimyo* was generally lord of all that he surveyed from the top of his castle keep, and ordinarily a good deal more (Mason and Caiger 1997: 197–98).

Unfortunately, the payoff structure of the conflict game also implies that successful constitutional settlements of this sort require an enforcement device of some sort, which for major matters nearly always requires institutional adjustments as well as formal agreements. Such problems tend to be social dilemma, rather than coordination games, and thus incentives to cheat on agreements always exist.

In the case of the shogunate constitution, it is clear that considerable decentralization and limitations on central government taxation were obtained by the principle *daimyo*, in exchange for an oath of fealty to the shogun. It was clear to all, however, that the new oaths were not self-enforcing. Compliance was assured by requiring *daimyo* family members to reside in Edo (Tokyo) as “hostages.” This system also reduced the likelihood of regional revolt, because it required the *daimyo* to spend one year in two in Edo (Mason and Caiger 1997: 197). In exchange, the *daimyo* and their own councils retained the ability to rule their own territories and were for the most part exempt from central government taxes. The result was a long period of relatively peaceful and lawful governance.

Constitutional Exchange and During the Tokugawa Era

The power-struggle game outlined above, also implies that changes in the nature of the underlying equilibrium—whether because of military innovation, changes in economic circumstances, or external shocks—will tend to cause the assignment of power between king and council to be revised if circumstances change. New circumstances will change the bargaining power of the participants. And new bargaining may take place that replicates the new balance of military power within the central government and/or between the central and regional governments.

Such military-based adjustments are not, however, the only source of opportunities for constitutional exchange, nor are they necessarily the most important. New mutually advantageous opportunities for constitutional exchange can also arise because of changes in the distribution of wealth or changes in the ideology among those with the authority to adopt changes. In either case, new assignments of authority are not imposed unilaterally by a stronger party, but rather emerge from bargaining in a preexisting political and constitutional context.

The shogunate period exhibits a number peaceful shifts of authority between king and council and between the central and regional authorities, that are consistent with the constitutional exchange model. The shogun gradually transferred authority to his council and the bureaucracy for day to day rule, and regional governments gradually secured increased autonomy (Mason and Caiger 1997: 215–16). The shift in policymaking authority between king and council and between central and regional governance fluctuated somewhat, but tended to be in the direction of council rule and regional autonomy. The fiscal constitution of the shogunate period allowed council members other regional governors to offer tax revenue in exchange for increased authority to make public policies, and the shogunate governments were always hungry for new revenues (Congleton 2001; Congleton, Bacarria, and Kyriacu 2003).

In the course of two centuries, the result of bargaining over the distribution of policymaking authority was a complex decentralized unwritten constitution, in which hereditary councils in the central and regional governments and their respective bureaucracies controlled most day-to-day policy decisions and the shogun and the major *daimyo* lived comfortable lives of high politics and leisure in Edo.

By 1800, Tokugawa administration at its topmost level had evolved into an elaborate coalition of different interests. The interests maintained their separate identities and important ties between them were often familial and tacit, rather than formal and institutional (Mason and Caiger 1997: 201).

Constitutional negotiation is easiest to recognize in cases in which a new assignment of policy making authority generates obvious benefits for those directly involved in the negotiations. When a contract is well negotiated, all parties not only expect to benefit, they actually do benefit. In the case of the Tokugawa period, the shogunate constitution ended a long period of armed conflict and created a fairly stable system of property rights and law, which promoted economic development throughout Japan. Decentralized policymaking in the Han, allowed local variations in public policies to encourage development, while yardstick competition among the daimyo encouraged “best practices” to be gradually disseminated throughout Japan.

Economic growth tends to take place through expansion of labor and capital and also through specialization. Increased specialization implies that commerce becomes more central to ordinary life and a more important source of national output. Increased specialization and capital accumulation also tend to change the extent and distribution of wealth in countries that are initially based on agriculture. The income produced by commerce and manufacturing in shogunate Japan grew relative to that of agriculture, at the same time that agriculture production increased as new methods of farming were employed and more land was brought under cultivation. As a consequence, the samurai became courtiers and businessmen, rather than full-time soldiers, and many daimyo diversified into manufacturing and commerce. Barriers to trade, however, among the Han (daimyo territories) and a policy of international isolation significantly impeded the development of national and international markets, although these policies were undermined to some extent by Japan’s extensive sea coast.²²⁹

In the long run, however, it became clear that Japan did not grow as rapidly as Europe or North America during the eighteenth and nineteenth centuries. A new

²²⁹ “The system of feudal government exercised a crippling influence, for each feudal chief endeavored to check the exit of any kind of property from his fief, and free interchange of commodities was thus prevented so effectually that cases are recorded of one feudatory’s subjects dying of starvation, while those of an adjoining fief enjoyed abundance. International commerce, on the other hand, lay under the veto of the central government, which punished with death anyone attempting to hold intercourse with foreigners” (Britannica 1911: 33).

“yardstick” was introduced in 1853, when Admiral Perry and a small fleet from the United States Navy arrived. After a long period of relatively stable governance, the best practices of the past were obviously no longer the “best” of the possible practices.

II. Constitutional Exchange and Reform in Early Modern Japan

Such new circumstances may create what Buchanan calls “constitutional moments,” and a new consensus for institutional reform was clearly evident in the two decades following Perry’s arrival. However, opportunities to develop new institutions peacefully remain constrained by interests that are generated and advanced by preexisting institutions. That is to say, any new institutions adopted must be expected to advance the interests of those with the authority to adopt them.

It also bears noting that the subsequent interests of persons with policymaking authority in Japan changed for reasons having nothing to do with Perry’s arrival. New interests often emerge as industrialization takes place and as liberal ideas spread and gain support among those with policy making authority (Congleton 2001, 2004). In the second half of the nineteenth century, these factors also created numerous opportunities for institutional reforms and constitutional exchange, which had profound effects on the course of constitutional development in Japan.

Japan was not entirely closed to foreign intercourse before Admiral Perry’s arrival, although contacts were very limited. Contacts between the Satsumu and the Chinese continued via Okinawa (Mason and Caiger 1997: 205). Contact with Europe was maintained through the small trading post maintained by the Dutch on the island of Deshima near Nagasaki. Nonreligious books and newspapers from the Netherlands were translated by scholars (albeit slowly and for limited distribution, because printing was done via wooden block, rather than with movable type). In this manner, some Western

scientific ideas and philosophical ideas were available to interested scholars, particularly in the south. Indeed, the Dutch provided the shogun with advance notice that the United States would send ships to Japan a few years before Admiral Perry arrived in 1853 [Britannica 1911: 239]. Additional international commerce also took place illicitly along the coast and also with the Russians to the north.

Tokugawa Reforms after Perry

Nonetheless, the arrival of Perry's four ships of war in 1853, his return in 1854, and subsequent treaties of access (1854) and trade (1858) had significant effects on daimyo and samurai assessments of the quality of existing Japanese institutions. Subsequent treaties with European states only reinforced their assessments of institutional weakness. It bears noting that this conclusion was not a superficial one that focused on military equipment alone, but was often far more sophisticated. Many senior government officials clearly understood that Western technology reflected organizational as well as technological advantages. To "catch up," many believed that a broad range of Western organizational techniques had to be analyzed and adapted to Japanese circumstances.

New policies were rapidly adopted. First, a variety of long-standing quasi-constitutional domestic policies changed. The Shogun ended the prohibitions on construction and purchase of seagoing ships. The government ordered a battleship from the Dutch, who were also enlisted to "procure from Europe all the best works on modern military science." New fortresses were built, cannons cast, and samurai troops trained in their use. The translation of European scientific, legal, and political texts was both broadened and accelerated as interest intensified and as moveable type was introduced. Second, the shogun convened a special council of the major daimyo to determine the proper response to the new "yardstick" and the West's insistence on more open international markets. Third, the Emperor directed that "at the seven principal shrines, special prayers should be offered for the safety of the land and the destruction of aliens" [Britannica 1911: 239]. A crisis was clearly at hand.

The renewal of foreign trade after two centuries of closure clearly affected many Japanese family firms that now had to compete with distant foreign producers. It also clearly affected those in the South, who previously had exclusive arrangements with the Dutch and Chinese. Southern daimyo were among the strongest opponents to foreign trade at the imperial court. The Shogun was in the forefront of negotiations and, by the standards of the time, could be regarded as a "liberal" in the sense that he and his advisors acknowledged the need for institutional reform and modernization. However, neither the shogunate nor the Edo court was sufficiently powerful or influential to accomplish such changes on its own. It takes more authority to change the status quo than to maintain it, and much of the central government's authority had been traded away during the past century or so.

Trade increased the presence of foreign persons, who did not always follow the well established etiquette of the Tokugawa era, which increased resistance to the intrusions of uncouth foreigners. On the other hand, a small liberal movement began to take shape that pressed for open foreign relations and a more participatory political process. The first newspapers were printed, and many were critical of existing government policies and results. These liberalizing pressures were countered by conservatives who pressed for a return to "closure."

Negotiations between the imperial court and shogunate took place regarding foreign treaties, domestic policies, and institutional reforms, but without obvious results beyond disagreement about the proper response. Many daimyo and samurai argued for renewed closure; others argued for the end of closure—largely out of necessity.

The Meiji Restoration

During the Tokugawa era, sovereignty formally rested with the Emperor and his court, and authority for "ordinary" policies was delegated to the Shogun and his administration. The Shogun, however, exercised considerable control over the coming and goings of the Emperor and his court through his Nijo-jo fortress near the Emperor's palace in Kyoto. With the failure of the shogunate to protect the homeland and enforce

its own policies, support for the old “two government” system diminished, even among those who had previously benefited from it. The future would clearly differ from the past.

Consultations continued among representatives of the Shogun, imperial court and daimyo. A shogun died and was succeeded by Yoshinubo (Keiki) in 1866, who continued to press for modest reforms. Further consultations were undertaken.

In 1867, a major constitutional reform emerged out of this long series of negotiations, albeit reinforced by the military efforts on behalf of the Emperor by the southern daimyo. The Tokugawa regime accepted a shift of day-to-day policymaking authority from the new relatively weak Shogun to the relatively new and weak (15-year-old) Emperor Meiji. The new Shogun called a council of daimyo and high officials in Kyoto to announce his resignation, which was tendered the following day to the Emperor (Britannica 1911: 308)

“Now that foreign intercourse becomes daily more extensive, unless government is directed from one central authority, the foundations of the state will fall to pieces. . . . If national deliberations be conducted on an extensive scale and the Imperio decision be secured, and if the empire be supported by the whole people, then the empire will be able to maintain its rank and dignity among the nations on earth—it is, I believe, my highest duty to realize this ideal by giving entirely my rule over this land” (Tokugawa Yoshinobu, reprinted from Mason and Caiger 1997: 259).

The Meiji “restoration” is considered by some scholars to be a unilateral act of generosity on the part of the Shogun to strengthen national governance and avoid civil war, and by others it is considered to be an act of surrender accepted out of necessity in the face of a superior military force.²³⁰ However, there is much that suggests that it can be regarded as part of the terms worked out for a major constitutional exchange.

The Restoration as Constitutional Exchange

The negotiations between the Shogun’s senior advisors and those of the Emperor clearly affected the details of the restoration. The shift of governmental authority from the Tokugawa to the Meiji court was initially accomplished without substantial change in the central government bureaucracy or regional governments, although a significant reorganization followed, which included surrender of the Tokugawa lands (tenryo) to the new central government (Mason and Caiger 1997: 259–60). The emperor relocated from Kyoto to the seat of Tokugawa power, Edo, after the city was renamed Tokyo. Policymaking authority remained for the most part in the hands of advisory councils.

The new regime was clearly more than a palace coup, however, because the change included clear commitments for constitutional reform. The 1868 reading of the “Imperial Oath,” which was clearly written by senior daimyo advisors, rather than the young Emperor, included five major commitments.

We shall determine all matters of state by public discussion, after assemblies have been convoked far and wide... We shall unite the minds of people high and low We are duty bound to ensure that all people . . . may fulfill their aspirations and not give into despair. We shall base our actions on the principles of international law. . . . We shall seek knowledge throughout the world and thus reinvigorate the foundation of this imperial nation.

After the oath was read, 411 major and minor daimyo (including the 30 members of the new advisory council, the Giro) formally renewed their oath of fealty to the Emperor by signing an official document (Breen 1996).

The parallels between the Emperor’s oath and the resignation letter of Yoshinubo submitted the previous year suggest that much had previously been worked out behind closed doors. It is also noteworthy that the four powerful daimyo from the south also surrendered their fiefs to the Emperor, an action similar to that taken by Yoshinubo

²³⁰ Emperor Meiji, of course, had formally been the official source of the Shogun’s authority and continued to be the formal source of authority under the Meiji constitution. Today’s constitution differs in that the government’s authority formally rests on popular sovereignty rather than royal grants of power.

(Britannica 1911: 311). Bargaining and compromise is evident too, in that the imperial court had originally opposed shogunate efforts to negotiate treaties with the west and to modernize, but now fully embraced it, as implicitly did the 411 signatories. A constitutional exchange has to be acceptable to those who have the power to enact major reforms.

The first Meiji reforms were largely consistent with a constitutional exchange interpretation of the restoration. For the most part, the early reforms assured the continued regional political and economic power of the daimyo, a subset of whom had been the chief negotiators. A council of daimyo continued to run the government, although it now included a group selected by the Emperor, rather than the Shogun. This is not to say that distribution of policymaking authority did not change, but rather to argue that the reforms were not imposed unilaterally. The restoration clearly took account of existing interests.

Policymaking authority shifted back to the central government. The old federal system of government was reorganized. The ancient feudal territories became prefectures to be governed, rather than family domains to be ruled. However, initially, the regional daimyo continued to rule as governors of their old territories and retained their territorial treasuries. National and regional tax bases were also reformed, so that they included income from commerce as well as from agriculture. Tax rates were reduced, but governmental receipts evidently increased, because of the expanded tax base. Regional daimyo were assured of 10 percent of the new tax revenues rather than 40 percent of that from agriculture alone (Britannica 1911: 312).

A less successful constitutional exchange was attempted to end the samurai's exclusive right to be members of the Japanese military. Cash "buy outs" of lifetime privileges were offered to the samurai with some success.²³¹ However, when the army was

reorganized in 1876 along more European lines, which ended the samurai's inherited right to military service and right to wear two swords in public, it generated significant civil unrest and also a significant regional civil war (the Satsuma Rebellion) in 1877, which was put down at great expense (Britannica 1911: 316–17).

The Emperor's Oath and Institutional Conservatism

The Emperor's oath was less than perfectly clear, probably because it reflected compromises among the negotiators. For example, whether the Emperor's commitment to "determine all matters of state by public discussion, after assemblies have been convoked far and wide" was a commitment to create a parliament or simply a promise to call the daimyo to Kyoto for consultations was not clear. The latter was a common procedure during periods of crisis under the shogun and at first appeared to be the only promise made.

The daimyo responsible for the "assemblies" language in the Emperor's Oath, however, pressed for broad assemblies, and induced several somewhat broader assemblies (kogisho) of nobles and samurai to be called (Caiger and Mason 1997: 284). Initially, these assemblies were consultative bodies without legislative authority. However, a new more influential "senate" of the daimyo (the genro-in) was convened in 1875, which was to discuss and suggest revisions to proposed laws and regulations. An assembly of prefecture governors also met in 1874 and 1878 (Britannica 1911: 319–20).

In practice, however, the senior council of the Emperor and the bureaucracy continued to control policy making. In this and other new practices, governance closely resembled that of the shogunate. Institutional conservatism had largely prevailed. And, although many new persons occupied positions of power, the old guard retained most of its authority and wealth.

²³¹ Approximately 400,000 samurai had rights to a lifetime pension, which was a substantial drain on the central government expenses. Many of the pensions were hereditary (Britannica 1911: 313).

Those in government tend to be quite content with the procedures under which they come to office, whether they are based on heredity, royal appointment, or particular election rules. Congleton (2004) demonstrates that election and other selection rules tend to be durable, because the high officials selected realize direct economic benefits and often ideological benefits from the existing rules. Since these same officials control the selection rules, and the rules are optimal from their perspective, they will resist changes in the selection process. Moreover, changes in interests regarding the selection procedures are unlikely to emerge from economic changes alone. Thus, the rapid industrialization that followed the Meiji restoration and its consequent changes in economic interests were unlikely by themselves to induce peaceful constitutional reforms of suffrage law although they may induce other significant changes, including a shift toward parliamentary governance.

Revolutionary threats as emphasized by Asemoglu and Robinson (2001) may induce changes in selection procedures, but credible revolutionary threats are not easy to organize and were not obviously present in Japan. Congleton (2004) argues that it is changes in ideas about “the good society” or about “qualifications for political participation” are more likely to induce changes in selection procedures than economic change alone or revolutionary threats. Consistent with the latter explanation, there was a significant shift in ideology that favored liberalization of both economic and political policies that took place in the fifty years after the restoration.

There is substantial evidence that long-held theories of governance began shifting rapidly in the period after the Meiji restoration, both among the educated and the politically active public and within elite circles of governance. New academic liberals drew on older Japanese writings on equality, law, and the state, and also drew from the new translations of Western philosophers. Among notable scholarly proponents of liberal reform were Fukuzawa Yukichi, who spent much of his life writing liberal tracts, and Nakamura Masanao, who translated J. S. Mill’s *On Liberty* into Japanese. Leading

educators in the 1870s, many of whom had prominent positions in universities and in the education ministry, also promoted liberal ideas and institutional reform (Hane 1969). The first generation of newspapers published in the 1870s could also be regarded as liberal insofar as they advocated a “wider opening of the door to official preferment” (Britannica 1911: 47). These newspaper interests were not entirely general, of course, insofar as they often promoted their owner’s “preferment.” But, such reforms required liberalization in the sense of expanded political and economic participation.

New organized groups explored philosophical issues of governance, as for example the Gakugeikodankai in Itsukaiki (Devine 1979), while others pressed for liberalization of political and economic life, as did the Liberty and Popular Rights Movement, which lobbied for a written constitution and national assemblies (Mason and Caiger 1997: 284; Devine 1979). Ideas about political privileges began to shift as notions of “equality before the law” began to replace theories of family privilege among educated people, including many members of Parliament. Indeed, there were sufficient number of liberal groups and proponents of modernization that a confederation of liberal groups was organized (the Aikokushi or Patriotic League) to lobby for tax, regulatory, and political reform. Such groups attracted support from the growing rural and urban middle class as well as liberal intellectuals and academics.

Within government itself, Itagaki Taisuke from Tosa continued to advocate the creation of a written constitution and founded the first organized political party in 1878 (the Jiyto) to more effectively lobby for reform. The Emperor’s oath, which mentioned broadly representative assemblies, was often used by liberals to insist on a written constitution with an elected national assembly.

This is not to say that members of the liberal movement of the early Meiji period always advocated liberal reforms for ideological reasons alone. Many did, but many others supported liberalization (more open governance and trade, modernization, and Westernization) for pragmatic political, economic, and military reasons—which was, of course, also true of the liberal movement in Europe during the nineteenth century. Nor

did opposition to change or institutional conservatism disappear, although it increasingly had to be justified, rather than deferred to. The experience with Admiral Perry and subsequent European intrusions had clearly revealed that the “best practices” of the past were not always the best of all available practices.

Election Rules as Constitutional Bargains

The first formal major institutional reform was adopted in 1878, when an imperial edict announced that local government would henceforth be based on elective assemblies. A totally new selection process was adopted, although it was evidently designed to minimize its effect on the persons holding office, as was also common in Europe. Those eligible to sit in the new representative assembly had to meet a relatively high property qualification, as did those who voted in the elections. Voting was by signed ballot, and the assembly would meet for just one month each year. The local assemblies controlled local taxes (as ratios of national taxes), but prefecture governors remained unelected (Britannica 1911: 150, 319–20).

The result was not local democracy, but clearly a significant increase in representative governance. Elections replaced earlier selection procedures—which had for the most part been hereditary and hierarchical. The specific electoral procedures, however, drew office holders from the same relatively wealthy families who normally held office in the past. The effect of signed ballots helped to guarantee this result, because it allowed the most powerful families in a community or prefecture to make sure that their “former vassals” cast their votes for the “right” candidate. Without such assurances, it is clear that opposition from influential families at court would have been far greater, support weaker, and the electoral reform less likely.²³²

The Meiji Constitution

In 1881 an Imperial edict announced that a national assembly would be convened in 1891. Efforts to draft a written constitution for such an assembly were begun in earnest,

and eight years later, Japan formally became a constitutional monarchy when the new written Meiji constitution was adopted at an Imperial ceremony in 1889.

As true of the local government edict, the Meiji constitution adopted Western forms of government and included new more liberal procedures for selecting office holders. However, it was also clearly designed to protect the interests of those already holding positions of influence. For example, rather than ground the constitution in popular sovereignty, the Meiji constitution was officially a grant by the sovereign, and the Emperor remained sovereign. Although royal policy decisions were to be cosigned by a cabinet minister, the ministers were appointed by the Emperor, and thus the new cabinet was very likely to include members of the present royal council of advisors. The Emperor retained the power to declare war and peace, sign treaties, and appoint and dismiss officials.

The existing political hierarchy outside of the imperial court was protected by using hereditary and wealth-weighted representation in the parliament (diet) and fairly restrictive wealth-based suffrage rights. Following the English design, the parliament was bicameral with a hereditary chamber of nobles and an elected chamber, which had essentially equal powers. Following the Prussian design for the elected chamber, the seats were apportioned by wealth. The top qualified voter-taxpayers, who paid a third of all taxes, received one-third of the seats, the next highest group of voter-taxpayers, who collectively paid one-third of taxes, received a third of the seats, and the rest of the electorate also received a third of the seats. About 1 percent of the total population of Japan—400,000 persons—were eligible to vote under the suffrage laws. Thus, the new electorate reached well into the old samurai class and new upper middle class, but no further. The diet (parliament) had the power to veto new taxes and new laws. Free speech within the new diet would for the first time be protected (Britannica 1911: 142–46; Devine 1979; Mason and Caiger 1997: 296–99).

²³² Similar wealth-based voting and office restrictions had been commonly adopted in most of the first political liberalization in Europe, and were still in place in many countries in, for example, Sweden and England. Secret ballots were becoming common in the United States and Europe at about this time.

Given the existing distribution of income, the new election laws provided a small group of wealthy businessmen and landowners (largely drawn from the court nobles, daimyo, and senior vassals) with one-third of the seats in the Parliament, and substantial control over public policy in the elected chamber, and complete control in the noble chamber.

Institutionally, the result was historic, nonetheless. Japan was now formally a constitutional monarchy. The government had moved beyond king and council—at least on paper—to king and parliament. Elections were now used to select members of government rather than family ties. Suffrage was far from universal, but governance was formally far more inclusive than the policy making bodies of the Tokugawa and early Meiji period. In these, as in many other respects, the Meiji constitution, as intended, resembled other European constitutional monarchies at this time. In much of Europe, kings rather than parliaments continued to have the right to appoint the “government” (the executive cabinet). And, the right to vote was even more widely regarded to be a privilege determined by wealth or tax payments, rather than a birth right. Once elections and a constitutional monarchy are in place, however, the steps from constitutional monarchy to parliamentary governance and democracy no longer require major changes in the organization of governance, but rather relatively modest reforms of existing procedures. Parliament must gain control over cabinet appointments, and suffrage must be expanded and based on one person–one vote.

Such reforms are by no means guaranteed. Many European systems of governance (e.g., England) had used procedures similar to those adopted in Japan in 1889 for centuries at a time without significant reform.

In industrializing countries of the nineteenth century, existing liberal economic and political interests were reinforced by rising incomes, improved communications technologies, and declining transportation costs. Together liberalization and industrialization tended to promote gradual democratization within parliamentary systems by linking free trade and suffrage movements. Consequently, industrialization in Europe

was linked with democratization, as policymaking authority gradually shifted to parliament, trade barriers were reduced, suffrage expanded, and appointments to the cabinet became more dependent on electoral majorities.

Although Japanese history prior to 1890 was very different from that of European nations, for the next three and a half decades Japan government followed a path of constitutional reform that was surprisingly similar to that of the liberalizing countries of Europe.

Rational Choice and Suffrage Reform

The shift to democracy requires an expansion of suffrage as well as an increase in the role of parliament. Although suffrage tends to gradually expand under wealth or tax based suffrage rules as economic growth takes place, major reforms, as demonstrated below, tends to require a shift in the world view of those with political authority, because non-voters cannot vote and, absent a revolutionary organization, they are unlikely to directly influence constitutional or policy development. In Japan this took place through a generational change of politicians and gradual “liberalization” of Japanese liberal political parties.

Individuals inside and outside of government have both pragmatic and ideological interests in suffrage law. Election law determines the median voter, the median member of the legislature, and public policy to the extent that the elected chamber has control over public policy. Election laws also affect many essential features of a the polity. They determine who is a political citizen and whose interests “should” be taken account of when choosing public policies. These dual interests in suffrage can be represented by including suffrage or suffrage norms as an argument in the typical citizen’s indirect utility function (Congleton, 2004).

For example, if the citizen i ’s ideological norm is S_i^* , and the present law is S , the citizen’s utility can be modeled as:

$$U_i = u(G, X_i, |S - S_i^*|) \text{ with } X_i = (1-t) W_i \text{ and } c(G) = t \sum_{j=1}^N W_j \text{ with } j = 1, 2 \dots N \quad (1)$$

for a given level of personal wealth, W_i , government services, G , and tax rate, t . If we assume that typical voter's utility function is strictly concave, that government services and after-tax consumption, X_i , are goods, and that deviations from his or her suffrage norm is a bad, Citizen i 's ideal service level will satisfy:

$$U_G = U_X X_G \text{ or } U_G = U_X (W_i) (CG / SW_j) \quad (2)$$

which the implicit function theorem allows to be represented as:

$$G_i^* = g[W_i, |S-S_i^*|, SW_j] \quad (3)$$

In this very lean model of the demand for government services, both the service level and tax rate are indirectly determined by elections laws, because suffrage laws determine identity of the pivotal voter.

Given an existing distribution of wealth, the minimum wealth that entitles one to the vote, SL , implies a particular electorate and thereby a particular median voter for a given distribution of wealth, $W_v = s(SL)$.²³³ The median of a distribution of eligible voters is determined by median wealth, W_v , whenever voter preferences for government services are either monotone increasing or decreasing in wealth. This indirect effect of suffrage law on service levels can be represented by:

$$G_i^* = g[s(SL), |SL-S_i^*|, SW_j] \quad (4.1)$$

and its effect on the pivotal voter's utility as:

$$U_v^* = u(G^*, X_v, |S-S_i^*|) \quad (4.2)$$

It can easily be shown that the pivotal voter will not have an interest in suffrage reform if he or she has no direct ideological interest in suffrage or regards the present suffrage law to be ideal. In the absence of a significant nonfiscal interest in suffrage, the

existing suffrage thresholds are optimal for the median voter, because $USSWL = 0$ and the first-order condition for the pivotal voter's ideal suffrage law are always satisfied at his (or her) ideal service level, G^* . The same result also suggests that changes in pivotal voter tastes with respect to private and public services or changes in the median voter's income will not cause the present pivotal voter to change the existing suffrage laws.

All equilibrium suffrage laws are fixed points. The existing suffrage law determines the identity of the median or pivotal voter who, in turn, prefers the current suffrage law. An electoral law equilibrium is illustrated in figure 1. Suffrage law equilibria can be very stable, as, for example, the early fifteenth century electoral laws for the English House of Commons, which remained unchanged for more than four hundred years.

[FIGURE 1, around here]

This model implies that a change in pivotal voter suffrage norms can disrupt a preexisting suffrage law equilibrium.

Even in such cases, however, it bears noting that a change in "ideological" interests may not lead the pivotal voter to favor changes in the election law. If the anticipated new pivotal voter favors a different suffrage law than the present pivotal voter, the current pivotal voter's preferred suffrage law reform may be expected to generate a series of reforms, which may generate a suffrage law that is worse than the status quo. The choice facing the current pivotal voter (and his agent, the median member of parliament) is between the status quo and the new equilibrium that would emerge under different suffrage rules.

²³³ In weighted voting or weighted representative systems the "pivotal voter" is the voter that supports the median member of the elected chamber of parliament. In such cases, the median voter will not be the median of the eligible voters. To simplify the discussion, these effects are neglected, but without significant loss of generality.

This is not to say that new suffrage law will never be adopted, but rather to indicate that the present pivotal voter cannot directly determine the new suffrage law, because any new law that he adopts can be revised by the pivotal voter generated by the new law. Given the continuity assumptions and the fact that suffrage laws are bounded at 0 and 100 percent, there will always be a fixed point, but it may not be an equilibrium that the current median voter prefers the status quo. Small changes in norms, however, tend to generate acceptably small changes in the electoral equilibrium and thus periodic changes in suffrage law.

Liberalism, Party Governance, and Democracy

Suffrage norms may change for various reasons, including philosophical reflection and experience. However, such changes are more likely if interest groups induce a broad cross section of voters to undertake such reflection. During late 19th century and early 20th century Japan, both significant liberal political parties and popular movements attempted to persuade a broad cross section of the Japanese public that more liberal economic and political laws were desirable for a variety of reasons. For example, a group was formed in 1899 by urban business leaders to press for new suffrage laws (the *shugiin senkyoho kaisei kisei domeikai*), which as partly responsible for election reforms in 1900 that doubled the electorate by reducing the tax-vote threshold from 15 to 10 yen. These suffrage reforms and the elimination of wealth restrictions on office were obtained by liberals in exchange for additional tax revenues required to finance Japan's rapid industrial and military expansion (Mitani 1988: 71). And although nonconstitutional issues often took center place in policy debates, the liberal arguments favoring more open markets and more open political processes were also clearly effective (Hopper 1974). Civil service reform was introduced in 1899, which attempted to reduce the politicization of the bureaucracy below the first rank appointed by the Emperor, by requiring examinations and creating explicit qualifications for bureaucratic office.

Political parties were organized and then reorganized, as with the merger of the liberal *Jyuto* and *Shimpoto* parties to form a Constitutional party (*Konseito*) in 1898, and

the formation of a new moderate party (*Seiyukai*) in 1900. The larger and somewhat more disciplined parties, together with more partisan election campaigns, allowed the parties to play an increasing role in development of public policy (Scalapino, 1968). With the creation of stronger parties, a significant shift toward party rule began.

“Constitutional government in Japan had developed to a point where it was impossible to govern without a majority in the Lower House” (Akito 1967, p. 135).

The first party government took office in 1898, but the emergence of more or less routine party governance did not emerge for another two decades. Cabinets and prime ministers were increasingly chosen from the major parties represented in the elected second chamber.

The electorate was doubled again in 1919 by reducing the tax-vote threshold from 10 to 5 yen (Mitani 1988). The tax-voter threshold was eliminated in 1925 to create essentially to universal male suffrage in 1925 (Britannica 1911: 144; Duun 1976:170; Mason and Caiger 1997: 320, 331). At this point, parliamentary democracy may be said to have come into existence, but this high water mark of liberalism was reversed a short time later. “Party” cabinets were appointed in 1919, 1924, and 1929, but the tide soon turned.

Fiscal crises, foreign entanglements, and nationalism generated broad support for non-partisan cabinets. After 1932 all the prime ministers were active military men, rather than elected representatives from major political parties (Mason and Caiger 1997: 330–32). The alignment of liberal political and economic interests that produced democracies in many European countries was not quite sufficient to do so in Japan. The constitution remained in force and elections were held, but policymaking authority shifted back to the Emperor and his advisory councils.

On the other hand, to say that the tide was reversed is different than to say that it was erased. Although conservative arguments evidently won the debate during the 1930s, the “liberalization” of Japan's economy and constitution during the late 19th century and early 20th century evidently made the current political and economic constitutions of Japan far easier to adopt and far more viable than it would have been without the liberal

successes of the Meiji period, but that is a topic for future research. Interests, ideas, and institutions clearly played a role in defending Japanese constitutional arrangements throughout its recent history, and changes in interests and ideas produced new constitutional reforms that were clearly influenced by preexisting constitutional interests and constraints.

V. Conclusions: Constitutional Bargaining, Rational Choice, and Evolution

Most governments are not unitary states, but rather divide policymaking authority among several branches and several levels of government (Ostrom, Tiebout, and Warren, 1961). In parliamentary democracies, the council (parliament) selects and monitors the chief executive (chancellor or prime minister). In a presidential democracy, the president and parliament are independently elected and legislative powers are divided between the president and the parliament. In constitutional monarchies, a hereditary ruler is combined with an elected parliament, and legislative authority is divided between the king and parliament. Policy making authority is also generally distributed among central, regional, and local governments (which may also use the king and council template). It is the fact that policymaking authority is multidimensional that allows it to be distributed among policy makers in a wide variety of ways.

Insofar as a given assignment of policy making authority is analogous to a division of "political endowments," it is clearly possible that a given assignment of policy making authority is not Pareto efficient for those who possess it at a given moment in time. That is to say, new "constitutional gains to trade" may emerge as political and economic circumstances change. Together the multidimensionality and divisibility of policymaking authority allow political power to be transferred peacefully and lawfully as results of constitutional bargaining (Congleton 2003, 2004). For example, a king may accept diminished policymaking authority in exchange for additional tax revenue or security. This was, for example, an important part of the explanation for both the origin of European parliaments with veto power over taxation and also the origin of the "free towns" of

medieval Europe, which generally paid the king additional taxes in exchange for additional local autonomy (Pirenne 1925).

In other cases, the reassignment of policymaking authority may reflect changes in the common political interests of the government (Buchanan 1975). This is, for example, a partial explanation of the Meiji reforms introduced in the decades after Admiral Perry's arrival in 1854 and revealed weaknesses in long-standing Japanese institutions. Both cases allow the possibility that constitutional reforms can be adopted peacefully and lawfully. Both cases also suggest that the reforms advances the interests of those with the authority to reform the rules of governance, which may but does not necessarily advance the interests of those who are governed.

Most previous public choice analyses have focused on unitary models of government, which allowed Public choice research to develop very good models of direct and representative democracy and also good models of autocracy and dictatorship. But, unfortunately, unitary models of governance cannot account for the effects of institutions on policy outcomes, nor for a gradual and peaceful process of constitutional reform, because these are caused by particular divisions of policymaking authority within a given government. The king and council model allows this division of power to be modeled and opportunities for constitutional exchange to be characterized.

Overall, this paper has demonstrated that the tools of public choice and constitutional political economy can shed significant light on an important period of Japanese political history. Consistent with this theory, the political institutions of the Tokugawa and the Meiji periods exhibited considerable durability, although less than complete stability in their underlying decisionmaking procedures. The Tokugawa regime shifted from shogun to council rule and between centralized and decentralized governance. Governance under the Meiji constitution shifted from royal toward parliamentary rule in the first three decades and then back again during the last two decades, largely under the stress of domestic and international crises—many, but not all,

of the government's own making. These constitutional reforms were generally lawful and peaceful within the context of existing constitutional institutions.

The restoration was clearly what Buchanan terms a “constitutional moment,” although the details clearly reflected ongoing procedures of constitutional negotiation and exchange. Many of the other reforms were individually relatively minor, although cumulatively very important. It was such “minor” reforms that led the Tokugawa regime toward decentralization and the Meiji constitution toward and then away from parliamentary democracy.²³⁴ In well-functioning democracies, the effects of shifts in authority between “king” and “council” are often subtle, because both the legislature and executive are constrained by similar electoral pressures. In authoritarian systems and intermediate systems, however, the effects of such shifts in authority can be profound, as has often been the case in Japanese history.

²³⁴ Here, I am assuming that purely democratic regimes use one man–one vote procedures for casting votes, selecting representatives, and determining the members of the cabinet. Internal “divisions” within majoritarian systems can be introduced through the use of bicameralism. However, there is clearly a spectrum of democracy, with one man rule at one extreme and one-man one-vote driven systems at the other. Weighted voting schemes and weighted representation systems occupy the middle ground in this spectrum. The gradual expansion of suffrage under Japan's weighted representation system made the system more democratic by reducing the difference between the implicit weights of voters as did the use of “party” cabinets during the 1920s.