

**Constitutional Exchange in Japan:
From Shogunate to Parliamentary Democracy¹**

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I. Introduction: Constitutional Exchange and Japanese Political History

This paper uses recent work from constitutional political economy to analyze the constitutional politics of Japan as it shifted from a medieval federation to a modern parliamentary state in the late nineteenth century. The main engine of analysis is a federal version of the king and council model. The historical analysis focuses on gains to trade that arose between the Shogun and Emperor, between these rulers and their respective councils, and between the central government and regional governments.

The main thesis of this paper is that a model of constitutional exchange can illuminate a good deal of Japanese constitutional history. This is not to say that all constitutional developments in Japanese history were peaceful reforms or motivated by narrow self-interest, but rather that the interests of those sharing the authority to reform rules of governance had important effects on the course of Japanese constitutional history. Even in cases in which explicit or implicit military threats empower those proposing constitutional reforms, it is clear that resistance to new procedures can be reduced by choosing reforms that advance mutual interests and minimize unproductive conflict. Analysis of potential gains from constitutional exchange, thus, sheds very useful light on both constitutional reform and policy outcomes, whether accomplished entirely through peaceful means or partly through force.

¹ A previous version of this paper was 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. This paper is part of a larger project on the emergence of Western democracy, the core models and themes of which are summarized in this paper on Japanese constitutional history.

The first half of the paper provides an overview of an evolutionary rational-choice model of constitutional design and reform. Section II develops several rational choice explanations for institutional convergence. It argues that institutional templates tend to be widely used when past experience demonstrates they are relatively efficient and robust; that is, they are “good practices” for a relatively wide range of circumstances. Section III summarizes four important advantages of a particular template for organizational policy making. It suggests that the “king and council” template reduces information collection and processing problems, and also can reduce wasteful conflict relative to unitary forms of government. The “king and council” and other forms of divided government, such as federalism, are also flexible systems of governance that can be peacefully adapted to new circumstances through constitutional exchange. The multidimensionality of public policy allows the right to create and veto policies to be exchanged between the king and council and between central and regional governments in one or two policy areas at a time.

The second half of the paper applies the model to Japanese constitutional history. Models of constitutional exchange predict that peaceful adjustments to the balance of policymaking authority are commonplace. In Japanese history, these are observed between the Shogun and his council, between the Emperor and his council, and between the central and regional governments of Japan. Moreover, constitutional exchange should be most common at times when economic, ideological, and other political conditions change systematically. The analysis also suggests that in cases when economic and ideological trends are favorable (rapid economic growth and the spread of liberal ideas within the ruling elites), there should also be evidence of a trend toward liberal democracy, and when circumstances are unfavorable, there should be evidence of trends away from liberal democracy. Although the transition from Shogunate to the Meiji parliamentary system was catalyzed by external events, it is clear that the details of a half century of minor and major constitutional reforms reflected internal interests and bargaining by those with the power to adopt constitutional reforms. Moreover, it is clear that developments in the first decades of the Meiji period lead to liberal democracy and then away from it.

Section V summarizes the results and suggests extensions. The distribution of policymaking authority often has significant effects on the course of public policy (Congleton and Swendenborg 2006), and this is clearly evident in Japanese political history.

II. Organizational Design, Rational Evolution, and Convergence

To understand the process of constitutional design and reform, it is useful to recall that governments rarely emerge as the consequence of a single universal contract or conquest, but rather emerge gradually as decisionmaking procedures, public policies, and laws are refined by those with the authority to make new rules. As such, governments, like other organizations, are consequences of a long series of experiments that attempt to solve a wide variety of internal incentive and decision problems, including significant ones associated with governance, itself.

All organizations share the property that they are formed to advance goals that can best be achieved by coordinating the efforts of more than one person. This is true of simple organizations in which fellowship is the organization's only objective and being organized is an end in itself. And, it is also true of large and complex organizations, such as governments and international corporations whose aims concern people, places, and activities beyond their membership. All formal organizations attempt to induce their members to function as productive teams, rather than an unproductive assembly of individual shirkers and rent seekers. All organizations also make decisions about how to direct their human and nonhuman resources. Thus, it is not surprising to observe that organizations, both nongovernmental and governmental, adopt more or less similar systems of conditional rewards to solve internal incentive problems. All formal organizations attempt to solve similar incentive and decision problems.

Economists have spent a good deal of time analyzing how incentive problems associated with team production and coordination can be addressed with various sophisticated methods of contract and selection. Economists, however, have paid little attention to the problem of governance, the process by which organizations make decisions to allocate their resources and also adopt changes in their decisionmaking procedures. Instead, economists normally assume that every private organization is well-governed; that is, they assume that an entrepreneur or "formeteur" has already created an organization that maximizes his or her net benefits, which are normally represented as money profits for organizations whose primary activity is commerce, namely "firms."

However, the task of establishing a well-governed organization is not trivial, whether for profit or not. It takes enormous time, talent, and energy to create an effective organization. As a consequence, a "formeteur's" time and attention is one of every organization's most valuable and scarce resources.

Formeteur Interest, Institutional Conservatism, and the Rule of Law

The scarcity of formeteur time and attention has obvious effects on the organizations created. Perhaps the most important of these is that, rather than trying to imagine every internal and external incentive problem that needs to be addressed in every conceivable circumstance, *formeteurs economize by selecting from a menu of preexisting organizational templates that have stood the test of time* and thus proven to be robust solutions to a broad range of organizational problems. The common problems faced by every person or group that has attempted to form a new organization or to modify an existing organization allow formeteurs to learn a good deal from the designs of past formeteurs. This method of economizing on the costs of organizational design implies that new organizations normally are, for the most part, “old” in the sense that they use divisions of duties and decisionmaking procedures from other long-standing organizations with which they are familiar.

This rational “institutional conservatism” produces other economic advantages as well, which also tend to reduce organizational experimentation. For example, it is generally less costly to staff organizations in which assignments of duties and relations among persons are similar to those in other existing organizations, because well-trained persons can be hired from other firms and from universities who will be immediately productive in their new jobs. This reduction in training costs is realized whether significant technological advantages exist for particular “job descriptions” or “specializations” or not, and these savings will be sacrificed only in cases in which large advantages are associated with a new assignment of responsibilities within an organization.²

² Established routines and specialization often improve an organization’s ability to engage in team production. For example, suppose that Mr. A performs task X, Mr. B performs task Y, and Ms. C performs task Z. If performance is acceptable, rewards are R_A , R_B , and R_C . If performance is not acceptable, penalties are P_A , P_B , and P_C for whoever has not performed up to standard.

If standards of performance are arbitrary, the rewards associated with a given effort by A, B, or C will be random variables, and normal risk aversion implies that they will prefer to be members of organizations in which rewards are more certain (have lower variance), other things being equal. Similarly, if the criteria for assessing penalties are volatile, the risk associated with being a member of even a productive organization is increased, which tends to lower the average penalty that can be applied, other things being equal. In this manner, the existence of other similar organizations—as tends to be true of regional and local governments—and the possibility of exit limits the arbitrariness of formeteurs and also increases the value of stable organizational routines and rules, both in the short run and long run.

The advantage of predictable reward systems for solving internal incentive problems implies that formeteurs and their successors would be wise to establish stable, predictable procedures for enforcing the

An organization's internal assignment of tasks also tends to be stable once adopted, because formateur time and attention remains a scarce resource. A common practice is for a formateur to issue a series of standing decisions, each of which remains in force unless revised. By carefully analyzing groups of related problems at a time, more or less general solutions can be developed.³ In this manner, the cycle of rule making and review tends to create a series of "rulings" or "policy principles" that are durable and, hence, predictable, insofar as they are sanctioned by the organization.

Detailed regulations for important groups or classes underpinned the Tokugawa administration system. Such regulations took the form of basic codes, which were reaffirmed and sometimes revised at the accession of each new Shogun (Mason and Caiger 1997: 195).

In the long run, standing rules become the "law of the land." Most organizations, thus, tend to have their own quasi-constitutional environments composed of standing rules and decisionmaking procedures that advance formateur interests, given their external and internal constraints. Such durable rules or policies are not adopted because formateurs operate behind a veil of ignorance or because they believe in "constitutionalism" or even the "rule of law." Rather, they are adopted because stable rule-based decisionmaking tends to improve the performance of their organizations. Without such predictable decisionmaking procedures, internal rules, and predictable rewards and penalties, organizations will lose members and territory to other more efficient organizations where effective predictable rule-based rewards are used.

The Evolution of Organizational Templates

A template is not a unique organization, but rather a palette of specialization, procedures, and responsibilities, from which particular organizations can be created. In the long run, minor experiments in organizational structure are often necessary as circumstances change inside and outside an organization. Experiments that generally improve effectiveness of particular organi-

organization's rules. These procedures may not be uniform for all members of the organization, as, for example, the formateur's family members may be subject to lower (or higher) standards. However, the more predictable the procedures are, the easier it will be to assemble and maintain an effective organization.

³ The variations observed often reflect differences in an organization's ability to screen individuals and to rely on nonpecuniary reward systems. Religious and governmental organizations, for example, generally make more extensive use of nonpecuniary rewards than firms, but firms also use nonpecuniary rewards to encourage loyalty and an internal work ethic.

zations will be copied by others, whereas changes that reduce effectiveness will be avoided. Most such experiments do not change an organization's fundamental assignment of responsibilities, nor its decisionmaking procedures for selecting organization-wide policies; although, fundamental changes can emerge gradually from a sequence of minor and major experiments.

The rational process of trial and error in organizational design, together with the more or less similar goals and problems faced and the limited time and attention of formateurs, imply that only a handful of general designs tends to be widely used in the private and public sector, because only a handful of templates attract the attention of formateurs by solving a sufficiently wide variety of incentive and decision problems for sufficiently varied circumstances.⁴ In this manner, the long-term search for "best practices" tends to generate a relatively small menu of institutional templates within a specific society. It also tends to lead to institutional convergence among societies with good communication, especially in cases in which some organizational structures are more effective than others (North 1987).

The rationality of formateurs and their successors implies that widely used organizational templates are not adopted for customary reasons or as a consequence of historical accidents, but rather because experience reveals them to be relatively efficient and robust methods for solving significant problems of governance and team production faced by organizations. Nor are decisionmaking procedures and rules within a given organization completely static; rather they emerge and are adjusted to solve problems associated with the circumstances confronting the organization. The common interests of formateurs, thus, also allow the theory of formal organizations to be far simpler than the organizations themselves, the problems addressed by them, and the environments in which they function.

III. The King and Council as an Efficient Template for Organizational Governance

A very common institutional template for policymaking within medium and large organizations consists of a committee of more or less equals and a chief executive. For example, corporations often have a chief executive (king) and a board of directors (council). Universities and other nonprofit organizations often have a president and a board of governors. The same template is widely used in the public sector as well. Modern democracies include a president or prime minister and a parliament. Modern constitutional monarchies include a king and parlia-

⁴ Elinor Ostrom (2005), for example, suggests that a large number of organizational choice settings exist, but argues that these can be classified using a reasonably small number of characteristics.

ment, and ancient monarchies normally included a king and advisory council. Provincial and local governments often have a governor and a local assembly.

The “king and council” template is widely used throughout recorded Western history and is also commonplace in Japanese political history. 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 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 organizational governance. Of particular interest for the purposes of this paper is its ability to solve information problems and to reduce unproductive intra-organizational conflict.

Informational Dilemmas for Formateurs

Wintrobe (1997) argues that every organizational leader (autocrat or ruling council) faces several information problems. First, he or she faces the same fundamental information problems as ordinary persons. An organization’s leadership has to make decisions, and their decisions are more likely to advance their interests when they are well informed. Because time and attention are scarce resources, the formateur must decide how much and what kinds of information to gather, which information sources should be believed, and how much of the information gathered should be shared with others. Second, the leadership of an organization confronts a series of information problems that are associated with the power of the position held. Much of the information available will be intentionally biased insofar as individuals, especially those within the government, can benefit from manipulating the autocrat in some manner. For example, personal careers can often be advanced by exaggerating one’s loyalty and performance relative to others within the organization of interest. Wintrobe (1997: ch. 2) refers to this filtering aspect of a ruler’s informational problem as the “dictator’s dilemma.”

Third, the problem of getting useful information is compounded by a greater need for accurate policy information than that of individuals with less control over their organization’s re-

sources. The scope of a formeteur's policymaking authority is normally far wider than that of other members of his organization, and, consequently, so are the range of alternatives that must be accurately assessed if he or she is to make policy decisions that advance his or her own interests. Together, these imply that, in most cases, it will be difficult for any single individual to directly gather enough information to make accurate assessments of the relative merits of alternative policies. Moreover, the larger the organization is and more complex its goals and operating environment, the more difficult it is to collect sufficient information to make good decisions.

A formeteur, like any other person, will economize on data collection and processing. Ordinary statistical theory implies that the smaller and more poorly analyzed the data set is, the greater estimation errors tend to be, other things being equal. Estimation errors reduce the quality of policy decisions, and insofar as policy mistakes are relatively costly for the formeteur, relatively more sophisticated and costly methods of collecting information and making day-to-day decisions are worthwhile for formeteurs (and their successors) than for others, *ceteris paribus*.

Advisory Councils for Well-Informed Formeteurs

One widely used organizational technology for reducing an autocrat's information and decision costs is the advisory council. Consider first the case of a somewhat informed formeteur with sufficient information to make unbiased forecasts of the consequences and relative merits of alternative policies. Such a formeteur will not make systematic policy errors and, so, on average, will choose policies that maximize expected utility. Nonetheless, a formeteur has an interest in improving his or her policy decisionmaking by reducing errors.

For example, a formeteur may assemble a group of advisors and pay them for their advice (either directly in cash or indirectly through favors and privileges). If the benefits of improved policy decisions exceed the cost of maintaining the council, a formeteur with a council will be better off than a formeteur without a council, other things being equal.

This is very likely to be the case, because even the advice of a council of nonexperts chosen at random from the organization (or from the citizenry in the case of a governmental organization) can improve the quality of an autocrat's policy decisions. Condorcet's jury theorem implies that advice from such a council tends to be informative, insofar as the council as a group has more independent information than the formeteur (Congleton 2005). The median councilman's (or councilwoman's) predictions about future events tend to be more accurate

than the formeteur's own independent estimate, even though each person may be individually less informed than the autocrat.⁵ Together, these aggregation and estimation effects imply that a council of advisors can be a cost-effective method for policymaking, particularly in cases in which more precise estimates significantly improve organizational performance or increase the formeteur's share of the organization's output.

In most cases, the formeteur (or leadership of an organization) can increase a council's accuracy by selecting a panel of especially well-informed independent individuals. Expert councilmen have a more thorough understanding of policy that tends to make their median forecast more accurate (lower variance) than that of a less informed group.

The independence and extent of council member information sets can be increased by choosing experts from different regions of the country, from different specializations, and by creating competitive contests for council positions.⁶ The latter may be designed to identify councilmen with a comparative advantage at gathering and processing information.⁷

Advisory Councils in Settings of Ignorance

In cases in which unbiased estimates are not possible for the autocrat, the benefits from improved information and policy decisions tends to be larger than in the previous case. In this case, better information reduces bias as well as the variance of the error term associated with the king's assessment of the relative merits of alternative policies. An honest, well-motivated council of expert advisors can clearly improve policy decisions by reducing the king's ignorance

⁵ Note that this provides an informational reason for using majority rule to make decisions, rather than "consensus," for committee decisions that may or may not be consciously appreciated by formeteurs or council members.

⁶ Both the size and representativeness of *advisory* councils can be varied to maximize the autocrat's informational advantage. At the autocrat's ideal, the marginal cost of a larger more complex council equals approximately the expected marginal informational advantage of improved public policies (e.g., those that advance the autocrat's interest in the present context).

⁷ The informational advantage of experts is, of course, partly endogenous. It can be increased by constructing competitive games for council membership that reward policy-relevant information acquisition with high status or high salaries, as with competitive examinations and the like. Research on rent-seeking competitions implies that such contests can be extremely effective. Indeed, they can induce greater investments in information acquisition by the players than the sum of the rewards given out, as is true of even simple lotteries (Tullock 1980). Moreover, payment in *positional goods* is often quite inexpensive for the formeteur, yet encourages substantial efforts by prospective councilors (Hirsch 1995; Frank 1985; Congleton 1989). Being a councilor to the king (shogun, chief, or prime minister) often produces new economic opportunities as well as status for contest winners.

at a relatively low cost. However, assembling a well-motivated council is not a trivial task. The “king” must somehow overcome the “dilemma of experts,” the difficulty of obtaining unbiased advice from knowledgeable persons whose information cannot be readily appraised *ex ante*.

He can attempt to address the problem of information manipulation in several ways. First, he can assess the quality of short-term forecasts by direct observation as events unfold, reward councilors who give consistently good advice and dispatch those who do not. Second, in addition to gauging the quality of advice based on past performance, a formeteur can attempt to organize his council to minimize strategic information problems. The simplest method is to assemble a council that includes persons with well-understood, but conflicting interests, who possess overlapping knowledge or expertise. Such a council can be assembled by having different regional and economic interests (guilds, land owners, the clergy, etc.) represented on the proprietor’s council. A more or less “balanced” council implies that the proprietor will hear a wide range of policy assessments and that the *median* or average of the opinions heard is well informed and more or less unbiased, insofar as the council as a whole lacks a policy interest that differs systematically from that of the formeteur. In Olson’s terms, a balanced council may be said to have an encompassing interest (essentially by definition).

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 on a senior council (*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).

Orderly Secession and Organizational Durability

In the long run, effective governance also requires an effective method of renewing both the king and the council through time, as well as effective information collecting and processing institutions. Formeteurs and councilmen do not live forever, nor are they always in good health while they live. A durable organization requires a method for identifying good and bad policy-makers to replace both council members and formeteurs as time takes its toll, and the method used should do so at least cost.

Note that the king and council template can easily be adapted to address problems of secession. In organizations using the king and council template, the council can select the new king. And, conversely, the king can select new council members. In this way government is gradually renewed by those with the largest stakes in the continuation of the organization and the most intimate knowledge of its operation, which tends to increase the effectiveness of future governments. A relatively skilled leader or manager from *inside* an organization can usually more readily judge the skills necessary for effective organizational governance than can an outsider.

Such secession arrangements are common across a broad cross-section of organizations: churches, commercial enterprises, and governments. A Council of Cardinals selects the new Pope, and the Pope selects new cardinals. A parliament or council of electors often selects a king, and the king often selects new electors or members of parliament. A board of directors hires a new CEO, and the CEO may appoint or suggest new board members. Kings in medieval Europe were often elected by panels of “electors.”

In cases in which an organization’s council cannot agree on a new king, conflict among council members can consume substantial resources (including in some cases assassination of rivals), which may reduce its prospects for survival. If such succession crises are commonplace, a more or less mechanical method of selecting kings may improve performance by reducing conflict (Congleton 1980), even if the average result is a somewhat less competent king or council than would have been selected by a consensus-oriented council.

A very common mechanistic solution to the transition problem is to make the current ruler’s oldest son his successor. In addition to reducing unproductive conflict, the creation of hereditary posts also tends 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.

[After the first three shoguns,] “Their 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).

As long as other crises are not confronted, hereditary solutions may be viable for a broad cross-section of government positions. Hereditary positions at all levels of government were, for example, commonplace 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 tend to be well informed, if not always well judged.

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 resources available for maintaining their membership and for their productive activities, which makes them more likely to survive temporary external shocks and decision errors.

Divided Governance as a Method of Reducing Wasteful Conflict

The previous section provided informational and succession explanations for the widespread use of the king and council template for governance, and for the widespread use of quasi-constitutional rules for both day-to-day and long-term decisionmaking. This partly explains why we rarely see a king without a council or a council without a king. Nor do we often see durable systems of governance without stable rules and internal procedures. The informational and secession analysis, however, do not provide a rationale for moving beyond nearly popular forms of the “king and council” template to ones in which both the king and council share the authority to determine public policies. We now explore how problems facing a nearly all powerful autocrats may lead them to adopt divided government as a solution to costly games of conflict.

Consider a setting in which an autocrat is dominant, but not in complete control of his organization or country. If the “king” is the most powerful person in the territory of interest, yet lacks the power to impose his will costlessly on all within the kingdom, conflict can be extensive and consume a good deal of resources. Clearly, a government that avoids such conflict would be economically and often militarily stronger, because fewer resources would be wasted in civil warfare.

Table 1 illustrates some essential features of an asymmetric game of political conflict in a setting in which two parties clash over the control of some territory, resource, policy, or theology. Suppose that the weaker of the two parties is able to resist the stronger, so that complete domination is either impossible or at least very costly for the stronger party. (In the case in

which the stronger party can simply conquer the weaker and dictate terms, a “kingdom” or autocracy may be said to result, as in the upper right-hand cell.) The stronger party benefits from investing resources in conflict, insofar as it is able to expand its dominion and/or tax base or generally achieve more control over policy. The weaker party benefits from resisting the stronger, insofar as it retains more power or property or generally achieves a better policy result. The Nash equilibrium of this game involves a balance of power in which both parties make intense efforts, that is, engage in a power struggle.

Table 1
Asymmetric Power Game

| | | Stronger Party | | |
|--------------|---------------------|-------------------|---------------------|--------------------|
| | | Little Aggression | Moderate Aggression | Intense Aggression |
| Weaker Party | Little Resistance | 6, 14 | 3, 16 | 0, 18 |
| | Moderate Resistance | 7, 10 | 4, 12 | 1, 13 |
| | Intense Resistance | 8, 8 | 5, 10 | 2, 11 |

Such investments in conflict are independently profitable in the sense that each party’s own payoff increases as it invests more resources in the conflict (aggression for the stronger party/resistance for the weaker), other things being equal. However, the balance of military power equilibrium that emerges is clearly wasteful, because the welfare of both sides shrinks as additional resources are consumed in the contest. In the illustration, seven units of resources can be said to be wasted at the Nash equilibrium [$7 = (6+14) - (2+11)$]. As in a conventional rent-seeking game, both parties would be better off if they could achieve the same balance of power, while reducing the extent to which each invests resources in the conflict that generates that balance.

If the parties agree on the magnitude of the losses associated with conflict and the final result, as assumed above, they each have an interest in adopting a collective choice mechanism that achieves a similar final apportionment of resources at lower cost (Hobbes 1651; Congleton 1980; North 1987). A well-designed political system of collective choice is one way of reducing the losses associated with such conflict. An effective collective choice mechanism does not necessarily eliminate all losses from conflict, but reduces the cost of conflict by encouraging the

use of more “civil” forms of competition (Congleton 1980). Persuasion and coalition building replace warfare on the battlefield, assassination, and counter assassination; tax avoidance may be replaced by tax compliance when less confiscatory tax instruments are used to raise revenue (Hobbes 1959; Bush 1972; Buchanan 1975).

Note that both the “king and council” and federal templates for governance allow military outcomes to be replicated by dividing the authority to make public policies between king and council or among central and regional governments. Such divided forms of government can replicate the payoff ratios of nearly any violent equilibrium, while reducing the extent of the resources consumed by conflict. This makes all contestants better off. In contrast, unitary forms of political organization rule out such power sharing, by definition, and so cannot be easily adjusted to reduce wasteful conflict.⁸

These institutional methods of avoiding wasteful conflict provide an 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 to secure something that it valued more. Replacing expensive forms of conflict with less expensive forms clearly made all parties better off.

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

⁸ It bears noting that the social contract that emerges from 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. 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 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.

In the case of the shogunate constitution, it is clear that considerable decentralization and limitations on central government taxation were obtained by the principal *daimyo* in exchange for an oath of fealty to the shogun.

Unfortunately, the payoff structure of the conflict game also implies that successful constitutional settlements 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; thus incentives to cheat on agreements always exist. It was clear to the Shogun that the new *daimyo* oaths were not self-enforcing. Thus, 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 also required the *daimyo* themselves 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 the Durability of the King and Council Template

The power-struggle game outlined above also implies that changes in the nature of the underlying equilibrium—whether because of changes in economic circumstances, military innovation, or external shocks—will tend to cause revision of the assignment of power between king and council if circumstances change. New circumstances will change the bargaining opportunities of the participants. And the constitutional exchange that takes place may replicate 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, however, the 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 of 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 bu-

reaucracy for day-to-day rule, and regional governments gradually secured increased autonomy (Mason and Caiger 1997: 215–16). 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). Consequently, 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.

In the course of two centuries, the result of bargaining on 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).

Success and Failures of the Shogunate Constitution

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.⁹

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 "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.

IV. 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. In addition to what might be called the Perry effect, it bears noting that the interests of persons with policymaking authority in Japan changed for reasons having little to do with Perry's arrival. New interests also emerged as industrialization took place and as liberal ideas spread and gained support among those with policymaking authority (Congleton 2001 and 2004).

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

⁹ "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).

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. These ties were broadened and deepened after Perry's arrival.

In the second half of the nineteenth century, these factors created numerous opportunities for institutional reforms and constitutional exchange, which had profound effects on the course of constitutional development in Japan. Opportunities to develop new institutions, however, remained constrained by interests that are generated and advanced by preexisting institutions. That is to say, the reforms or new institutions adopted had to advance the interests of those with the authority to adopt them.

Tokugawa Reforms after Perry in Pursuit of Best Practices

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.

On the one hand, foreign trade increased the presence of foreigners, who did not always understand or 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.”

More than a decade of 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 of the comings 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 from 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 and relatively weak Shogun to the relatively new and relatively 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 imperial 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.¹⁰ 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,

¹⁰ 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.

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 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 four powerful *daimyo* from the south also surrendered their fiefs to the Emperor, an action similar to that taken by Yoshinubo (*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 among 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, the regional *daimyo* initially 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 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.¹¹ 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 new 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 policymaking. In this and other new practices, governance closely resembled those of

¹¹ 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).

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.

Ideas and Interests in Suffrage Reform

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. Because 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 Meiji Japan. Congleton (2004) argues that changes in ideas about “the good society” or about “proper” 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, a significant shift in ideology took place in the 50 years after the restoration that favored liberalization of both economic and political policies.

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 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 prefer-

ment” (*Britannica* 1911: 47). These newspaper interests were not entirely general, of course, in that 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, 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 numbers 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 *Jyuto*) to lobby more effectively 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 nineteenth century 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 electoral reform less likely.¹²

The Meiji Constitution

After further negotiation, 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 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 Emperor, 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 cabinets were 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 hereditary and wealth-weighted representation in the parliament (diet) and restrictive wealth-based suf-

¹² 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.

franchise 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).

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 to the ruler. Suffrage was far from universal, but governance was formally far more inclusive than the policymaking bodies of the Tokugawa and early Meiji period. In these, as in many other respects, the Meiji constitution resembled other European constitutional monarchies at this time, as intended. In much of nineteenth century Europe, kings rather than parliaments continued to have the right to appoint the “government” (the executive cabinet). And, the right to vote was widely regarded as 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 fundamental changes in the organization of governance, but can emerge from a series of modest reforms of existing procedures. Parliament must gain control over cabinet appointments, and suffrage must be expanded and based on one person–one vote. However, such reforms are by no means guaranteed, or irreversible. 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, liberalize lines of argument tended to link free-trade and suffrage movements. And, the effectiveness of these groups was increased by rising incomes, improved communications technologies, and declining transportation costs. 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. The peaceful path to democracy required both an increase in the role of parliament and expansion of suffrage.

Although Japanese history prior to 1890 was very different from that of European nations, for the next three and a half decades Japan governance followed a path of constitutional reform that was surprisingly similar to that of the liberalizing countries of Europe. Its shift toward parliamentary democracy took place through a gradual “liberalization” of Japanese liberal political parties and a generational change of politicians in the next four decades.

Rational Choice and Suffrage Reform

Individuals inside and outside of government tend to have both pragmatic and philosophical 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 determine many essential features of a polity. They determine who is a political citizen and whose interests “should” be taken into account when choosing public policies. The pragmatic and normative 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 represented as:

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

for a given level of personal wealth, W_i , government services, G , and tax rate, t . It is commonly assumed that the 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. In this case, citizen i ’s ideal service level will satisfy:

$$U_G = U_X X_G \text{ or } U_G = U_X (W_i) (C_G / \sum W_j) \quad (2)$$

which the implicit function theorem allows to be represented as:

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

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, S^L , implies a particular electorate and thereby a particular median voter for a given distribution of wealth, $W_v = s(S^L)$.¹³ 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:

$$G_i^* = g[s(S^L), |S^L-S_i^*|, \sum W_j] \quad (4.1)$$

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 $U_S S_{WL} = 0$ 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 in which the median voter prefers the current laws to all others (Congleton 2004). The existing suffrage law determines the identity of the

¹³ 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.

median or pivotal voter who, in turn, prefers the current suffrage law, noted above. Consequently, suffrage law equilibria can be very stable, for example, the early fifteenth century electoral laws for the English House of Commons remained unchanged for more than 400 years. Suffrage expands gradually under wealth or tax-based suffrage rules as economic growth takes place, and more people meet the wealth requirements for voting. Major reforms, however, require a shift in the world view of those with political authority, because nonvoters cannot vote and, absent a revolutionary organization, they cannot influence constitutional or policy development directly.

The model implies that a change in pivotal voter suffrage norms can disrupt a preexisting suffrage law equilibrium, although it bears noting that changes in the median member of parliament's "ideological" interests do not necessarily lead to changes in suffrage law. New suffrage laws create new median voters, and if the anticipated new pivotal voter favors a different suffrage law than the present one, this will be taken into account by the voter(s) currently holding the power to adopt new suffrage laws. For example, a change in suffrage law reform may be expected to generate a series of reforms, which may in the end generate a new suffrage law equilibrium that is worse than the status quo for the current pivotal voter. Consequently, some changes will be rejected even by a median voter who is unsatisfied with current law. This is not to say that suffrage law will never be reformed, but rather to indicate that the present pivotal voter cannot directly determine new suffrage law, because any new law that he adopts can be revised by the new 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 one or more fixed points where $S=S_i^*$, but there may not be another equilibrium that the current median voter prefers to the status quo.

Small broadly accepted changes in norms, however, tend to generate acceptably small changes in the suffrage law equilibrium and thus can generate small, but often discrete, 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 nineteenth century and early twentieth century Japan, significant liberal political parties and popular movements emerged in Japan

and 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 was partly responsible for election reforms in 1900 that doubled the electorate by reducing the tax-vote threshold from 15 to 10 yen. The 1900 suffrage reforms and the elimination of wealth restrictions on office were obtained by liberal parties in the parliament in exchange for additional tax revenues required to finance Japan's rapid industrial and military expansion (Mitani 1988: 71).

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. Party alliances 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).

Cabinets and prime ministers were increasingly chosen from the major parties represented in the elected second chamber. Nonconstitutional issues normally took center place in policy debates, and liberal arguments favoring more open markets and more open political processes were increasingly persuasive (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. 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 universal male suffrage (*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 for a short time. “Party” cabinets were appointed in 1919, 1924, and 1929.

Unfortunately, the alignment of liberal political and economic interests that produced durable democracies in many European countries during the nineteenth century was not quite suf-

ficient to do so in Japan. Fiscal crises, foreign entanglements, and nationalism undermined liberal arguments and generated broad support for “nonpartisan” 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 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 nineteenth century and early twentieth century evidently made the current political and economic constitutions of Japan far easier to adopt and far more viable than would have been the case without the liberal successes of the Meiji period, but that is a topic for future research.

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

Most governments are not unitary states, but rather divide policymaking authority among two or more branches and several levels of government. This paper has provided several rational choice–based explanations for the widespread use of a specific bipolar form of divided governments, the king and council. The king and council template, solves informational and conflict problems while being sufficiently flexible to be adapted to changing circumstances without creating major disruptions. This provides an efficiency explanation for the fact that we observe so many instances of that template in organizational governance. Policymaking authority is also generally distributed among central, regional, and local governments (which also tend to use the king and council template).

A given constitutional assignment of policymaking authority determines what an economist might call the “initial political endowments.” Political interests and opportunities determine whether gains to trade exist at a given point in time. A constitution’s amendment procedures determine whether the gains to trade that exist are sufficient for constitutional reforms to be adopted. Rationality implies that such reforms advance the interests of at least a majority of those with the authority to adopt them, which may, but does not necessarily, advance the interests of all those who are governed. It is the fact that policymaking authority is multidimensional that allows it to be distributed among policymakers in a wide variety of ways. It is the fact that

policymaking authority is divided that allows constitutional exchange to take place through peaceful and lawful means.¹⁴

This paper has demonstrated that a model of constitutional exchange can shed significant light on an important period of Japanese political history. Consistent with this theory, the political institutions of the Tokugawa and Meiji periods exhibited considerable durability, in the sense that its organizational architecture remained in place for long periods, but less than complete stability in the distribution of policymaking authority among policymakers within that architecture. Policymaking authority in the Tokugawa regime shifted from shogun to the council and from the central to the regional governments. Governance under the Meiji constitution shifted from royal toward parliamentary rule in the first three decades and then back again during the last decade or two, largely under the stress of domestic and international crises. In both cases, a long series of constitutional and quasi-constitutional reforms was adopted using lawful and peaceful means as circumstances changed. Many of the reforms were relatively minor, although cumulatively they had very significant effects on the division of policymaking authority within the Japanese state. It was such "minor" reforms that led the Tokugawa regime toward decentralization and the Meiji constitution toward centralization and then toward and away from parliamentary democracy.

In well-functioning democracies, the effects of shifts in policymaking 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 shifts in authority can be profound, as were often the case in Japanese constitutional history.

¹⁴ Most previous public choice work has 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. However, unitary models of governance cannot account for the effects of institutions on policy outcomes or 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.

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