THE SOVEREIGN STATE AND ITS CONFORMISTS:
JAPAN'S ENTRANCE INTO INTERNATIONAL SOCIETY

by

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To Leo, Ray, and Alyssa

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AUTHOR'S NOTE

Japanese names are given in traditional order with surname first. All dates have been changed to the Western calendar.

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ABSTRACT

This study examines the socialization of Japan into the European state system as an aspect of expansion and institutionalization of the European international system. It asks: (1) What explains Japan's rapid socialization into the European sovereign state system in the late nineteenth century? (2) How can Japan's entry into the European state system be placed in the larger map of institutionalization of the European state system? The central puzzle that runs through the study is the apparently extraordinary degree of conformity that Japan demonstrated in accommodating itself to Western norms of international relations within a very short period of time. In exploring this puzzle, I focus on the interactions between systemic constraints from the international system and the choices that the political leaders made, identifying the logics of the persistence of the Westphalian system and of the conformity of newcomer states.

Japan's conformity to international norms can be explained by a number of factors; first, by the existence of functional equivalents, or domestic institutions culturally different from the West but similar as an institutional mechanism; second, by the systemic imperative of the nineteenth-century international system that defined membership criteria of international society based on positive international law; third, by the interest political leaders found

in forging a congruence between domestic logic and systemic constraints, plus their skill in manipulation.

The international norms of different historical periods define the problematique of statehood. How to respond to the historical contingency depends on the attributes of a country, including its physical preparedness for nation-building and its leaders' capacity. Then, a newcomer's entrance generates dynamics in the existing international society as an institution that contribute to its adaptability and autonomy. In fact, international norms and the Western concept of sovereignty have been reconstituted and reshaped through the entrance of newcomers. The socialization of newcomer states and the institutionalization of the international system are, in this sense, synchronic phenomena.

CHAPTER I

INTRODUCTION:
EXPLAINING JAPAN'S ENTRANCE INTO THE INTERNATIONAL SYSTEM
- ALTERNATIVE VIEWS

... civilization has ceased to be that delicate flower which was preserved and painstakingly cultivated in one or two sheltered areas of a soil rich in wild species which may have seemed menacing because of the vigour of their growth, but which nevertheless made it possible to vary and revitalize the cultivated stock. Mankind has opted for monoculture; it is in the process of creating a mass civilization, as beetroot is grown in the mass. Henceforth, man's daily bill of fare will consist only of this one item.

Claude Lévi-Strauss, *Tristes Tropiques*

This study examines the socialization of Japan into the European state system in the latter half of the nineteenth century as an aspect of expansion and institutionalization of the European international system by asking the following questions: (1) What explains Japan's rapid socialization into the European sovereign state system in the late nineteenth century? (2) How can Japan's entry into the European state system be placed in the larger map of institutionalization of the European state system? While independent statehood has become globalized as to be called "one of the most remarkable features of the twentieth century,"[1] it has not been fully explored why the European state system prevailed over other international systems of different subregions of the

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[1] Robert H. Jackson and Alan James, eds., *States in a Changing World: A Contemporary Analysis* (Oxford: Clarendon Press, 1993), 4.

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world and why the Western sense of territorial statehood has eventually become the standard form of political entity covering the entire globe. My ultimate concern, therefore, is how and why the Westphalian system has been maintained and institutionalized by accommodating changes brought by newcomers.

In examining these questions, I will employ the wisdom of a number of social science theories: structuralism, developed by European linguists and anthropologists and partially borrowed in the studies of International Relations; English School of International Relations, which explores the evolution of the societal aspects of international relations in history; and new institutionalism, originally developed by economic historians and widely applied to other social sciences. One of the important overlapping elements among these theories is the tension and interaction between the systemic/societal constraints and the choices that actors make. In this study I will treat interstate systems as institutions that possess certain functions, rules, and norms that constrain the behavior of actors for the stability, regulation, and preservation of the value of the existent society. I will then examine Japan's response to such a systemic necessity of international relations in the nineteenth century.

In the study of institutions, scholars' emphases vary from the crude rational-choice variant that focuses on choices of the human agent, on the one end of the continuum, to the historical institutionalist variant that focuses more on the constraints imposed on actors within specific historical contexts, on the other end.[2] My approach is neither one of the extreme variants, but somewhat

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[2] Sven Steinmo and Kathleen Thelen, "Historical Institutionalism in Comparative Politics," in

closer to the latter, which stresses structural constraints as determinants of social outcomes.

The central puzzle that runs through the study is the high degree of conformity that Japan demonstrated in accommodating itself to Western norms of international relations within a short period of time. Only four decades after its first encounter with the West in 1853, for example, it joined Western powers in the European colonial competition in East Asia. The slogan of "expel the barbarians (jōi)," which prevailed during the early days of the encounter with the West, was changed into the slogan of "civilization and enlightenment (bunmei kaika)" by 1880. Why does Japan seem to have joined the Western state system without voicing resistance as much as, for example, China did? What explains Japan's rapid transformation from feudal society to a modern nation-state? The answers to these questions may provide insights into the foreign policy behavior of newcomers to the European state system in general and enhance our understanding of the evolution of the international norms in the particular historical context of the nineteenth century.

Japan's entry into the international system and its socialization has not been directly taken up as a political science subject but rather has been studied as a historical subject, mainly from the perspectives of Japan's modernization.[3] Here I would like to discuss some of the major explanations for Japan's rapid

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Sten Steinmo, Kathleen Thelen, and Frank Longstreth, eds. *Structuring Politics* (Cambridge: Cambridge University Press, 1992).

[3] Excellent works on the subject include, for example, Barrington Moore, Jr., *Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World* (Boston: Beacon Press, 1966); Ellen Kay Trimberger, *Revolution from Above: Military Bureaucrats and Development in Japan, Turkey, Egypt, and Peru* (New Jersey: Transaction Books,1978).

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socialization with Western norms in the late nineteenth century. While each of the following views offers plausible explanations for some aspects of Japan's entry into international system, they remain partial and heavily reductionist, with systemic constraints hardly taken into account. Rather than addressing the subject directly, they indirectly touch on Japan's socialization within the international system.

Explaining Japan's Entry into the International Society

Power Gap Explanation

The most obvious explanation for Japan's socialization in international society is that Japan was simply "forced" to socialize. The explanation accords with the traditional realist theory of international relations whose essence is outlined in Thucydides's famous words: "The strong do what they have the power to do and the weak accept what they have to accept."[4] The power configuration of international relations during this period defined the course of Japan. Empowered especially after the industrial revolution, European powers appeared to Japan as too strong to chase away. There was no way Japan could resist Western demand with its strong military and economic power and backed by its rapid industrial and technological development.[5]

This is the most general explanation for Japan's overall response to the West during this period. It, however, fails to account for several important

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[4] Thucydides, *History of the Peloponnesian War* (Book 5:89) (London: Penguin Classics, 1972).
[5] Most of the standard history text books explain Japan's opening up of the nation this way. See, for example, Mitsusada Inoue, et al., *Shōsetsu Nihonshi* [Detailed Japanese History].

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aspects of Japan's socialization. Why, for example, did Japan not get colonized, if its weakness was so plainly exposed to the Western eyes? How can it explain the rapid modernization Japan experienced after being forced to open up the country? While it clearly explains why Japan was obliged to open the country and to accept Western demands, it is weak in explaining Japan's conformist behavior afterwards. Being forced to yield to the West does not account for the unusual efforts that Japanese leaders made in adopting Western norms and modern state apparatus and in demonstrating their capability to the West. The positive attitudes that Japan showed in conforming to the Western norms must be explained by some other factors.

Time Lag Explanation

Among the explanations for Japan's fast socialization with the West, the "timing" of the encounter with the West has often been mentioned as one of the most plausible reasons. Regarded as a small, poor country, located in the periphery of East Asia centering around China, Japan had been somewhat ignored by European powers at the first stage of European expansion in East Asia. Because of this lucky ignorance, Japan's encounter with the West fell ten years behind China's, which gave Japan sufficient time to learn what was going on in other parts of Asia and to prepare for the coming encounter with the West.[6]

This view also provides important general background of the nature of Japan's encounter with the West. It explains, at least partially, why Japan did

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(Tokyo: Yamakawa, 1993).

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not get colonized while China and India did. Keenly aware of what was going on in China and India, Japanese leaders seriously discussed how Japan should respond to the West in order to avoid the fate of those countries.[7] For their part, the Western powers had gradually lost their colonial interests after they had met considerable rebellions and anti-European movements in China and India. With Japan, therefore, they tended just to want friendly commercial relations.

While this time lag factor is also hard to refute as a common-sense explanation along with power gap explanation, many other important features of Japan's entry into the international system will still be left out. For example, even though the Japanese leaders might have been aware of the fate of China and other parts of the non-European world, how was it possible to prepare itself physically to avoid the same fate if the country was no stronger than China? Also, although it is common to compare Japan's case with China's, comparison with other countries may invalidate this claim. The West came to Thailand later than Japan, for example, but the later date did not necessarily make the Thai socialization process faster or smoother than Japanese process. It took Thailand much longer than it did for Japan to acquire complete membership in international society. There must be other causes that led different countries in Asia to different paths of socialization. Further, cross-sectional implications will be lost by emphasizing the specific timing of Japan's encounter with the

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[6] Reference to time lag also often appears in standard text books on Japanese history. Ibid.

[7] Japan learned about China's defeat in the Opium War, for example, through Nagasaki and Ryūkyū (current Okinawa Prefecture). A shogunate leader, Abe, immediately delivered the news to all the major feudal nobles. Motegi Toshio, *Henyōsuru Kindai Higashiajia no Kokusaichitsujo* [Transforming International Order of Modern East Asia] (Tokyo: Yamakawa, 2004), 41.

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West and by identifying 1853 as the timing exclusively important.

Cultural-Psychological Explanation

Explanations for Japan's modernization have often relied on intrinsic aspects that Japan possessed as a country and the Japanese as a nation. The sheer size of China, for example, attracted the West, while the small size of Japan, and its scarcity in natural resources, on the other hand, did not appeal to the eyes of the West. The cultural-psychological argument is one such explanation that emphasizes unique aspects of Japan and used to be popular among anthropologists as well as among political scientists. Several traits of the Japanese culture and psyche are often pointed out.

First, Japan's island-nation mentality, fostered by the geographical factor as well as by three hundred years of isolation before Perry's arrival, is said to have worked as a locomotive for rapid catching up with the West. A sense of threat and backwardness in the face of technological superiority of the West was keenly felt by the Japanese due to their sensitivity to the outside influence. The insularity of Japan had contributed to its awareness that superior culture and technology existed outside of Japan and could be borrowed, while China's geographical location, its status in East Asian international relations, and its sense of superiority led to an attitude of disdain for what the outside world could bring to them. Attitudes of learning from abroad, in fact, had traditionally existed in Japan, starting with the missions sent to China in the seventh and eighth centuries. Not only were the plans of Japan's capital cities and its

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governmental institutions patterned on China, the Japanese written language itself was an import. Centuries later, after the ban on Occidental books was lifted in 1720, Western scientific knowledge came to be known as Dutch learning (rangaku) and was held in high regard. "The tradition of 'Dutch learning' ...not only contributed to Japan's responsiveness to the West but also gave Japan a head start with the Western science and technological modernization that most Asian countries lacked."[8] The rapidity of social change in both the Meiji period and after World War II has often been ascribed to Japan's openness to foreign examples. The tradition of looking abroad for best practices, and of the public accepting such borrowing as legitimate, is thus an important aspect of Japan's island mentality as a possible explanation.

Second, some note that geographical isolation also fostered a "strong sense of separate identity which amounted to a feeling of nationalism." Fairbank, Reischauer, and Craig point out that due to its geographical isolation from the continent, Japan "assumed a plurality of countries in the world and made no claim to universal rule. In the nineteenth century, while the Chinese found the multistate, international system of Europe wholly unacceptable, the Japanese could quickly understand and accept it, and begin to act accordingly."[9] Japan, in other words, was already possessed with the basis, or the concept, of a nation-state that made it able to accept the anarchical nature of international life, composed as it was of sovereign states as reality.

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[8] John K. Fairbank, Edwin O. Reischauer, and Albert M. Craig, *East Asia: The Modern Transformation* (Boston: Houghton Mifflin Company, 1965), 189.
[9] Ibid., 180-181.

Third, the ethics and morals of the Japanese soldiers' culture are also often pointed out as cultural-psychological traits of the Japanese that blended well with the Western international norms. Historical documents show that Westerners living in China and Japan often identified the differences in the mentalities of the Chinese and the Japanese, contrasting the proclivity of the Chinese whose preference was to be governed by the intellectuals and that of the Japanese whose preference was to be governed by the soldiers. "As feudal military men Japanese leaders had a more realistic understanding of military technology than did the scholar-gentry leadership of China. Unlike China, the Japanese did not have to be humiliated in bitter defeat before they could recognize their own military inferiority."[10]

Fourth, Japanese goal-orientedness, represented by the tradition of frugality and pride in simple living as well as by the capacity of saving and long-range economic investment, is often said to have facilitated fast adoption of Western sciences, contrasted to the status-orientedness of other countries in Asia. The soldiers' culture, which fostered a sense of shame and dishonor, is also often said to have regulated and motivated the Japanese conduct in its relation with the West. The unusual degree of fear that the country may be laughed at by others worked as a locomotive of state-building.[11]

The cultural explanations never exhaust themselves. These explanations, however, tend to suffer from non-falsifiability and an incapacity to

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[10] Ibid., 189.
[11] See, for example, the classic description of this aspect of the Japanese by Ruth Benedict, *The Chrysanthemum and the Sword* (Boston: Houghton Mifflin, 1946).

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present long-term, cross-sectional implications, the same pitfall as with the time lag explanation. It is difficult to establish a social science theory based on cultural-psychological traits of a nation.

Isomorphism

Some scholarship has moved from the traditional East-West divide, or European-Asian distinction, toward a more objective perspective to locate Japan and its modernization in the world and in history. Two such views offered by Japanese scholars have attracted considerable attention both inside and outside Japan and are considered classic writings on the interpretation of Japanese history and modernization. The two views both indicate that pre-modern Japan was already possessed with features comparable to Western Europe that were conducive to modernization.

"Ecological View of Japanese History"

Tadao Umesao published a provocative essay called "An Ecological View of History" in 1957. [12] While the traditional view of Japan's modernization was based on the predominant Western conception of history, Umesao provided a unique, refreshing view on Japan's identity and Asia more generally. In fact, his ecological view is a model of world history rather than a

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[12] Tadao Umesao, *Bunmei no Seitaishi Kan* [An Ecological View of History] (Tokyo: Chūō Kōron Sha, 1967). It is also published in English as, *An Ecological View of History: Japanese Civilization in the World Context* (International Specialized Book Service Inc., 2003). His other works published in English include: "Japan as Viewed from an Eco-Historical Perspective," *Review of Japanese Culture and Society* 1, no.1 (1986): 25-31; "Introduction to an Ecological View of Civilization," *Japan Echo* 22 (Special Issue, 1995): 42-50.

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model focused exclusively on Japan. Umesao identified some fundamental differences that exist between the coastal areas and the inland areas of the Eurasian Continent. According to Umesao, both coastal regions, whether in the East or in the West, display striking similarities when compared with the inland regions, where the history is characterized by the repeated emergence of strong authoritarian regimes. The coastal regions, Japanese and Western European, on the other hand, are characterized by unilinear, step-by-step development of history from feudal to modern, and with increased trade and liberty.[13]

Dividing up the world into the East and the West is nonsense, Umesao says. Conceptualizing the world in East-West terms ignores the region that lies in between: the vast area from Pakistan to North Africa on the Eurasian Continent. The differences in the social structure between the two caused differences in their life styles and history. We see a parallel of what Japan achieved as a civilized country only in Western Europe: industrial power, an enmeshed transportation system, an administrative system, a high level of education with a well-developed educational system, material abundance, a high standard of living, a long life expectancy, low death rate, advanced culture, art, and academics.[14] According to Umesao, it was by irreversible historical law and consequence that Japan and Western Europe became civilized powers. Western Europe and Japan shared similar conditions that enabled them to follow

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[13] Although elements of geopolitical landmass vs. peripheral island may be noticeable in Umesao's arguments, his intention was rather to challenge Arnold Toynbee's theory of civilization based on an analogy of a life cycle. A.J. Toynbee, *A Study of History* (London: Oxford University Press, 1946).

[14] Umesao does mention that due to its peculiar policy of closing the country Japanese feudal collapse and colonial expansion were delayed by 200 years, procrastinating the accumulation of

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certain historical steps: temperate climate and an appropriate amount of rain, bringing high productivity. Social phenomena in coastal regions that occurred in parallel were feudalism,[15] emergence of a citizenry, formation of guilds, development of liberal cities, international trade, farmers' rebellions, imperialist competitions, development of capitalism, and so on.[16]

Umesao's theoretical model is adopted from ecological succession. Succession occurs due to the accumulated interactions between actors and the environment, eventually spilling out of the framework of former life-styles. One important point that Umesao makes is that the step-by-step succession in the coastal area is "autogenic" with energy for development emerging from the inside of the community, while the history in the inland area is "allogeneic," developed by the outside forces.[17]

"Rereading of Japanese History"

Revisionist Japanese historians contend that Japan's modernization had started during the fifteenth century, when Japan underwent tremendous changes

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wealth.

[15] The feudal system is said to nurture the bourgeois class that initiates revolutions, which leads to highly developed industrial societies, as feudalism eventually makes people aware of individual "self."

[16] In contrast, Umesao describes the inland area as follows: The inland regions cover many countries that achieved independence after WWII. In ancient history, the high standard of civilization in the inland area has no comparison in the coastal area. The history of the inland area is a cyclical rise and fall of great empires. Nomads have been the sources of destruction and conquering. Most of the countries in the inland area used to be colonies or half-colonies; capitalism remains infantile in those areas. Revolutions in those areas led to authoritarian political system. Feudalism did not precede revolutions but authoritarian monarchy or colonial rule, which could never be a ground fertile to raise the bourgeois. Enormous authoritarian empires such as the Tsar of Russia, Qing Dynasty of China, Mugal Empire, Turkish Empire share many social phenomena in parallel: extravagant castles and courts, vast land, complicated ethnic structure, existence of periphery and satellites, poverty and ignorance of farmers, big landlord, corruption and collapse.

in political and social structures, and not in 1853, as had commonly been thought. This school argues that by the time Perry arrived, Japan had been replete with social organizations desirous of Westernization. One of the contentions of this school, for example, is that "feudalism" in Japan, which is supposed to have lasted until the modernization in the nineteenth century, was quite different from the Western conceptual equivalent. "Farmers," literally translated as "one hundred surnames (hyakushō)" in Japanese, for example, were frequently engaged in other types of economic activities,[18] which undermines the conventional wisdom that pre-modern Japan was essentially an agrarian society. "Japanese farmers were gradually becoming the most efficient producers in the world. Farming became increasingly commercialized... The great economic development of the Tokugawa period made economic modernization easier. Rich Japanese peasants, instead of investing in more land, the only relatively safe investment in most of Asia, put their wealth into trade and industry, which brought larger profits."[19]

While Umesao's *Ecological History* explains Japan's modernization by isomorphic attributes that Japan shared with the Western Europe, this school considers the existence of domestic institutions prior to the time of entry that facilitated the socialization process. On another point, vertical ties of loyalty

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[17] Ibid.

[18] Amino Yoshihiko, *Nihon no Rekishi wo Yominaosu* [Rereading of Japanese History] *II* (Tokyo: Chikuma Shobo, 1996) 8-49.

[19] Fairbanks, Reischaur, and Craig, *East Asia*, 191, For the analyses of economic development, see also William Lockwood, *The Economic Development of Japan: Growth and Structural Change, 1868-1938* (Princeton: Princeton University Press, 1954); Henry Rosovsky, *Capital Formation in Japan* (Glencoe: Free Press, 1961); Johannes Hirschmeier, *The Origins of Entrepreneurship in Meiji Japan* (Cambridge: Harvard University Press, 1964); Hayami Akira,

that had bound feudal Japan are said to have led to the hierarchical, centralized political propensity of Japan, which was congenial to modern state-building.[20] The bureaucratic tradition experienced within the ruling class of the domain system further blended well with what was required for modern government.[21]

Although isomorphism does partially explain why the process of entry was smooth, exclusive attention to domestic institutions is insufficient in explaining a country's entry into international society. Those institutions needed to be vectored toward modernization and compliance with international norms in order for Japan to enter the international society. These societal features, therefore, "facilitated but did not precipitate" Japanese modernization.[22] The constitutive sense of sovereign statehood was developed in the nineteenth century in international law. That sense of statehood was now imposed on the newcomers, and the new perception of the leaders need to be examined in explaining how Japan's domestic features were translated into something externally acceptable. The existence of domestic institutions conducive to modernization, the fact that Japan already had infrastructure for modernization, therefore, was a necessary condition but not a sufficient one for its socialization with Western norms. Here we need to incorporate two types of dynamism in

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Saito Osamu, and Ronald P. Toby, *Emergence of Economic Society in Japan, 1600-1859* (Oxford: Oxford University Press, 2004).

[20] Fairbanks, Reischaur, and Craig mention that "in China, by contrast, though the top level of administrative organization under the emperor was more centralized, loyalties even within the bureaucracy were more diffuse; obligations to family or to local community competed with duty to emperor and to society." Ibid., 181.

[21] Studies on these institutions that had existed since the pre-modern Japan originated in the works of John Hall and Marius Jansen. John W. Hall and Marius Jansen, *Studies in the Institutional History of Early Modern Japan* (Princeton: Princeton University Press, 1970); John W. Hall, *Japanese History: New Dimensions of Approach and Understanding* (Washington, D.C.: Service Center for Teachers of History, 1961).

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explaining Japan's socialization: the manipulation of the leaders in vectoring the domestic institutions toward something that would suit international demand, and the systemic pressure from the international society.

Argument

Overall, few studies have focused on Japan's socialization with the European state system that integrate both international systemic constraints and state-level logic. Also, while many studies have been conducted on modern state-building of non-Western countries, few have analyzed the process of entry into the sovereign state system from a political-scientist perspective in a systematic manner. My goal here is to examine the interactions between structural constraints and the actor's choices entailed in a country's socialization by combining the strengths of theories of International Relations and Comparative Politics.

My main argument is that the relative rapidity of Japan's entry into the sovereign state system can be explained by the normative change in the nineteenth-century international society, where Japanese leaders perceived utility in joining it. I will pay particular attention to the development of the system of international law as an important index of institutionalization of the international system. As is widely perceived, the nineteenth century experienced not only increased legalization of rules that bind states in the spheres of commerce and warfare, but it also underwent a paradigmatic shift in international law from

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[22] Fairbanks, Reischaur, and Craig, *East Asia*, 193.

natural law to positivist one, displacing the universal notion of sovereignty to a constitutive one.[23] During this shift, a "standard of civilization" emerged and was laid down on the newcomer states.[24] The timing of Japan's entry coincides with the positivist turn in international law, which constrained the way newcomers entered the family of nations.

Japanese conformist response to the "standard of civilization" can be explained by the availability of domestic institutions conducive to Western style of modernization, as well as by the leaders' maneuvering to incorporate the international norms in order to achieve membership in international society. In other words, the nineteenth-century positivist turn in international law opened up an opportunity for Japan to modify its traditional domestic institutions into ones compatible with modern institutions that would accord with Western norms. The cost of conformance for Japan proved to be low due to the existence of such institutions, including its tradition of adopting ideas from abroad. During the process of socialization between 1853 and 1899, the leaders saw utility in abiding by the international law as a means to enhance national interests, first, as a "shield of the weak," and later, as a "tool of the strong."[25]

"Entry" into an international system is considered a process rather than a particular point of history. Japan's entry in this study covers the period of its rise from subordinate, second-class status under the unequal treaties with the

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[23] Lydia Liu, "Desire for the Sovereign and the Logic of Reciprocity in the Family of Nations," *Diacritics* 29, no.4 (Winter 1999): 151.

[24] Gerrit Gong, *The Standard of 'Civilization' in International Society* (Oxford: Clarendon Press, 1984).

[25] These terms are used by Stern. See John Peter Stern, *The Japanese Interpretation of the "Law of Nations," 1854-1874* (Princeton: Princeton University Press, 1979).

West to the acceptance of abrogation of extraterritoriality by the West in 1899. Although it is debatable when the entry process actually ended, I regard the acceptance of abrogation of extraterritoriality by the West as a landmark of formal recognition of Japan as an independent sovereign state by the international society, which constitutes a key criterion of the Western sense of sovereign statehood based on territorial demarcation and mutual recognition.[26]

Socialization is an actor's adjusting process in conforming to the norms of the international system, which produces attitudes, beliefs, perceptions and value standards toward various functions, principles, and rules, as well as the recurrent pattern of the system itself.[27] A country's conformity to the norms of the international system may in turn strengthen the durability and the autonomy of the existing international system as an institution. From a broader perspective, therefore, a country's socialization into the sovereign state system must be considered as a simultaneous process with further institutionalization of the European system.

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[26] One can think of other landmarks of recognition as an independent state. The retrieval of tariff autonomy in 1911, for example, was actually the final lift of all the unequal treaties. The victory over Russo-Japanese War in 1905 is also often considered an important turning point in raising Japan's status in international politics. As another perspective, Correlates of War (COW) project measures a country's entry into the international system by diplomatic recognition by either Britain or France until 1919, and by the membership of the League of Nations or the United Nations after 1919. The importance of the abrogation of extraterritoriality, however, lies in the fact that it concerns the territorial integrity of a nation, which is fundamental to modern statehood, and therefore, strongly appealed to the Japanese public as a symbol of national pride. It affected the later course of Japanese history by increasing national coherence and mobility.

[27] For theories of socialization in general, see, for example, P.E. Freedman and A. Freedman, "Political Learning," in *The Handbook of Political Behavior*, vol.1, ed. S. Long, 255-303 (New York: Plenum Press, 1981). 255-303; O. Ichilov, ed. *Political Socialization, Citizenship Education and Democracy.* (New York: Teachers College Press, 1990). 1-8; Gabriel Almond and James Coleman, eds., *The Politics of Developing Areas* (Princeton: Princeton University Press, 1960), 26-58. For the discussions on socialization in IR context, see, for example, G. John Ikenberry and Charles A. Kupchan, "Socialization and Hegemonic Power," *International*

It is not my intention to treat Japan's case either as a success or a failure of socialization. Teaching practical or moral lessons from Japan's experiences is the last thing I intend to do in this study. Nor do I intend to treat socialization into the European state system as a goal or something desirable. The historical legacy of deep-rooted suspicions and enmities among Asian countries toward Japan fostered during the colonial war in Asia in the process of its socialization stays alive today,[28] constraining Japan's foreign policy performance in various ways. Also, imperialism and colonialism, after all, were integral parts of the nineteenth-century European international system. My concern is, rather, to examine the logic of the conformity of newcomers, which seems closely tied with the logic of persistence of the Westphalian system.

Organization of the Study

The study consists of three parts. The first part offers theoretical perspectives to the study. Chapter II focuses on the two key concepts of this essay: "state socialization" and "institutionalization." I will start by discussing some elements in the existing theories of International Relations and Comparative Politics that touch on the concept of "state socialization." While "state socialization" is a fairly new concept, most of the existing theories in fact refer to it in one way or another, since it is a concept that relates to the agent-structure problem,[29] an eternal theme of many subjects in social science.

Organization 44, no.3 (Summer 1990): 283-315.

[28] The most recent example would be the anti-Japanese demonstration in China in April, 2005.

[29] Alexander E. Wendt, "The Agent-Structure Problem in International Relations Theory," *International Organization* 41, no.3 (Summer 1987)

Like the concept of "state socialization," "institutionalization" also entails tensions and interactions between agent and structure. I will first discuss the concept of institutions, and move on to the discussion on institutionalization, examining the four important criteria that Samuel Huntington presented thirty-seven years ago.[30] "Autonomy" and "adaptability" are the two key criteria that are useful in analyzing the institutionalization and institutional change of the European international system. The nineteenth-century international society, which acquired its autonomy as a Eurocentric, positivist system, also acquired complexity and durability as an institution during the process of accommodating the entry of Asian countries. State socialization and institutionalization of the international system are, thus, processes interacting with each other.

After discussions on state socialization and institutionalization, in Chapter III, I will examine three international institutional changes that occurred in the modern Western international system. Before I conduct historical case studies on Japan, this exercise will be important in locating the entry of Asian states into the international system and within the history of international relations. I divide the history of modern international system into three parts: first, the Westphalian system; second, the European system; third, global, legally equal system. Asian entry into international society coincided with the period of European empowerment and expansion, where "might is right" became the norm of foreign policy. The international membership during this period was

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[30] Samuel Huntington, *Political Order in Changing Societies* (New Haven: Yale University

constrained by the positivist norm of international law and defined the way Japan entered the international society.

The second part consists of three chapters of historical case studies on Japan that focus on the process of abrogation of unequal treaties concluded with the West at the early stage of encounters with it. Chapter IV examines the period between 1853 and 1870. International law was introduced to Japan for the first time during this period. The moderate nature of Japan's encounter with the West when compared with other non-European countries, Japan's physical preparedness for modernization, and the existence of national leaders, who could see the situation of Japan placed in the power map of world politics - all contributed to an accurate understanding of Western international law and to directing Japan's course of compliance with Western norms. Chapter V examines the 1870s, when Japan's foreign policy goal became clearly set by the political leaders as their understanding of international law matured, especially after the Iwakura Mission. This is the period when Japan started to adopt various domestic institutions based mostly on the Prussian model and decided to "get out of Asia (datsua)," leading to rapid modernization and Westernization. While the treaty negotiations with the West turned out to be a slower process than Japan had earlier expected, Japan tried to apply the international law that it had just learned in dealing with other Asian countries, thereby demonstrating its faithfulness to the Western norm. Chapter VI examines the final stage of negotiating abrogation of extraterritoriality with the West. The Japanese

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Press, 1968).

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leaders utilized international pressure to convince the domestic public, while utilizing the domestic pressure to persuade the Western powers to nullify the unequal treaties. They also made various efforts to convince the West of Japan's loyalty to international law and of the membership of international society, basing its rationale on its lawful conduct of war during the Sino-Japanese War. The extraterritoriality was finally ended in 1899, bringing Japan a diplomatic honor as the first non-European power to be fully admitted to the international society.

The third part analyzes the historical case studies conducted in the second part and concludes the essay. Several conventional views on Japan's modernization process will be questioned on the basis of the case studies, which will lead to some implications for the future study of state socialization and state-building in general. The third part also questions the meaning of Japan's entry in the larger map of institutional change in the international system.

Features of the Study

The significance of the study is threefold. First, by treating the state system as an institution embodied in international law and by offering a systemic perspective, the study will provide explanations for the making of certain domestic decisions, which have been weaknesses of the rational-choice variant of institutionalism, as well as of the historical interpretation of Japan's modernization. Although rational-choice institutionalists tend to emphasize the government's role in creating institutions, they in fact often rely on exogenous

factors such as international economic interdependence,[31] the advancement in war technology,[32] or international military competitions[33] in accounting for the emergence of institutions. External factors, in other words, have been implicitly recognized but have been treated in an unsystematic manner. By explicitly analyzing the institutional constraints of the positivist turn of international law in the nineteenth century, the study is expected to offer a better explanation for the logic of domestic response.

Second, the study sheds light on a rather neglected area of the state building literature, that is, the survival or maintenance of the state system. While explanations abound on the origin of the state in Western Europe,[34] how the system has evolved and been institutionalized since its creation is still an inadequately investigated area of the study. The factors that explain the origin of state and state system may not necessarily be useful in explaining the survival of the system. The study thus has a broader goal of contributing to a better

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[31] Hendrik Spruyt, *The Sovereign State and Its Competitors* (Princeton: Princeton University Press, 1994).

[32] Charles Tilly, *Coercion, Capital, and European States: AD990-1990* (Cambridge: Blackwell, 1990).

[33] Charles Tilly, "Reflections on the History of European State-Making," in *The Formation of National States in Western Europe, ed. Charles Tilly, 84-163* (Princeton: Princeton University Press, 1975); Tilly, *Coercion*; Douglass North and Robert Paul Thomas, *The Rise of the Western World: A New Economic History* (Cambridge: Cambridge University Press, 1973); North, *Structure and Change*.

[34] See, for example, Thomas Bartlett, *The Making of Europe: Conquest, Colonization, and Cultural Change* (Princeton: Princeton University Press, 1993); Thomas Ertman, *Birth of the Leviathan: Building States and Regimes in Medieval and Early Modern Europe* (Cambridge: Cambridge University Press, 1997); Michael Howard, *War in European History* (Oxford: Oxford University Press, 1976); Bernard S. Silberman, *Cages of Reason: The Rise of the Rational State in France, Japan, the United States, and Great Britain* (Chicago: University of Chicago Press, 1992); Spruyt, *The Sovereign State; Idem*, "Institutional Selection in International Relations: State Anarchy as Order," *International Organization* 48 (Autumn 1994): 527-57; Charles Tilly, "War-making and State-making as Organized Crime," in *Bringing the State Back In*, eds. Evans, Rueschemeyer and Skocpol, 169-191 (Cambridge: Cambridge University Press, 1985); *Idem*, "Reflections on the History"; *Idem*, *Coercion*.

understanding of the evolution of the sovereign state as a form of universal political organization. By highlighting the instrumental rationale for the persistence of the European state system, the study will also partially present a skeptical view of the recently popular "global village" argument. Despite the increased degree of economic interdependence and technological innovations that seem to render the world an intimately connected community, it is doubtful whether the significance of sovereign statehood has diminished as the most fundamental way to organize the world politically. [35] While it did not ensure perfect peace and justice among countries, the sovereign state system has proven to be most helpful in providing minimum order, limiting conflict, sustaining communications, and providing the conditions in which international cooperation could grow. As an institutionalized system, it plays a conservative role in accommodating new changes, giving conformist incentives to its members. The roles and functions of states, in fact, are "re-articulated, reconstituted and re-embedded at the intersection of globalizing and regionalizing networks and systems."[36]

Third, the study offers a political scientist's explanation for Japan's modernization and entry into the international system, while bridging Political Science, International Law, and History. The following statement by Buzan

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[35] Skeptical views on economic interdependence and globalization are presented, for example, in Paul Hirst and G. Thompson, *Globalization in Question*. (Cambridge: Cambridge University Press, 1996); Chris Brown, "International Political Theory and the Idea of World Community," in *International Relations Theory Today*, eds. Ken Booth and Steve Smith, 90-109 (University Park: The Pennsylvania State University Press, 1995).

[36] David Held and Anthony McGrew, "The End of the Old Order? Globalization and the Prospects for World Order" in *The Eighty Years' Crisis: International Relations 1919-1999* eds. Tim Dunne, Michael Cox, and Ken Booth, 235 (Cambridge: Cambridge University Press, 1998).

and Little states the importance of interdisciplinary studies between Political Science and History.

> IR theory cannot develop properly unless it is rooted in a full-scale world history. ...Linking IR and world history is not just a marginal luxury that IR theorists can take or leave as they wish. It is an essential act, without which IR theory can never hope to capture its subject. Without the link to world history, IR will never break out of its own ghetto, and thus never develop its role as the integrating macrodiscipline of the social sciences."[37]

Recent US IR scholarship has also demonstrated an increasing tendency to emphasize the importance of bridging International Law and International Politics.[38] The feasibility of interdisciplinary dialogue and cross-fertilization is great in analyzing Japan's entrance into the international society.

A problem may exist in determining how much generalization one can draw from the case of Japan that will ultimately contribute to the understanding of the socialization of newcomer states and the institutionalization of the European sovereign state system.[39] My goal, however, is to contribute to a large scholarly literature, based on observations made by scholars of European state building. This work, therefore, will not exist in isolation from other achievements made by the community of scholars.

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[37] Barry Buzan and Richard Little, *International Systems in World History: Remaking the Study of International Relations* (Oxford: Oxford University Press, 2000) 385.

[38] See, for example, Anne-Marie Slaughter, Andrew S. Tulumello, and Stepan Wood, "International Law and Internaitonal Relations Theory: A New Generation of Interdisciplinary Scholarship," *American Journal of International Law* 92, no.3 (1998):367-397; Anne-Marie Slaughter, "International Law and International Relations Theory: A Dual Agenda," *American Journal of International Law* 87, (1993); Friedrich V. Kratochwill, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International and Domestic Affairs* (Cambridge: Cambridge University Press, 1989); Nicholas Onuf, *World of Our Making: Rules and Rule in Social Theory and International Relations* (Columbus, SC: University of South Carolina Press, 1989).

[39] For discussions on the value of single-case studies, see, for example, Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (Cambridge:

Theoretically speaking, explaining a country's socialization by both international constraints and actors' choices may give readers the impression of indeterminacy. While acknowledging the importance of clarification of causal directions in enhancing explanatory power of the theory, I still find it necessary and beneficial to maintain a certain degree of eclecticism in order to answer the question of not only "why" Japan socialized itself rapidly but also "how." Interactions between international and domestic logic and the consistency that political leaders tried to obtain between the two are the key to understanding the process of a country's socialization and the institutionalization of the international system. As Gourevitch states, "International relations and domestic politics are... so interrelated that they should be analyzed simultaneously as wholes."[40]

Another caveat to be heeded is that of interdisciplinary tensions that exist between history and political science.[41] It is a common understanding that historians tend to regard history as a process, which renders description of events rather thick as an objective itself, while political scientists tend to "use" history

MIT Press, 2005) 32-33; 80.

[40] Peter Gourevitch, "The Second Image Reversed: The International Sources of Domestic Politics," *International Organization* 32, no.4 (Autumn 1978).

[41] The interdisciplinary tensions and opportunities for collaboration are fully discussed in Colin Elman and Mariam Fendius Elman, eds., *Bridges and Boundaries: Historians, Political Scientists, and the Study of International Relations* (Cambridge: MIT Press, 2001); *International Security* 22, no.1 (Summer 1997); Christopher Hill, "History and International Relations," in *International Relations: British and American Perspectives,* ed. Steve Smith, (Oxford: Basil Blackwell, 1985); Gordon Craig, "Historian and the Study of International Relations," *American Historical Review* 9, no.1 (February 1983); Clayton Roberts, *The Logic of Historical Explanation* (University Park: Pennsylvania State University Press, 1996); Barry Buzan and Richard Little, "The Idea of 'International System': Theory Meets History," *International Political Science Review* 15, no.3 (1994): 231-255; *Idem*, "Reconceptualising Anarchy: Structural Realism Meets World History," *European Journal of International Relations* 2, no.4 (1996): 403-438.

in order to prove their theories.[42]   As a political scientist, a field more committed to generalization than historians, by studying Japan's entrance into international society, I try to produce theories that can explain the entrance of Asian countries into the international system in general.   I then try to explain the latecomer's entrance in general, and then state socialization in general.   I hope, however, to base my arguments on firm facts in accounting for historical events, respecting historians' attitudes of pursuing truth through an extensive excavation of historical materials and prudence in interpretation of them. Historians in the past have produced admirable works based on primary documents.   My ideal is to combine a thorough case study of Japan's entrance, as a historian, with strong commitment to generalization, as a political scientist.

The view presented here is thus a modest one, a perspective to explain Japan's socialization and institutionalization of the international system. Japan's case in many ways may look unique, considering its rapidity of modernization and high degree of accommodation with international norms.   If one is successful in drawing generalizations from an apparently distinct case, however, it would make a strong contribution to theory building.

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[42] A good example of political scientists' use of history is Machiavelli's *Discourses on Livy*, where he used Livy's Roman history to support his political views.   The treatment of the rise and fall of great powers from the perspective of the interaction between national wealth and military strategy by Paul Kennedy is another example. Niccolò Machiavelli, *Discourses on Livy* (Oxford: Oxford University Press, 1997); Paul M. Kennedy, *The Rise and Fall of the Great Powers: Economic Change and Military Conflict from 1500 to 2000* (New York: Random House, 1987).

PART 1. THEORY

CHAPTER II

FRAMEWORK OF ANALYSIS

This chapter clarifies the concept of "state socialization," which has

been implicitly discussed in many theories of International Relations and

Comparative Politics but not explicitly studied as an independent subject.   It

further clarifies the concept of "institutionalization," which seems to have long

been forgotten somehow since Huntington's *Political Order in Changing

Societies,* [1] but is helpful in analyzing the sovereign state system as an

institution which historically evolved by incorporating newcomer states.   Both

concepts entail interacting processes between states as agents and the

international system as a structure.   They are useful concepts not only in

examining how a country adjusts itself in becoming a member of international

society, but also in analyzing how an international system affects a country to

conform to its norms.

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[1] Huntington, *Political Order*. The discussions and theories on institutionalization can be
considered as absorbed in the study of institutional change and regime/norm transformation.
Many elements in Huntington's institutionalization can be observed in, for example, Stephen
Haggard and Beth Simmons, "Theories of International Regimes," *International Organization*
41 (1987). 481-517; Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics
and Political Change," *International Organization* 52, no.4 (Autumn 1998): 887-917; Judith L.
Goldstein, Miles Kahler, Robert O. Keohane, and Anne-Marie Slaughter, *Legalization and World
Politics* (Cambridge: MIT Press, 2001).

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Theories of State Socialization

Socialization is generally defined as "the process by which people learn to adopt the norms, values, attitudes and behaviors accepted and practiced by the ongoing system."[2] Any discussion on socialization presupposes the following two aspects of it: first, socialization involves newcomers, whether they are children, trainees, novices, or infants, who "become incorporated into organized patterns of interactions";[3] second, socialization involves a certain learning process,[4] where the newcomers come to adopt socially accepted "ways of thinking, feeling, and acting."[5]

Socialization has recently come to attract attention of IR scholars as a concept to describe and explain compliant behaviors of states. Although treating such abstract entities as states as acting units may violate one's common understanding of units of analysis as personal and individual, it is justified in IR to treat states as unitary actors, and therefore, as political frameworks to be analyzed in the study of "state socialization."[6] In "international society," which is society of states, it is in the name of the state that treaties are concluded, that wars occur, and that all types of international interactions take

[2] P.E. Freedman and A. Freedman, "Political Learning" in *The Handbook of Political Behavior*, vol.1, ed. S. Long, 258 (New York: Plenum Press, 1981).

[3] S. Stryker and A. Statham, 1985. "Symbolic Interaction and Role Theory" in *The Handbook of Social Psychology*, 1, eds. G. Lindzey and E. Aronson, 325 (New York: Random House, 1985).

[4] The term "internalization" is often used in describing this process where values and norms become taken for granted. This study, however, emphasizes behavioral compliance rather than internalization, as will be shown later.

[5] Stryker and Statham, "Symbolic Interactions,"325.

[6] Good discussions on the treatment of states as units are found in Waltz' *Man, the State, and War* (New York: Columbia University Press, 1954) 172-180. Bull's discussions on "international order" vs. "world order" are also helpful. Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (London: McMillan, 1977) 20-22.

place.

For Ikenberry and Kupchan, who analyze state socialization in an hegemonic international environment, socialization is "a process of learning in which norms and ideals are transmitted from one party to another." Emphasizing the role of elites in socialization, they further note that socialization is "the process through which national leaders internalize the norms and value orientations espoused by the hegemon and as a consequence become socialized into the community formed by the hegemon and other nations accepting its leadership position."[7] In this process national leaders stand in between the external and the internal environment and play both international and domestic games simultaneously.[8] Leaders' successful coping with the two games, therefore, becomes crucial in the process of state socialization. During the early process of Westernization that this study focuses on, Japanese political leaders enjoyed a high degree of autonomy in managing internal and foreign affairs, relatively insulated from domestic power struggles at least until the Diet came into existence in 1890. Leaders' autonomy is thus assumed in analyzing Japan's socialization into international society, and in treating Japan as a unit of analysis.

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[7] Ikenberry and Kupchan, "Socialization and Hegemonic Power": 284, 289-90.
[8] For a systematic treatment of this process, see, for example, Robert D. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games," *International Organization* 42, no.3 (Summer 1988), 427-260; Peter E. Evans, Harold K. Jacobson, and Robert D. Putnam, *Double-Edged Diplomacy: International Bargaining and Domestic Politics* (Berkeley: University of California Press 1993).

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International Relations Theories and State Socialization

I will develop here an overview of how the concept of political socialization has been treated in the context of international politics. State socialization has been implicitly discussed in most of the major IR theories and some theories of Comparative Politics. Generally speaking, the discourse on the topic can be categorized into two types of arguments: (1) structuralist and (2) voluntarist. The primacy of the "whole" or international system is the characteristic of the structuralist argument, while the primacy of the "parts" or states as actors is that of the voluntarist.

Structural Realism

As a theory belonging to the structuralist camp, neorealism in the theory of International Relations has been the most explicit statement of structural imperatives imposed on actors that explains the long-term patterns of international relations in a theoretically elegant way.[9] In neorealist theory, an actor's behavior is molded by structural forces, which encourages similarities in the long-term foreign policy outcomes despite different domestic-level attributes. States conform to common international practices even if for internal reasons they would prefer not to. An international system, in other words, exercises a compliance pull autonomously of state interests and other attributes. Thus, neorealism uses the term "socialize" in describing the systemic effect on international actors, indicating their general conformity to international

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[9] Kenneth Waltz, *Theory of International Politics* (New York: McGraw-Hill Publishing Company, 1979).

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structure. States are socialized to conform to the ordering principle of international system, resulting in similarities in the long-term foreign policy behaviors of all the states. [10]

Asian states in the late nineteenth century all faced such systemic forces of European dominated international relations, and in the end, they all conformed to Western norms of international society, becoming a member of it sooner or later. The theoretical rigor of structural explanation in analyzing long-term international phenomena, however, loses its charm when social scientists need to know how different actors respond to the same systemic constraints differently and what kind of different international outcomes they produce.

My study starts by examining the basic structural forces of the nineteenth-century international system that operated as systemic constraints on the international actors in Chapter III. It will then study the response that Japan made to such systemic constraints. I will, therefore, follow a conventional method of conducting a research of this kind, first, by examining the general systemic factors that circumscribe actors' behaviors, and then by

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[10] The World Polity Perspective in Sociology can also be considered as belonging to structuralist, although detailed discussions will be spared here. It examines the macrohistorical spread of norms and social practices such as sovereignty, market economies, and rationalism. Socialization is also a central concept for social constructivists in IR. They focus on "logic of appropriateness" as opposed to "logic of consequences" in explaining norm diffusion. Socialization for them is the process where intersubjective meanings of the societal norms become taken for granted. See, for example, John W. Meyer, John Boli, George M. Thomas, and Francisco Ramirez, "World Society and the Nation-State," *American Journal of Sociology* 103, no.1 (July 1997):144-181; David Strang, "From Dependency to Sovereignty: An Event History Analysis of Decolonization 1870-1987," *American Sociological Review* 55, no.6 (December 1990):846-60; Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999); *Idem*, "Collective Identity Formation and the International State." *American Political Science Review* 88 (1999): 384-396.

examining domestic factors that explain what was left to be explained after the systemic analysis.[11] Systemic constraints that I focus on in this study are not general ones that transcend time and space of the state system but the ones confined to a particular historical era. In this sense the study aims at establishing a rather midrange theory of state socialization.

The English School

International Relations in Britain has had a long tradition of studies based on law, philosophy, and history. [12] The English School [13] has highlighted the societal aspects of international relations and their evolution while regarding states as essential actors of international relations, where a

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[11] One recent school of international relations that seeks to revive liberalism (distinguished from neoliberal institutionalism that led the liberal school in the 1980s and early 1990s) advocates that domestic attributes should not be treated as residues. The revived liberal school argues that instead of starting with systemic factors and going down to the domestic level, we should always start with domestic attributes. See, for example, Andrew Moravcsik, "Taking Preferences Seriously: A Liberal Theory of International Politics," *International Organizations* 51, no.4 (Autumn 1997): 513-53; *Idem*, "Introduction: Integrating International and Domestic Theories of International Bargaining" in *Double-Edged Diplomacy*, eds., Evans, Jacobson, and Putnam, ch.1; Helen V. Milner, *Interests, Institutions, and Information: Domestic Politics and International Relations* (Princeton: Princeton University Press, 1997). I do not see the advantage of taking this method of conducting research, however. Starting with domestic attributes could give researchers a wrong orientation of where the study should be directed, especially in the kind of study that deals with a long-term historical era that reflects certain background "zeitgeist" of the period.

[12] Included in this tradition are, for example, Carr's dialectical method, Wight's historical sociology of culture and identity, Bull's reflections on alternative notions of community, Vincent's prescriptions for a radical redistribution of wealth from the haves to the have-nots. E.H. Carr, *The Twenty Years' Crisis, 1919-1939: An Introduction to the Study of International Relations* (New York: Harper & Row, 1964); Martin Wight, *International Theory: The Three Traditions* (London: Leicester University Press, 1991); *Idem, Power Politics* (London: Leicester University Press, 1978); *Idem, Systems of States* (London: Leicester University Press, 1977); Bull, *Anarchical Society*; Herbert Butterfield and Martin Wight, *Diplomatic Investigations: Essays in the Theory of International Politics* (London: George Allen & Unwin, 1966); R.J. Vincent and J.D.B. Miller, *Order and Violence: Hedley Bull and International Relations* (Oxford: Clarendon Press, 1990).

[13] For a comprehensive overview of the development of the English School, see Tim Dunne, *Inventing International Society: A History of the English School* (Oxford: Macmillan, 1998).

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common set of rules binds states in their relations with one another and in the working of common institutions. States form a society with moral or legal restrictions binding them and mitigating the degree of "anarchy."

Regarding the topic of socialization, Bull, representing the English School, outlines the factors of a country's compliance with international law on two grounds: habit or inertia and deliberation or calculation of actors. On the latter, three kinds of motivations for states to obey international law are identified: first, states obey laws when the law is thought to be valuable, mandatory, or obligatory, apart from its being legally required (international law of community); second, obedience results from coercion or the threat of it by some superior power enforcing the agreement (international law of power); third, incentives to comply with international law could result from the states' interest to expect reciprocal action by other states (international law of reciprocity), which are exemplified in mutual respect for sovereignty, the keeping of promises and the laws of war, the most central principles of international law.[14] On this point, Bull clearly states that "the importance of international law does not rest on the willingness of states to abide by its principles to the detriment of their interests, but in the fact that they so often judge it in their interests to conform to it."[15] Bull's point of emphasis on actors' expediency is similar to the arguments made by U.S. institutionalists, which will be discussed later, and will also be proven later in the case study of Japan.

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[14] Bull, *Anarchical Society.*
[15] Ibid. 140.

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Studies with Time Dimension

Scholars of state-building, industrial policy and democratization in sociology and comparative politics have often fine-grained the structural explanations by introducing a time dimension. Charles Tilly, who is well-known for his study on the formation of national states in Western Europe, recognizes, for example, that while West European state-building can be explained by domestic variables, the state-building of latecomer states cannot be adequately explained by internal logic alone, and that external constraints play a larger role for the latecomers.[16] Similarly, in the literature on industrialization and modernization, Gerschenkron and Hirschman contend that the timing of industrialization defines the speed, the domestic institutions, and the strategies required for economic development.[17]

These works suggest the importance of timing in defining the way a state socializes itself. The content and the method of state socialization is constrained by the prevalent norms of the day and by the available domestic means of socialization. The entry process of Japan will be examined by incorporating the time dimension of the evolution of international law in the particular historical context of the nineteenth century.

Neoliberal Institutionalism

In the voluntarist camp, the recent institutionalist literature in the United

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[16] Tilly, "Reflections on the History."

[17] Alexander Gerschenkron, *Economic Backwardness in Historical Perspective* (Cambridge: Harvard University Press, 1962); Albert Hirschman, *A Bias for Hope* (New Haven: Yale University Press, 1971).

States treats the interests of states or individuals as a moving force of international relations. Due to the popularity of the rational choice approach, conscious choice made by actors through cost and gain calculation constitutes the basis of the argument. Neoliberal institutionalism in International Relations considers institutions as direct reflections of the voluntarist will of the self-interested actors, who comply and socialize with the institutions by perceiving the reduction in the transaction cost and in the information-provision mechanisms entailed in them. At the creation stage at least, the theory is voluntarist. It is the actors' self-interest and cost and benefit calculation that leads to the creation of institutions.[18]

Some studies on state-building, economic reform, and democratization have placed emphasis on the human agent's choices, focusing on the roles of political leaders at a time of national crisis or regime transition. It is often noted that, in situations of nation-building or economic reform, the leaders' role increases in identifying the objectives to be achieved, investigating the major alternative courses of actions, calculating the probable costs and risks (as well as the positive consequences of various other alternatives) and searching for new information relevant to assessment of the options. A country's entry into the state system, too, can be regarded as a "constitutive moment," which renders political elites an enormous opportunity to shape the course of events.

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[18] Once the institution is created, however, the institutions exercise compliance pull by providing transaction-cost reducing mechanism and information provision mechanism. The most comprehensive and explicit statement of neoliberal institutionalism is contained in Robert O. Keohane's works. Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1986; *Idem,* "International Institutions: Two Approaches," *International Studies Quarterly* 32 (1988): 379-396.

State Socialization: An Underdeveloped Concept in International Relations

Major IR theories, thus, all touch on state socialization in one way or another, since how states interact with other countries and adjust themselves to the external environment has been one of the major themes of International Politics. It is only recently, however, that "state socialization" started to draw the attention of scholars as a central subject of study in International Relations. Kai Alderson took up this unmapped concept and discussed the possible contribution that the concept could make to the study of IR.[19]

He defines state socialization as "the process by which states internalize norms arising or arisen elsewhere in the international system." By analyzing the process of how international norms become shared by actors, Alderson emphasizes the importance of clarifying the mechanisms of the internalization of norms, i.e., the process of how influential economic and political leaders and public leaders change their attitudes, of how domestic actors lobby for compliance with an international norm while sanctioning and punishing violations of them, and of how bureaucratic operating procedures become standard within the society and become institutionalized.[20]

> The fact that states, otherwise jealous of their independence and sovereignty, tend over time to adopt prevailing norms of international behaviour and domestic organization is a puzzling yet recurrent outcome. "State socialization" has emerged as a compelling metaphor to describe the normative pressures exerted on states interacting in international society, yet there is little scholarly

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[19] Kai Alderson, "Making Sense of State Socialization," *Review of International Studies* 27 (2001): 415-433.
[20] Ibid.

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consensus on what it means or how it operates. The absence of a common conceptual framework has inhibited the emergence of a substantive research programme, with very real consequences. Many contemporary foreign policy questions could be better answered if a more acute understanding of international norm diffusion and states socialization were available.[21]

Like Alderson, I define state socialization as a country's adjusting process in conforming to the norms of the international society. Alderson's conception of state socialization, however, essentially leans toward the voluntarist, regarding internationalization of states and internalization of international norms rather as a strategy that a state adopts. He states, for example, that "state socialization is always the project of domestic social and political actors. It is never the direct impression of external imperatives upon a passive and plastic national society."[22] The usefulness of the concept of state socialization, however, lies in its being an intersection of international-level and unit-level analyses.

Alderson also tends to emphasize normative aspects of state socialization rather than behavioral compliance. I consider state socialization as entailing both normative and physical aspects. In other words, state socialization includes both meeting a normative standard of accepting contemporary international customs, laws and rules, both explicit and implicit, and meeting a materialistic standard (e.g., military and economic) that accords with the required criteria of international society. In measuring the degree of state socialization, therefore, one needs to focus on several features of the

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[21] Ibid., 433.
[22] Alderson, "State Socialization."

adjustment process of a state such as: (1) the degree of adoption of political and economic institutions that meet the international standards and promote international norms, e.g., military system, parliamentary system, banking system, educational system, and (2) frequency of participation in international conferences; (3) the degree of compliance with international laws and norms; (4) acceptance of the prevalent ideas of the contemporary Great Powers, for example, standard of civilization, imperialism, and colonialism; (5) the degree of national power measured mainly by military and economic strengths.

The degree of socialization, however, should not be measured by those unit-level attributes of each state alone. State socialization presupposes the existence of an international society, first of all. If international relations do not constitute any element of society, socialization does not become a problem at all. In fact, the degree of socialization of one country is related to how much society there is and in what way a system is institutionalized at the international level. If international relations form a "tight" society with enmeshed ties and channels among countries, for example, the countries within such an international system necessarily require a higher degree of engagement in order to be called "socialized." If the international system remains "loose," just an occasional diplomatic exchange with other countries might suffice for a country to be recognized as "socialized." It is crucial, therefore, to discuss socialization not only from the agent's level but also from the system level. In the nineteenth century, with European empowerment and expansion throughout the globe, the international system was becoming "tighter," increasing the level

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of socializing pressure to newcomer states. Here, theories of institutions and institutionalization become useful in analyzing the interactions between domestic and international sources of socialization. Using theories of institutionalization of systems, we can construct arguments that incorporate both structural and voluntarist elements.

Theories of Institutionalization

Institutions: Definition

While the study of institutions has occupied the central locus of political science, the foci of the study have become transformed considerably over time. In the early period, the study focused on formal administrative structures, procedures, and functions, or rules and laws of political institutions. Focus on formal attributes of political institutions gradually moved to informal ones since the 1950s, when efforts to identify some behavioral patterns of institutions were widely observed. In the 1970s, the study of institutions was revived as New Institutionalism, which treated institutions' dynamic nature by conceptualizing them more broadly than before and analyzing their origins and causes of change. The contribution of the economic historian Douglass North[23] was applied widely to other social sciences. In the field of International Relations, for example, the development of theories of regimes in the 1980s and international institutions later on owed much to the concepts and logic that North originally

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[23] Major contributions of North include: North and Thomas, *The Rise of the Western World;* North, *Structure and Change; Idem, Institutions, Institutional Change and Economic Performance: Political Economy of Institutions and Decisions* (Cambridge: Cambridge University Press, 1990).

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developed. In the field of Comparative Politics, institutionalism was applied to comparative analysis of the political-economic system of a country. Furthermore, New Institutionalism was applied to International Politics and Comparative Politics, including the topic of state-building, and used in analyzing the emergence and transformation of sovereign states and international systems.[24]

As is noted in North's definition of institutions as "a set of rules, compliance procedures, and moral and ethical behavioral norms designed to constrain the behavior of individuals in the interests of maximizing the wealth or utility of principals,"[25] institutions entail two aspects that can be contradictory to each other. On the one hand, actors voluntarily create institutions, reflecting their preferences and interests; on the other, once created, institutions constrain the behavior of actors and the relations among them. In fact, different institutionalist scholars define institutions differently, varying from the ones that emphasize the institutional constraints on actors to the ones that emphasize the institutional dynamics where actors' intentions are considered as major force of institutional creation and transformation. As an example of the former, March and Olsen define institutions as "a relatively stable collection of practices and rules defining appropriate behavior of specific groups of actors in specific situations."[26] As a latter example, William Riker

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[24] Spruyt, *The Sovereign State*; *Idem*, "Institutional Selection"; Tilly, *Coercion*.
[25] North, *Structure and Change*, 201-202. In his *Institutions, Institutional Change and Economic Performance*, they are defined as "the rules of the game in a society, the human devised constraints that shape human interaction." *Idem, Institutions*.
[26] James March and Johan P. Olsen, "The Institutional Dynamics of International Political Orders," *International Organization* 52, no.4 (Autumn 1998):943-969; *Idem*, "The New

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mentions that "institutions are no more than rules and rules are themselves the product of social decisions. Consequently the rules are also not in equilibrium."[27] How to conceptualize the balance between actors' voluntarism and institutional autonomy is a key to understanding institutions and is also a focus of future studies on institutions.[28]

Sovereign State System and International Law as Institutions:

Sovereign state system can be considered as an institution that entails certain rules and norms designed to constrain the behavior of states. It provides a political order based on territorial borders, excluding any higher authority within a given territory. Non-interference and self-help are two basic principles of sovereign state system as an institution since Westphalia.

International law, commonly conceived as constituted of treaties and international customs, is also an institution, or rather, a sub-institution of the sovereign state system and at the same time an embodiment of it. It can be defined as "a miscellaneous aggregate of rules, principles, procedures, decision,

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Institutionalism: Organizational Factors in Political Life," *American Political Science Review* 78, no.3 (September 1984): 734-749; *Idem, Rediscovering Institutions* (New York: Free Press, 1989).

[27] William H. Riker, "Implications from the Disequilibrium of Majority Rule for the Study of Institutions," *American Political Science Review* 74 (June 1980): 444-445.

[28] Defining international institutions as "explicit rules, agreed upon by governments, which pertain to particular sets of issues in international relations," R.O. Keohane categorizes institutionalism into two groups: "rationalistic theory" which focuses on specific institutions as "a particular human-constructed arrangement" and the "sociological approach," which emphasizes the role of underlying practices that includes culture, norms, and value systems influencing the formation of persistent social forces that constrain and prescribe actors' behavior and expectations. Robert O. Keohane, "Neoliberal Institutionalism: A Perspective on World Politics," in *International Institutions and State Power: Essays in International Relations Theory*, ed. Robert O. Keohane: 1-20 (Boulder: Westview Press, 1989); *Idem*, "Two Approaches," 195.

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orders, policies, precedents, and other normative elements, not a single, coherent practice or institution."[29]   International law, in other words, is an informal institution that reflects general patterns or customary behavior in international relations.   Holsti states that international law is "an important institution of international politics.   Indeed, it is so important that it distinguishes a society of states from a conglomeration of independent political units."[30]   Carr notes, "International political community is intimately related to international law.... Law cannot exist except in a political society... International law is a function of the political community of nations."   Not only does international law reflect international politics, but it does so in a more political way than domestic law, because the "power element is more predominant and more obvious in international law."[31] Further, Carr notes :

> Law gives society that element of fixity and regularity and continuity without which no coherent life is possible.   It is the fundamental basis of organized political society that the rights and duties of citizens in relation both to one another and to the state should be defined by law.[32]

As an institution, international law has certain functions to perform: (1) ensuring mutual independence of states; (2) promoting or discouraging certain international norms of the day; (3) socializing latecomers.   Bull is one of the IR scholars who have examined the roles of international law as one of the institutions in the international society.   He identifies three functions of

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[29] Terry Nardin, "International Pluralism and the Rule of Law," *Review of International Studies* 26 (December 2000): 96.

[30] K.J. Holsti, "Scholarship in an Era of Anxiety: The Study of International Politics During the Cold War," in *The Eighty Years' Crisis: International Relations 1919-1999* eds. Tim Dunne, Michael Cox, and Ken Booth, 17-46 (Cambridge: Cambridge University Press, 1998).

[31] Carr, *The Twenty Years' Crisis,* 177-178.

[32] Ibid., 179.

international law in relations to order in international society. First, international law identifies the idea of a society of sovereign states. Second, international law states the basic rules of coexistence among states and other actors in international society. Third, international law facilitates compliance with the rules of international society by (1) "providing a means by which states can advertise their intentions with regard to the matter in question," (2) providing "reassurance" about the future policies of states, and (3) "solemnizing the agreement" so as to create an expectation of permanence. What is implied here overlaps the functions that institutionalists in American IR literature identify, such as "information," "transaction cost," "transparency," and "shadow of the future."[33]

While the core functions of the European sovereign state system as an institution have themselves been resistant to change, shifts in broad socioeconomic or political context brought changes to its "sub-institutions," an important one of which is international law and its norms. These sub-institutions have shaped the meanings and functioning of institutions in a particular historical period. European empowerment and its concomitant geographical expansion in the eighteenth and nineteenth centuries, for example, gave rise to a special norm of the period, a "standard of civilization," which itself can be considered as a sub-institution of the state-system. Indeed, "the vocabulary of international law could not be separated...from the material

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[33] Bull, *Anarchical Society*. 140; Keohane, *After Hegemony*; *Idem*, "International Institutions."

conditions of industrializing capitalism."[34]   European state systems during these periods, in other words, were possessed with institutional structures and functions that distinguish those of different period of history.

Historical institutionalism explains the dynamics of impersonal social forces, norms and values that are constrained by time and space and provide a context for the emergence of such sub-institutions.   Unlike rational institutionalism, which employs an economic method in analyzing political behaviors and aims at constructing deductive, parsimonious theories that apply to all the political settings that transcend time and space,[35] historical institutionalism focuses special attention to particular historical contexts, which cannot be explained by individuals' rationality or utility maximization. Institutions reflect historically distinctive combinations of material circumstances, social patterns of thought, and individual initiative, and shaped

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[34] Alexis Dudden, "Japan's Engagement with International Terms," in *Tokens of Exchange: The Problem of Translation in Global Circulations,* ed. Lydia H. Liu, 168 (Durham: Duke University Press, 1999.).

[35] Rationalist views of institutions are presented, for instance, in Kenneth Shepsle, "Institutional Arrangements and Equilibrium in Multidimentional Voting Models," *American Journal of Political Science* 23 (1979): 23-57; Margaret Levi, *Of Rule and Revenue* (Berkeley: University of California Press, 1988); Robert Bates, *Markets and States in Tropical Africa* (Berkeley: University of California Press, 1981).   North also belongs to the rationalist camp. Here, political actors are rational maximizers of self-interests and "goal-seeking agents who make specific institutional design choices to solve the particular cooperation problems they face in different issue-areas." Barbara Koremenos, Charles Lipson, and Duncan Snidal, "The Rational Design of International Institutions," *International Organization* 55, no.4 (Autumn 2001). Their preferences are formed exogenously, where institutions play significant roles in providing strategic contexts.   Institutions, in other words, constrain the way actors pursue their objectives, although not the objectives themselves.   Among the rational choice theories, the transaction school, whose foundation was laid by Williamson, emphasizes the role of institutions that reduce the cost of transactions and solve the collective action problems efficiently.   Oliver Williamson, *Markets and Hierarchies* (New York: The Free Press, 1975); *Idem, Economic Organization* (New York: New York University Press, 1986). Keohane explains international cooperation by the transaction-reducing/ information-providing functions of international institutions, where egoistic actors find interests in compliance. Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984).

over time by path-dependent processes. Historicity and learning are taken into account in explaining the dynamics between institutions and actors.

Historical institutionalism also considers autonomy of institutions as playing a role in shaping actors' political behavior. The central importance of institutions lies in "mobilizing bias in political processes," as actors' preferences and interests are shaped by the institutional context. Steinmo and Thelen appreciate historical institutionalism as a midrange theory that achieves both the appropriate degree of parsimony and complexity, constructs "important analytic bridges between state-centered and society-centered analyses" and "allows us to examine the relationship between political actors as objects and as agents of history."[36] "One of the great attractions and strengths of this approach is in how it strikes this balance between necessary complexity and desirable parsimony." [37]

Historical institutionalism, therefore, explains general patterns and customs of international institutions such as sovereign statehood, instituted not by agreement but as a result of the elaboration over time of the principle of sovereignty, while rational perspective is more useful in explaining concrete, formal, specific institutions. The significance of employing historical institutionalism in the analysis lies in providing insights that combine the strengths of political science and history, or those of grand theories that highlight broad cross-national regularities and narrower accounts of particular national cases.

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[36] Steinmo, Thelen, and Longstregh, *Structuring Politics*. 10.
[37] Ibid., 13.

The dynamics entailed in the tensions and interactions between institutional constraints and actors' choices are further explored in the next section, where the concept of institutionalization is reexamined and the factors of institutional transformation are explored. Institutionalization is a crucial concept in theorizing how institutions originate, stabilize, and transform, which can be applied to the analysis of the European sovereign state system.

Institutionalization and Institutional Transformation

It has been increasingly recognized among scholars that the interaction between the systemic/societal constraints and the choices that actors make is one of the unexplored areas in the institutionalist literature. "More explicit theorizing on the reciprocal influence of institutional constraints and political strategies and, more broadly on the interaction of ideas, interests, and institutions" is necessary. [38]

Many of the core elements of institutional dynamism are contained in Huntington's concept of institutionalization. In exploring institutional dynamics, it is useful to reexamine the concept of institutionalization that was originally developed by Huntington but has been obliterated in the political science literature for a long time. Huntington examined the importance of political institutions in relation to political development and conceptualized political institutions as something that mitigated or avoided conflicts among different social forces that accompany modernization and social mobilization.

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[38] Ibid., 14;Kathleen Thelen, "Historical Institutionalism in Comparative Politics," *Annual Review of Political Science* 2,(1999): 369-404.

For Huntington, institutionalization is defined as "the process by which organizations and procedures acquire value and stability."[39] Huntington also stated that political institutionalization that accords with the level of social and economic change is necessary for political stability and listed four criteria for institutionalization: adaptability, complexity, autonomy, and coherence.[40]

In the process of institutionalization of certain norms and rules, a general pattern was observed where those norms and rules acquired exclusive characteristics that can distinguish them from others. In this pattern, norms and rules exist for a certain period of time, become stabilized, and then become transformed, responding to environmental stimula. Also involved in the process are actors' perceptions of institutional constraints, adjustment to those constraints, all of which contributes institutional survival and stability. Further, institutions themselves incorporate extraneous elements, contributing to their higher degree of complexity and adaptability. From the essence of Huntington's arguments, I deduce that "autonomy" and "adaptability" are the most fundamental aspects of institutionalization. The former makes an institution emerge independently from others and establish its intrinsic identity. The latter contributes to adding flexibility and complexity in its interactions with the environment.

Autonomy is related to coherence in Huntington's analysis. It is a criterion that measures institutional constraints on actors. In the first phase of institutionalization, institutions acquire autonomy, providing actors with

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[39] Huntington, *Political Order,* 12.
[40] Ibid., 12-23.

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coherent rules and behavioral appropriateness. A political system becomes institutionalized when it develops certain distinct characteristics of its own that can clearly separate it from other political entities. With rules that distinguish some institutions from other institutions and with the rationale for those rules, institutions make it possible for actors to predict directly and specifically possible interactions with others, and lead actors to adjust themselves to institutional rules in an appropriate matter. When the membership of an institution suddenly expands, an institution could lose its coherence easily. An autonomous political institution, however, absorbs new social forces and members, makes them obliged to comply with rules, and maintains coherence without losing its institutional integrity.[41] An autonomous institution can neutralize or eliminate the influence of new members by delaying newcomers' joining the system, or changing newcomers' attitudes and behaviors through the process of political socialization.

In the second phase of institutionalization, an institution acquires adaptability, which is related to another of Huntington's criteria, complexity, and concerns institutional survival and stability. Complex institutions with many purposes and roles tend to adopt actors' preferences easily, since even when a purpose of one subunit is lost, other purposes of other subunits can easily compensate for it. Therefore, a complex institution has strong adaptability to its environment. Adaptability means two things. One is an ability to endure extensive environmental changes. Institutions that have

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[41] Ibid., 22.

endured and survived environmental challenges have higher degrees of adaptability. The second meaning is an ability to increase its supporter-members and adopt foreign elements. Although Huntington placed emphasis on the number of years that institutions exist as a measure of adaptability, spatial breadth that an institution covers on the globe is also an important criterion. Institutionalization, therefore, should be a concept that incorporates not only a time dimension but also a spatial dimension in the analysis. An adaptable institution has the flexibility to incorporate outlandish elements of new members not only without sacrificing institutional autonomy and stability but also in a way to give itself more autonomy and stability.

In short, institutional autonomy works as constraints on actors and adaptability indicates institutional ability to adopt actors' attributes. In this sense, the dynamics between institutions and actors mentioned in the discussions of socialization again become the central theme of institutionalization. This theoretical framework of conceptualizing institutionalization from the point of view of institutional autonomy and adaptability is useful in examining the process of expansion and development of the European international system as it gradually absorbed countries that had belonged to different civilizations. A high degree of adaptability of newcomers led to further survival and autonomy of the international system as an institution, as encounters with countries of different cultural and civilizational background highlight the European identity of state relations. At the same time, in the process of engaging different actors, the European state system became a more

complex system with more capability of adapting flexibly to the new environment. Newcomers' socialization, therefore, occurs in parallel with further institutionalization of the European sovereign state system. Actors' accommodation institutionalizes the sovereign state-system.

The international system thus can be treated as an institution that entails a Huntingtonian dynamics of institutionalization. The transformation of the international system since Westphalia that I will discuss in chapter III can also be understood in light of different types and degrees of autonomy and adaptability that the system has adopted in the course of its expansion.

CHAPTER III

THE INSTITUTIONALIZATION OF THE INTERNATIONAL SYSTEM
IN THE NINETEENTH CENTURY

In this chapter, I look closely at how international norms of a particular historic era have posed constraints on international actors and how the international system transformed itself since Westphalia. Three big transformations can be observed that occurred in the history of the sovereign state system, presenting a big picture of where the nineteenth century is located in the history of the European international system from the perspective of institutional change examined in the previous chapter.

Since the way law and political community operate is defined by time and space in the particular historical period, the timing of entry into international society plays a significant role in defining the way a country socializes within the norms and rules of international society. Political science in this sense needs to be married to history in examining state socialization. Newcomers to international society faced different international constraints that different time period of history presented. Japan's entrance can be explained by the particular international norm of the nineteenth century, including the "standard of civilization." This point needs to be emphasized before the case study in Part II, where I describe the process where Japan, confronting the

socializing pressure to conform to Western international law at the initial stage of encounter with the West, gradually learned to utilize it for its national interests and development, while focusing on acquiring membership in the international society.

I will first examine the historical transformations of international society, moving on to elaborate on the positivist turn of international law from natural law in the nineteenth century. The positivist turn in large part defined the way Asian countries met the European challenge. I will then proceed to a brief sketch on the characteristics of the Asian encounter with the West.

Evolution of International Law in History: Three Transformations

A common understanding of the modern international system and international law is that it originated during the sixteenth-century Europe and was consolidated during the nineteenth century. [1] We can observe three stages of development in the history of the modern European state system and international law: (1) the creation of the Westphalian system during the seventeenth century; (2) the emergence of the Eurocentric international society with the European norm of "standard of civilization"; (3) the globalization of the state system and democratization of legal/external sense of sovereignty since decolonization in the latter half of the twentieth century. These are the three

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[1] Countries and regions such as China, India, and Assyria had developed their own codes of inter-state relations in the ancient times. Anand notes, however, that "there is no connection between those ancient principles and the present rules of international law, even if there is found to be a large degree of similarity in certain rules" in their relations. R.P. Anand, "Attitude of the Asian-African Countries toward Certain Problems of International Law," *International Comparative Law Quarterly* 15 (1966): 57.

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forms of universalism that have periodized the history of modern international relations: "At first the world was destined to become Christian, then it was destined to become civilized, while now it is destined to become legally egalitarian (but not at all materially)."[2] Transformations from each of these steps to another have entailed changes in the concept of statehood, in the criteria for membership in the international society, and in the norms that bound the members. Each of these transformations presupposed some exogenous changes that led to the institutional adaptation of the international system.

The Westphalian Transformation

Many studies exist that focus on seventeenth-century state-building and the emergence of the international system.[3] Charles Tilly and Hendrik Spruyt, in particular, offer insightful explanations for the creation of states and state-system from different angles. Tilly periodizes history with three marking points: 990, 1490, and 1990, explaining European state-building by military competition brought by the military revolution at the end of the Middle Age that worked as an exogenous factor for the institutional change. The invention of artillery, modern fortifications and massed infantry in particular increased the need to secure revenue from the society to maintain security of a political entity from around 1400. Although military competition drove the European states to the same general direction of state building, countries differed in how to

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[2] Jörg Fisch, "The Role of International Law in the Territorial Expansion of Europe, 16th-20th Centuries," *ICCLP Review* 3, no.1 (March, 2000):5-15.
[3] Spruyt, *Sovereign State*; Tilly, *Coercion*; Bartlett, *The Making of Europe*; Ertman, *Birth of Leviathan*.

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combine the two social logics, military (coercive) and economy (capital), which widened the gap in national powers among states. States that efficiently utilized both "coercive intensive" and "capital intensive" methods proved better at waging war and dominating the poorer, less urbanized areas in Europe. Since the 1970s Tilly has been faithful to the original thesis that he had developed: "States made war and war made states."[4] Tilly is primarily concerned with the state's ability to raise revenue from its society for war and regards war as the primary state activity. The essence of the European state building is security capability of a political entity, which is also the source of institutional selection in international politics.

Spruyt examined the origin of the state and state system during the period between 1000 and 1648 with the aim of refining and modifying Tilly's arguments. He suggests that the emergence of the sovereign state system in Europe can be explained by the functional ability of state to respond to the increased degree of economic interdependence and commercial development that occurred at the end of the Middle Ages. According to Spruyt, therefore, it was the economic competition, not military competition, that led to the victory of the sovereign state, superseding city-leagues and city-states as synchronic alternatives. By establishing a central authority, sovereign states were able to prevent free riding, to reduce transaction costs and to rationalize the economy by standardizing coinage, weights, and measurements. By mobilizing social resources, they were thereby recognized as the legitimate actors in international

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[4] Tilly, "Reflections on the History."

relations. Spruyt is also influenced by Gould's theory of punctuated equilibrium, explaining institutional changes by institutional selection that occurs as a response to major environmental changes. For him, the major environmental change that occurred during the eleventh to the thirteenth centuries was the growth in commerce and economic expansion that transformed the relative position and powers of different social groups. Spruyt utilizes institutional theories more consciously than Tilly by combining grand theory, bargaining, and the perspective of evolution. While military efficiency had long been considered as standard explanation for the emergence of states since Tilly, Spruyt introduced economic efficiency as the source of institutional selection.[5]

The emergence of the sovereign state system in Europe was a phenomenal event that marked the start of the modern international system. Military revolution and economic interdependence are identified as exogenous factors that led to the creation of a new institution called the Westphalian international system. As an institution, the system operated from the basis of two principles of sovereignty: internal hierarchy and external autonomy.[6] The survival of this distinct institution had yet to be tested.

Nineteenth-Century Transformation

Institutional changes are usually brought about by (1) changes in socioeconomic context and (2) changes in political context. What were the

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[5] Spruyt, *Sovereign States*; *Idem*, "Institutional Selection."
[6] Ibid.

exogenous factors that brought fundamental institutional changes to the nineteenth-century international system? The Industrial Revolution that started in seventeenth-century Britain was an important event in the socio-economic context that raised the material standard of Europe to an incomparable degree in relation to other international societies. The material empowerment of Europe led to its concomitant expansion abroad, bringing significant political consequences. The nineteenth century was the age of science, the age of the Victorian ideals of progress, optimism, and liberalism. Industry and technology were considered instruments for the betterment and progress of human society. It was also a period when international law transformed from natural law to positive law, changing the concept of sovereignty to a substantive one based on the historical experiences and the actual power that a state possesses.

Since the mid-nineteenth century, the formalities and techniques of international law underwent revolutionary changes. Entailed in such changes were the establishment of various international organizations, development of the law of war, developments in the procedures of international arbitration and mediation, including the establishment of a Permanent Court of Arbitration in 1899, legalization of property rights, issues of shipping, and efforts to curtail piracy, buccaneers, and mercenary activities. Further, the nineteenth century witnessed an increased sense of nationalism and changes in the conduct of war, which accompanied a change in the way military power was employed as a means to pursue national policies. These phenomena all occurred in parallel,

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each intrinsically related to one another. They were related parts of transformation that the international society went through since the Industrial Revolution.

Schroeder points out that European international relations changed dramatically from an international system to international society between 1763 and 1848 with the emergence of the exclusive concept called "Europe."[7] The international system up to the turn of the nineteenth century was what Watson calls "inclusive international society,"[8] where the power gap between the European states and non-European ones was not big and where European countries established relations with others as equal partners. The conception of Europe as an exclusive society of the most civilized nation states, however, gradually took over, changing the criteria of membership in the international society and developing Euro-centric international norms.

Since the middle of the nineteenth century, the recognition of a state came to depend more on subjective domestic factors rather than an abstract legal standard. In the nineteenth century, international law became

> an expression of the will of the state, and ... used by those who control the state as an instrument of coercion against those who oppose their power. The law is therefore the weapon of the stronger.[9]

The nature and the objective of states thus became more important criteria for membership in the international society during this period than at any other time in history. The determination of "who to be admitted into the international

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[7] Paul W. Schroeder, *The Transformation of European Politics, 1763-1848* (Oxford: Clarendon, 1996).

[8] Adam Watson, *The Evolution of International Society* (New York: Routledge, 1992).

[9] Carr, *The Twenty Years' Crisis,* 176.

society, to what extent, and for what purposes"[10] came to depend on the new sense of sovereignty. Turning away from natural law to positive international law, international lawyers during this era also based their rules of conduct on the actual body of custom and treaties that were historically accumulated. During this "positivist" era, the contact between Europe and non-European powers was not that of equals any more. Until the end of the eighteenth century Europe was never strong enough to be able to resort to threats in dealing with other international societies or states. Empowered Europe, however, gained the ability to exercise direct control over many parts of the world. As a consequence, matching the "standard" (and increasing) national power became the foremost agenda of all the non-European states that were to enter the international society. In 1856 Turkey became the first country to pass the test of the "standard of civilization," partially, and entered the Eurocentric international society.[11] Failing in the test meant imposing activities such as territorial partition, unequal treaties, invasion, and opening of ports.

In expanding into other areas of the globe, problems arose for the European countries of how to protect lives, liberty, and property of the Europeans in non-European lands.[12] The "standard of civilization" emerged as a guarantee of certain basic rights in often hostile foreign lands. The

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[10] Anghie, "Finding the Peripheries," 2.
[11] As a major participant in the Crimean War, Turkey's presence was prerequisite to end the war. At the Peace Conference in Paris in 1856 after the war, therefore, France, Austria, Britain, Prussia, and Russia along with Sardinia explicitly recognized Turkey's eligibility in the Concert of Europe and started to invite Turkey to participate in all the major international conferences. Turkey was not, however, treated equally with other European countries. It was not until the 1923 Treaty of Lausanne that Turkey's extraterritoriality was lifted.
[12] Gong, The Standard.

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emergence of the "standard" can also be explained by property rights arguments. If we identify the origin of institutions with the need to arrange property rights, following the logic of institutionalists, "standard of civilization" provided a rationale for an institutional arrangement to divide up the remaining land on the globe by limiting international recognition to candidate states. As the expansion of Europe physically meant a gradual decrease in space on the globe, some kind of new institutional arrangements became necessary. Here, "transaction cost" was reduced by the international norm of colonialism, which was another side of the coin of "standard of civilization." In outlining several characteristics of the European expansion, Fisch notes that:

> There was probably no other empire building in history in which legal and moral justification played such an important part. The Europeans tried hard to legitimize their actions, to find a more solid legal foundation for what they did than simply to refer to a right of conquest.[13]

The modern European state system that emerged as a Westphalian system in the seventeenth century was consolidated during the nineteenth century with the development of the Eurocentric "standard of civilization." The socio-economic change that occurred as exogenous environmental change defined the power configuration of the world, empowering Europe with respect to other parts of the world.

Post-Second World War Transformation: Decolonization

Still another change in the international system occurred in the latter

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[13] Jörg Fisch, "The Role of International Law," 5.

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half of the twentieth century. This important transformation of the international system and ruling norms has been examined most thoroughly by the quasi-states argument represented by Robert Jackson.[14] His work offers an excellent "second-image reversed" explanation for the survival of the contemporary statehood in the third world on the basis of the institutionalized nature of the "negative sovereignty regime." The quasi-states argument posits that the notion of sovereignty has changed intrinsically since the Second World War and especially in the 1950s and 1960s with the birth of new international norm of decolonization and national self-determination that eradicated colonialism. The emergence of many of the states legally recognized as independent but without effective government is explained by the structural constraints of the international system. According to this view, the international society, which used to be an exclusive European club of nations during the nineteenth century, became a world-wide democracy based on legal, external sense of sovereignty, with non-European states constituting a larger part of the membership in the latter half of the twentieth century. The survival and membership of today's states now relies on the new institutional mechanism of the international society, or the "negative sovereignty regime," and the stability of external sense of sovereignty brought by it. The right of self-determination, international peace and security, inviolability of borders, and non-intervention all came to be recognized as significant "rules of the game" in

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[14] Robert H. Jackson and Carl Rosberg, "Why Africa's Weak States Persist: The Empirical and Juridical in Statehood," *World Politics* 35, no.1 (1982):1-24; Robert H. Jackson, *Quasi-states: Sovereignty, International Relations, and the Third World.* (Cambridge: Cambridge University Press, 1993).

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today's international politics.[15]   Stabilization of international borders and the concomitant stabilization of external sense of sovereignty are unprecedented characteristics of today's international system.

Jackson suggests that the spread of democracy and the concomitant increase in the anti-sentiment against Western colonialism is the major factor that explains this major institutional change.   For Jackson, institutional change is different from radical physical change; it is more gradual and becomes the problem only when enough people start to doubt the existing norms of institutions.[16]   While Jackson's explanation for institutional change relies on perceptive/normative factors that arise endogenously within the international system, it is also possible to explain it from the perspective of physical change that accompanied globalization of the European international system.   When the international system that originated in Western Europe gradually expanded after 1648 to cover the entire globe after WWII, the room to export wars decreased.   While the state borders at the early stages of the expansion were in constant changes through wars, international borders stabilized after WWII, especially after decolonization, as there came to be no room to export wars in the international system that covered the whole globe.

Although a classical sense of sovereignty shared by developed countries

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[15] Due to these changes in international structure and norms, frequency of inter-state wars was dramatically decreased, resulting in less frequent changes in international borders and low death rate of states.   International borders have been especially stabilized with the incorporation of the right of self-determination in United Nations (UN) Charter and resolutions of the UN General Assembly, where the norms of inviolability of states became explicitly stated and institutionalized.

[16] Robert Jackson, "The Weight of Ideas in Decolonization: Normative Change in International Relations," in *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change,* eds. Robert O. Keohane and Judith Goldstein, 114 (Ithaca: Cornell University Press, 1993).

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consists of both juridical and empirical statehood (positive sovereignty), many of today's developing countries possess only a simple juridical status without empirical content (negative sovereignty).[17] The rules of international politics changed from a "positive sovereignty game" to a "negative sovereignty game," enabling the former colonies and territories to be recognized as sovereign entities regardless of whether they fulfill the criteria of empirical statehood. The change in the norm of sovereignty created anomalies in international politics, among which is security. Since the juridical sovereignty once achieved has become inalienable and since the norms came to prevent the political demise of even the most inviable of empirical statehood, many Third World states continue to exist without solving their domestic dimension of security in a genuine sense, which is called the "third world security predicament."[18]

In the experience of the Western European countries, an external threat was an incentive to state building.[19] European countries solved the international dimension of security first in their state-building with wars contributing to the increase in national coherence and creating loyal citizens to collaborate in state-building efforts. In other words, the threat to security came from outside of the state in the experience of Europe, while the internal dimension of security is the major problem for today's third world. The lack of enough external threat, or the lack of inter-state wars has meant the lack of

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[17] Jackson and Rosberg, "Why Africa's Weak States Persist,"; Jackson, *Quasi-states*.
[18] Mohammed Ayoob, *The Third World Security Predicament: State Making, Regional Conflict and the International System* (Boulder, Lynne Rienner, 1995).
[19] Tilly, "War-making and State-making."

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incentives to establish a nation within a defined border. Although the past colonial experience or strong leadership can sometimes work as factors for national coherence, they do not prove to be immediate and strong for state-building as does a foreign threat.

State-building is thus tied closely to the international norm that constrains a country's motivation for national development. By examining the transforming conception of statehood that is divided into three stages, one can highlight the peculiar feature of the nineteenth century criteria of membership for international society. It is distinguished from both the Westphalian criteria that preceded it and criteria based on "negative sovereignty" that followed it. I will examine below in detail the effects of the nineteenth-century norm on Asian latecomers to international society.

The Asian Encounter with the West
in Light of the Positivist Turn of International Law

Positivist Turn in International Law

Legal positivism means, first, that sovereignty is the supreme authority to enforce laws and rules. Second, law is considered the creation of the sovereign states that regulate relations between them. Third, the actual behavior of states that create rules and institutions became the basis of international law. This is a significant contrast to natural law thinking, where sovereign states were considered to be bound by an overarching higher

morality.[20]

The ascendancy of positive international law discarded "some of the fundamental qualities of the classic law of nations, particularly the principle of the universality of the Family of Nations irrespective of creed, colour, and continent," thus rendering international law "shrinking" from a universal order into an Eurocentric one.[21]

> While the original concept of sovereignty, derived from Bodin, is negative and formal in the sense of not recognizing a superior, of having the competence to exercise all rights without necessarily actually exercising them, in the nineteenth century it became positive in the sense that only those who actually exercised those rights were considered sovereign.[22]

By its positivist turn, international law reidentified itself for further adaptation to the new international environment. With this turn, the nineteenth-century international law as an institution came to pose unique norms of statehood on the newcomer states, among which was the "standard of civilization." It was a notable product of the society dominated by European countries and was a legal justification of colonial expansion. Positivist writers such as Henry Wheaton, William E. Hall, James Lorimer, Thomas Lawrence, M.F. Lindley, T.E. Holland, John Westlake, and Lassa Oppenheim articulated the positivist international law and "standard of civilization" in response to the questions that arose in the European contact with increasing numbers of

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[20] Bull notes that natural law had mitigated the exclusiveness of the idea of Christian international society by emphasizing universal rights and duties of all men. "In the era of European international society the decline of natural law thinking withdrew this mitigating influence." Bull, *Anarchical Society*, 34.

[21] C.H. Alexandrowicz, *The European-African Confrontation* (Leiden: A.W. Sijthoff, 1973), 6.

[22] Fisch, "The Role of International Law," 12.

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non-European countries.[23]

> Positivism was the new analytic apparatus used by the jurists of the time to account for the events that culminated in the universalization of international law and the formulation of a body of principles that was understood to apply globally as a result of the annexation of unoccupied territories such as the Australian continent, the conquest of large parts of Asia, and the partitioning of Africa.[24]

"The basic idea behind the requirement [was] that governments aspiring to membership of international society should be able to meet standards of performance such as in protection of basic rights of their citizens, standards of honesty and efficiency in administration, capacity to adhere to rules of international law and to enter into diplomatic relations, and avoidance of slavery and other odious practices."[25] Depending on how countries met these standards, the membership in international society was designated as full or as partial.

Carr calls this positivist turn the emergence of a "realist view of international law,"[26] which was first explicitly mentioned by Bodin and Hobbes far earlier: "Ius est quod ius sum est [law is the command of the sovereign]."[27] Divorced altogether from ethics, law became something that an authority enforces obedience to.

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[23] W.E. Hall, *A Treatise on International Law* (4th edn.) (London: Stevens and Sons, 1895); Thomas Lawrence, *The Principles of International Law* (London: Macmillan, 1895); Lassa Oppenheim, *International Law* (London: Longmans, Green, 1905); John Westlake, *Principles of International Law* (Cambridge: Cambridge University Press, 1894).
[24] Anghie, "Finding the Peripheries," 2.
[25] Ibid., iii.
[26] Carr, *The Twenty Years' Crisis*, 176.
[27] Jean Bodin, *On Sovereignty: Four Chapters from the Six Books of the Commonwealth* (Cambridge: Cambridge University Press, 1992); Thomas Hobbes, *Leviathan* (London: Penguin Books, 1988).

The Asian State System

Two international systems are known to have existed in the ancient Asia: a Sino-centric system and an Indian international system. Japan at least for a short time belonged to the Sino-centric system, although its degree of immersion in the system remains debatable. It had learned a lot from Chinese culture since ancient times. The political social system that developed in Japan, however, was quite different from that of China. Japan had never been under direct political control of China as Vietnam or Korea had been, which are not separated by the sea from China as Japan is. The Chinese system has changed to a considerable degree throughout different phases of history. The relations with other countries showed more equality or inequality at some times than at other times. The content of the relations with China differed from country to country, too. Japan's interaction with China in general tended to be contained at the minimum.

The international system that centered around China was based on Confucianism. Hierarchy was the natural order in the Confucian conceptualization of the world. Conquest of other people ought to be achieved by civilization and virtue and not by coercion. Use of military force, therefore, was traditionally denied. China's superiority as the center of the world was the core value in the system. Countries that existed outside the Chinese civilization were considered barbaric and could not conclude interstate ties with "civilized" countries in the Chinese sense. The Confucian Chinese

international system was further extended by civilizing the barbarians. The essence of the Chinese system, in other words, was hierarchy and inequality among states.

The major interactions between China and other states took the form of tributary and investiture system. Tributaries recognized China's superiority; in return, China recognized the independence of the tributaries and did not intervene in the domestic affairs of them, even if China retained the right to do so. The Sino-centric international system was divided into three regions: (1) Sinic zone, which consists of Korea, Vietnam, and Ryukyu; (2) Asian Zone that includes Tibet and other inland areas; (3) outer zone consisting of Southeast and South Asia, Japan and the West. The Chinese system lasted until the arrival of the West in the nineteenth century.[28]

The Arrival of the West

While the early contact of Asian countries with the West was based on more or less equal relations, it started to take on the characteristics of Western political intervention into East Asia from around the beginning of the nineteenth century. China for the next 100 years lost its influence over tributary states, suffered political, commercial and territorial damages, and was deprived of the status as an international actor. The Opium War from 1840 to 1842 was the decisive event that demonstrated European superiority of power. The Western

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[28] For further studies on the operation of the China-centered system, see, for example, Hamashita Takeshi, *Kindai Chūgoku no Kokusaiteki Keiki* [International Factors in Modern China], (Tokyo:University of Tokyo Press, 1990); Hori Toshikazu, *Chūgoku to Kodai Higashiajiasekai* [China and the Ancient East Asian World], (Tokyo: Iwanami, 1993).

invasion meant first, the end of the Chinese international system in East Asia; second, the rise of Japan with the anti-sentiment and skepticism against it from other Asian countries that emerged later on; and third, the change in the political units in Asia into nation states and integration of Asia into global international system dominated by the West.

Initially, European powers had to approach Asian countries differently from their American and African counterparts. In America and Africa, Europeans took an approach of domination, either by majority control or minority control; Europeans approached Asian states as "clients." From the perspective of sovereignty as control over territory and possession of "property rights over definite portions of the earth's surface," many Asian states had met the definition of sovereignty. From the perspective of the de facto sense of sovereignty, or the capability of the sovereign that exercises effective control over the society, however, Asian states had met with further suspicion.

> The Europeans often tried ... either to avoid the conclusion of treaties from the beginning or to gradually replace them with unilateral acts. They were fairly (although not completely) successful in America and, from the late nineteenth century, in Africa, but much less so in Asia. Here they even struggled hard--- and often, as in the cases of China and Japan, without success--- to achieve recognition as legally equal contracting parties by the local rulers.[29]

The European approach to Asian countries, therefore, was different from that of Africa, America, and Australia. Although Asian states were not recognized as subjects of international law in the full European sense, their territory at least was not considered as subject to foreign occupation. The

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[29] Fisch, "The Role of International Law," 7.

Europeans had first established diplomatic relations with Asian powers and the reciprocal relations continued up to the nineteenth century. With the empowerment of Europe during the nineteenth century, concomitant with the development of positivist international law, the legal personality of Asian countries came to be questioned. When the exclusive "great power concert club" was established with the Congress of Vienna in 1815, the major European powers "assumed the authority to admit new member states or to readmit old members who did not participate in the foundations of this closed club... as guardians of the European community and executive directors of its affairs."[30] International legal status of countries in the world thus came to be at the mercy of the claim made by those European powers, who admitted or denied the birth of new states and death of the existing states at their will irrespective of the reality of international relations.[31]

> The positivist attempt to distinguish between the civilized and uncivilized was fraught with unresolved complications. ...but these [complications] were irrelevant in terms of the broad issue of the central distinction between the civilized and uncivilized. The international law of the period can be read, not simply as the confident expansion of intellectual imperialism, but a far more anxiety-driven process of naming the unfamiliar, asserting its alien nature, and attempting to reduce and subordinate it... The whole edifice of positivist jurisprudence is based on these initial exclusions and discriminations. [32]

This was the phase where international law was developing its "autonomy" and "coherence" as an institution. As was discussed in the last chapter, any institution needs to develop these two attributes at the early stage of its

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[30] Anand, "Attitude of the Asian-African," 58.
[31] Fisch, "The Role of International Law," 7.
[32] Anghie, "Finding the Peripheries," 17.

development, while other attributes such as complexity, adaptability, and endurance may be acquired as the institution matures at a later stage.

Asian states and their civilization came to be reduced, for the first time in their history, from the status of full international membership to the status of ambiguity. In the era of positive international law, when the international society became identical with the Concert of Europe, they became candidates competing for the European-defined full membership, to which the international law would be applicable.[33]

> Weakened by strong jealousies, rivalries and divisions amongst themselves, Asian States were unable to stand against the might of the European Powers and lost all capacity to question or dispute such novel assertions of the European Writers. One by one they came under the control and subjugation of their former European partners. The acts of the colonizing powers came to be considered as valid and legal after the establishment of colonial rule in Asia on the basis of actual physical control and the rule of effectiveness... [Having] lost their international personality, the Asian States could not play any active role in the development of international law during the most creative period of its history in the latter part of the nineteenth and the beginning of the present century. The smaller countries of Europe could hardly play any effective role in this process during the age of the balance of power superimposed by the recognized supremacy of the States that formed the European Concert, either.[34]

Asian Response: The Case of Japan

In the following historical research, I will pay close attention to how Japanese perceptions of international law and the Western sense of sovereignty changed from that of obligation to that of a tool to enhance national interests. For European sovereign state-system, the entry of Japan, a non-European power

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[33] C.H. Alexandrowicz, "Mogul Sovereignty and the Law of Nations," *Indian Yearbook of International Affairs* 33 (1955): 317; Anand, "Attitudes of the Asian-African," 58.
[34] Anand, "Attitudes of the Asian-African," 59.

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that shared hardly any common culture, came as an exogenous shock. The international society as the European dominant *Gemeinschaft* gradually began to transform itself into a global *Geselleschaft* consisting of diverse members that shared only the legal minimum of sovereignty in the late nineteenth century. Japan's entry can be viewed, therefore, as a major stepping stone for further institutionalization of the European system as it brought alien elements to the system, contributing to further complexity, autonomy, stability, and therefore, adaptability.

As was discussed in the previous chapter, institutional adaptability is a process where actors adopt new institutional autonomy borne out of major environmental changes, and where an institution incorporates new elements that outside actors bring. The international system has adapted and transformed itself while acquiring new institutional characteristics throughout modern history. This adaptability is seen with the emergence of territorial states as new political entities during the seventeenth century, with the rise of an exclusively European concept of "standard of civilization" during the nineteenth century, and with the emergence of "negative sovereignty" in the twentieth century, which has guaranteed the legal equality of all the members of the international society.

If "one of the most conspicuous features of the present international society is its extended nature, with the emergence and participation of Asian and African States,"[35] it is also an important feature of international society that

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[35] Ibid., 55.

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during the period of European expansion and colonization of the world, Asian and African leaders learned the rules of international society, including political organizations, international law, diplomatic customs and procedures, military technology, the concept of sovereignty, and democracy. In order to enter the international society defined exclusively in a European sense, Asian and African leaders had to embrace what sometimes even contradicted their style.

How did Japan, which entered the international system at a particular time period of history of the latter half of the nineteenth century as a newcomer, acknowledge the institutional constraints of the international society and adapt itself? The second part examines Japan's accommodation to the nineteenth-century international law as a case of actors' response to the institutional constraints of the international system, focusing on the treaty revision. The lifting of the unequal treaties was the foremost agenda for Japanese foreign policy during Meiji, which was tied to the problem of domestic political and legal reforms, and brought tremendous changes in the Japanese society and culture. Drawing on the admirable works produced by historians in providing a comprehensive picture of the process of the treaty revision, I will offer a new perspective, lending a political scientist interpretation based on the theoretical frameworks that I have outlined in Chapters II and III.

PART 2. HISTORICAL CASE STUDIES

CHAPTER IV

THE WEST VERSUS JAPAN: PRELUDE, 1853-1860's

The first problem that we come across in undertaking a historical case study of Japan's socialization into the international system is that of periodization. There exists "an inevitable tension between the idea that the past represents a seamless web and the practical need to divide the past into manageable chunks that can be investigated. If we accept that periodizing history requires drawing a distinction between continuity and change, then the process is necessarily a theoretical activity."[1] By periodizing history, we necessarily assume that changes have occurred. Besides the problem of periodization itself, how to periodize poses another problem. The periodization used here of Japan's socialization, focused on international law, is rather loose. I have decided to leave it loose for several reasons: first, as many events occur in parallel incessantly in history, it is extremely difficult to draw a sharp line between each period; second, even though dividing up the socialization process into three periods of history makes the process more intelligible, I tend to see each historical event tied to one another. Certain domestic events or accumulation of public energy toward some cause in one historical period, for example, may

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[1] Barry Buzan and Richard Little, *International Systems in World History: Remaking the Study of International Relations* (Oxford: Oxford University Press, 2000), 387.

affect international events in another.

The first phase of Japan's socialization in this study covers the period from the arrival in 1853 of Commodore Matthew C. Perry to the end of the 1860s, when Japan started to engage in the international society dominated by the West, while gradually overcoming the political rivalry between domains (han) and fostering a sense of national unity. The second phase covers the entire 1870s, a turning point, when Japan started to clearly direct its course toward building a modern state conforming to the Western norms of international society and departing from the Asian values. The third and the last phase covers the period from the early 1880s to 1899, when Japan formally obtained an international status as a civilized nation by the abrogation of extraterritoriality after a series of negotiations and efforts to appeal to the West.

Encounter with the West: Perry's Arrival and After

The European approach to Asian countries was not that of conquer and control as in the case of Africa, America, and Australia. By the Eurocentric "standard of civilization," countries such as Turkey, China, Thailand (then called Siam), and Japan were grouped in a "semi-civilized" category, which was distinguished from the "uncivilized." For several reasons, the Western approach to Japan above all was gentle and peaceful, even compared with other countries categorized as "semi-civilized." First, Japan's encounter with the West was delayed. The simple geographical unattractiveness of Japan as a target of political objectives of the West had spared Japan hostility and conflict with the

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West, while the sheer size of China, for example, attracted the West. As the Western countries had met with strong resistance previously in China, India, and Turkey before coming to Japan, they did not show as much colonial enthusiasm toward Japan as toward those countries. Therefore, "no wars were fought, no smuggling trade developed, no territory was forfeited. Not a single man was killed on either side during Perry's expedition to Japan, and the commercial treaties were negotiated amicably around a table."[2]

Second, Japan's first encounter with the West was with the United States, whose interest was more commercial than that of the colonial-minded Europeans. The U.S. objective was made clear in the annual message to Congress by President Millard Fillmore:

> The waters of the Northern Pacific, even into the Arctic Sea, have of late years been frequented by our whalemen. The application of steam to the general purposes of navigation is becoming daily more common, and makes it desirable to obtain fuel and other necessary supplies at convenient points on the route between Asia and our Pacific shores. Our unfortunate countrymen who from time to time suffer shipwreck on the coasts of the eastern seas are entitled to protection. Besides these specific objects, the general prosperity of our States in the Pacific requires that an attempt should be made to open the opposite regions of Asia to a mutually beneficial intercourse. It is obvious that this attempt could be made by no power to so great advantage as by the United States, whose constitutional system excludes every idea of distant colonial dependencies. I have accordingly been led to order an appropriate naval force to Japan, under the command of a discreet and intelligent officer of the highest rank known to our service. He is instructed to endeavor to obtain from the Government of that country some realization of the inhospitable and anti-social system which it has pursued for about two centuries....[3]

The supply of fuel, protection at the time of shipwreck, and mutually beneficial

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[2] Fairbank, Reischauer, and Craig, *East Asia*, 180-181.
[3] The message was delivered on December 6, 1852. J.D. Richardson, *Messages and Papers of the Presidents*, V, 167-168; cited in F.C. Jones, *Extraterritoriality in Japan: And the Diplomatic Relations Resulting in Its Abolition, 1853-1899* (New Haven: Yale University Press, 1931): 7.

relations were exactly what Perry demanded from Japan in a letter that President

Fillmore ordered him to hand to the emperor. The letter also stated that "the

Constitution and laws of the United States forbid all interference with the

religions or political concerns of other nations."[4]

Third, as Westerners had obtained information about the Japanese

resilience as a nation during the several centuries before Perry's arrival, they

showed somewhat more prudent attitudes in dealing with Japan than in the case

of other Asian countries. Although Japan adopted a policy of isolation (sakoku)

in 1638, Europeans had reached Japan since the sixteenth century, leaving records

of what they had observed of the Far Eastern country in diaries and books.

Some had learned about the characteristics of the spirited Japanese soldiers and

came to believe that they would not be able to defeat them in the case of the long

land war. *Histoire de l'eglise du Japon*, written by Jean Crasset in 1689, for

example, illustrates the Western perception of the Japanese soldiers vividly. He

writes of the appalling sharpness of the Japanese sword, which at the age twelve

Japanese men come to wear and always keep at the waist. In describing the

Japanese character, he emphasizes their belief in honor and hatred to be looked

down on, stating that the courage, spiritedness, quickness, curiosity, the

understanding ability, and the diligence of the Japanese could bear all kinds of

sufferings and battle.[5] As another example, Ernest Satow, a British interpreter

who came to Japan at the end of the nineteenth century, is known to have warned

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[4] John Bassett Moore, *A Digest of International Law*, V. 737; cited in Jones, *Extraterritoriality*, 8.

[5] Jean Crasset, *Histoire de l'eglise du Japon* (Paris: Chez Estienne Michallet, 1689). It was published in Japanese, entitled *Nihon Seikyōshi*, by several publishers after Meiji government translated it.

Harry Parks, a highly successful British diplomat who had served in China before coming to Japan, that the techniques of an idle threat that worked in China in getting what he wanted would not work with the Japanese.[6]

Perry arrived in Uraga on July 8, 1853. From the experience of Captain James Biddle, who had come to Edo Bay in 1846 but was refused entry and withdrew without negotiating opening relations between the two countries, he was more prepared to strongly demand the opening up of Japan "as a right, and not as a favor."[7] The news of Perry's arrival immediately spread all over Japan. It is said that within two weeks from his arrival, everybody in Japan came to know about it, thanks to an excellent information-delivering system of "hikyaku," or "flying legs" literally, originated in the Kamakura period and developed extensively during the Edo period.

Over the course of the two hundred years, bakufu's control had extended to cover the whole Japan.[8] In terms of the capability to gather information, Japan fared well, although the analysis of the information may not have been something that Japan was capable of. Facing domestic turmoil and sick of bureaucracy, one of the capable shogunate leaders (rōju), Abe, thought that he should let all the daimyos (feudal nobles or lords) in Japan know of the content of the US letter from the President and share the peril that the government was facing. By publicizing the President's letter to everyone in Japan, Abe aimed at

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[6] Ernest Mason Satow, *A Diplomat in Japan* (Oxford: Oxford University Press, 1968).
[7] Marius B. Jansen, *The Making of Modern Japan* (Cambridge: Harvard University Press, 2000): 276
[8] "Bakufu" refers to the political authority during this time. It can also be translated simply as government.

building consensus and uniting Japan, giving the people a sense of danger, while at the same time preparing for the worst, or for fighting against the West. In response to the publication of the letter, Abe received 177 petitions, which contained various ideas on how to meet the challenge from the West, including the fortification of Edo, trading with China and gathering wealth to prepare for the coming fight against the West. Among the petitions, 47 percent were against opening of Japan and only 4 percent supported it. At this point, bakufu decided to undertake a "burakashi (procrastination)" policy, delaying its decisions on how to respond to the Western demand.[9] For the next several years vigorous responses came from all over Japan, even from residents of cities remote from the capital."[10]

When Perry came back the following year, on February 12, 1854, he came deeply into the Bay, ignoring Japan's demand not to pass the line to enter the Edo Bay,[11] and handed a letter from the President in Kurihama, demanding: (1) replenishment of their stocks of coal and provisions; (2) arrangements for the proper treatment of shipwrecked sailors; (3) opening of the country for commercial relations. He further entered close to Kawasaki, panicking the Japanese and maintaining his heavy-handed stance during the negotiations. He demanded that Japan open three ports, which was refused at first. Japan eventually had to concede to open two ports, Shimoda and Hakodate, as well as to agree to protect wrecked ships, and to replenish fuels and provisions. The treaty,

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[9] Interestingly, from about this time, information became a business in Japan. There appeared those who sell information to bakufu officials and general public such as Fujioka-ya.

[10] Fairbank, Reischauer, and Craig, *East Asia,* 182.

[11] As will be shown in the next chapter, Japan did exactly what Perry did this time to Japan to Korea 23 years later, at the time of Kanghwa Incident.

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which became the first break of Japan's seclusion policy, was called "Treaty of Peace and Amity" or "Treaty of Kanagawa." At this time, opening the two ports did not mean opening commercial relations at all. No provisions for extraterritoriality were made, either, although a most-favored-nation clause was included, securing the possible privileges granted to other countries to the United States.

Perry's arrival was the beginning of the breakdown of bakufu and the reunification of Japan. The threat it posed and the peril that Japan felt revealed the weakness of bakufu's control. Japan came to need the help from all daimyos in the country in order to protect itself. The significance of Perry's arrival, therefore, lies in the fact that the Japanese came to identify themselves not with domains under each daimyo but with Japan as an entity that would eventually be called a "nation." A sense of unity had been created during the two hundred years of Tokugawa rule, at least at the unconscious level, which could be easily transformed into the concept of "a nation" with the arrival of the West. The geographical fact that it was a relatively small, island country with good accessibility among islands, and the extensive nationwide networks of communication and transportation facilitated Japan's responsiveness and national coherence.

Within a short time, the people in Japan came to perceive their country as facing a great change. Abe's effort to spread the news of Perry was the first instance of a Japanese leader utilizing the foreign threat to lead the country in a better direction. Publicizing the U.S. President's letter and asking for opinions

on it from a nationwide audience was something that nobody thought of before. It is also notable that Abe received many responses from all over Japan, some of which came from intellectuals equipped with accurate knowledge of the West and concerned with the future of Japan.

Japan's encounter with the West makes a good contrast to that of China's. While the Japanese encounter with the West was rather gentle compared with the case of China, Japan demonstrated much stronger responsiveness with quick and determined reorganization of the country that would meet the standard of modern international power. Its less violent encounter with the West and its greater response to it is a startling paradox that has attracted the attention of scholars. The differences in the reactions to unequal treaties imposed by the West on China and Japan could shed light on this intriguing question.

Unequal Treaties and Extraterritoriality

When Townsend Harris arrived in 1858, the Treaty of Amity and Commerce was concluded with two major "inequalities" contained in it: tariff restrictions and extraterritoriality. Due to these two provisions, Japan was left limited in its sovereignty as an independent state. Between the two "inequalities," the political leaders considered the former as more fundamental, since tariff autonomy was a must to promote industrialization and modernization. The foreign ministers who came to be in charge of treaty negotiations in the later period, such as Terajima, Inoue, and Ōkuma, tended to trade continued Western

extraterritorial privileges for lifting of the inequality of fixed tariffs.[12] The public, however, focused their attention more on extraterritoriality, which had more symbolic significance. Extraterritoriality appealed strongly to the emotion of the general public, as it concerned national pride and honor.

Extraterritoriality can be defined as "the extension of jurisdiction by a state beyond its own borders. While foreigners enjoying extraterritorial rights may claim some immunity from the jurisdiction of the native courts, they are to the same extent subject to the authority of tribunals specially erected by their own state for their benefit."[13] Extraterritoriality was first introduced to East Asia after the Opium War with the Treaty of Nanjing in 1842, between China and Britain. Treaty Ports were established where foreigners were tried under the laws of their own countries and under the jurisdiction of their own consuls. For the Western countries, extraterritoriality was to provide their nationals with respect for life, liberty, and property rights in foreign lands where they were not necessarily guaranteed. Governed only by the laws of their countries, they could freely obtain land or engage in commercial activities. In China, the number of the Treaty Ports increased to eighty-five by the end of the nineteenth century. [14]

According to Jones, extraterritoriality "finds its origin in a concept of law which is as old as the most primitive of societies."

> The belief that the stranger within the gates should be judged according
> to his own law and not by that of the people among whom he resides is

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[12] Gong, *The Standard,* 170.
[13] Jones, *Extraterritoriality,* 1.
[14] Stephen Krasner, "Organized Hypocrisy in Nineteenth-Century East Asia," *International Relations of the Asia-Pacific* 1(2001): 181

much older than the contrary axiom of the territoriality of law, which is largely derived from the comparatively modern theory of sovereignty. In ancient times law was universally held to be personal in nature since it was a crystallization of customs which were inextricably interwoven with religious beliefs and ceremonies. Participation in legal rights and obligations was an integral part of citizenship which could not possibly be extended to the alien, no matter what the cultural standard of his city or tribe might be....Thus the Turks, when at the zenith of their power, granted extraterritorial privileges with a lavish hand, and permitted their exercise even when they had not been conferred by treaty. For the Ottomans, in common with most oriental races, still considered law a personal rather than as territorial in character and were not conscious of any infringement of their sovereign powers by the exemption of a few alien traders from their jurisdiction......Originally, therefore, the feeling of superiority, in so far as it existed at all, was on the side of the power which conceded extraterritorial rights .[15]

For the same reason, Japan was more than generous in giving extraterritorial privileges to the Westerners when the first Europeans reached Japan starting with the Portuguese in 1542. Referring to Japan, Jones in particular emphasizes the Japanese feudal tradition based rather on the personal tie between the lord (daimyō) and the retainer (samurai) than on land holding as in the West. As law and justice for the Japanese was more personal than territorial in nature, they demonstrated the same willingness as the Ottoman Sultans "to grant exemption from the native jurisdiction to foreigners... Thus the question of extraterritoriality caused no difficulties during the first period of European intercourse with Japan..."[16]

The Westerners were at first surprised that the Japanese did not show any objection to extraterritorial rights, when Harris came several years after the Treaty of Kanagawa, demanding commercial relations with such rights. The

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[15] Jones, *Extraterritoriality*, 2-3.
[16] Ibid., 5-6.

consular jurisdiction in Article 6 of the Treaty of Amity and Commerce concluded in 1858 was one that would have never existed among the "civilized" powers at that time.[17]   Harris was rather appalled to see Japan accepting without any hesitation the idea, for example, that the crimes committed by Americans in Japan will be tried in American consular courts.   No sense of defeat or loss was experienced on the side of the Japanese leaders; they did not feel that they had conceded too much to the US demand due to the reasons mentioned above.

The generous attitude toward giving extraterritoriality to the Westerners was an even more striking feature in the case of China due to its sense of superiority as the center of East Asian world order.   Three terms constituted the three elements of inequality in the Treaty of Nanjing: negotiated tariff, consular jurisdiction, and most-favored-nation (MFN) clause.   China, however, justified them by its traditional norm of "virtuous governance (tokuchi)."   They were part of China's appeasement policy to the barbaric foreigners.   In fact, the sense of ethical superiority of the Chinese emperor was reinforced by doing the favor of giving those rights to the Westerners.   The exemption of foreigners from the Chinese law, therefore,

> was done not with any sense of loss of dignity or power, but in the condescending belief that the less civilized aliens could not understand the highly complex Chinese rule and must therefore be given a chance to learn the civilized way of life through gradual observation and slow assimilation.   Needless to say, it was also an expedient device by which the Chinese officials could avoid the troublesome task of

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[17] The second chapter of Wheaton's *Elements of International Law* elaborates on the consular jurisdiction in the US-China Treaty of Amity and Commerce, clearly stating that as a general rule "civilized" states will never permit other countries' interference with their own legal rights but that consular jurisdiction was applied to Turkey and Muslim countries in North Africa. Henry Wheaton, *Elements of International Law* (Boston: Little Brown and Company, 1866).

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governing men of different tongues and modes of life.[18]

China did not understand that by concluding the treaties with the West, it had become incorporated into a world order different from what it had been accustomed to. Nor did it understand that the new world order that the West brought was based on equal relations among sovereign states. In the case of China, opening of the five ports (Ganzhou, Amoi, Fuzhou, Ninpo, Shanghai) was not such an entirely new experience as in the case of Japan, since at least three of the ports, Amoi, Ninpo, and Shanghai, had already been open even before the arrival of the West in the nineteenth century. Also, in a vast continental country like China, the arrival of the West was taken rather as a local event which occurred in the South-Eastern shore. Since China was more used to dealing with the aliens than Japan, they tended to treat the arrival of the Westerners as one of those conflicts that had occasionally happened on the borders, even though the arrival of the West in China was in fact more violent in nature compared with the case of Japan. The great shock of the Opium War, therefore, was absorbed in the traditional Chinese ethics of appeasing foreigners.

The Japan-US Treaty of Amity and Commerce, or the Treaty of Shimoda, concluded by American Minister Townsend Harris on July 29, 1858, stated the extent and the method of extraterritoriality. To achieve his commercial objective, Harris is known to have persuaded the Japanese by mentioning the examples of China invaded by the European Powers with "much

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[18] Immanuel Hsü, *China's Entrance into the Family of Nations: The Diplomatic Phase, 1858-1880* (Cambridge: Harvard University Press, 1959):139.

more-far-reaching and imperialistic" consequences than the United States[19] and by warning that Japan would do well to submit voluntarily to what it could not hope to avoid by resistance. Included in the Treaty that Harris concluded were important provisions for Japan to open new ports for trade and residence of Americans with diplomats and consular officials appointed in the Treaty Ports. Extraterritorial rights were conceded to cover civil as well as criminal cases. It also included the revisionary clause stating that after July 4, 1872, the Treaty could be revised on the request of either Japan or the United States.[20] Japan was to devote much of its energy to the revision of the Treaty for the coming several decades.

By the time that Harris warned Japan of the imminent danger of being colonized by the Europeans, Japan had already had a keen sense of danger of being attacked by the West. The imminent sense of danger that Japan felt on hearing the news of the Opium War from Nagasaki and Ryūkyū is best illustrated by the order that bakufu issued on August 28, 1842, one day before the conclusion of the Treaty of Nanjing, when they changed the policy of expelling all the foreign ships to that of supplying fuels, water, and food to them. This event simply indicates how shocked bakufu was by the defeat of China by Great Britain. They immediately sensed that the British superiority would eventually affect Japan. The sense of threat and urgency was most keenly felt in Japan among all the Asian countries, even compared with China, which was directly

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[19] Harris is known to have been biased against European countries, especially against Great Britain.

[20] Following the United States, the Dutch concluded a similar treaty on August 18, Russia on August 19, and France on October 9 in the same year.

affected by the encounter with the West through the war with Britain. Korea was also slow in reacting to the danger that might afflict the fundamental order that it relied on, perhaps because of the way information was brought through China.[21]

Introduction of International Law in Japan

According to Gong, Harris had started to instruct the Japanese on international law during this period.[22] Henry Wheaton's *Elements of International Law*, translated by an American missionary in China, William Alexander Parsons Martin, into Chinese and published in Beijing in 1864[23] reached Japan in 1865.[24] Due to its wide circulation, the translation was constantly out of print in Japan. The Japanese leaders during this period focused tremendous amount of energy on learning the international law. As Martin's translation was not a precise one, aimed only at giving the Chinese a general idea of international law, many Japanese compared the original text with the translation of Martin, adding notes, explanations, and corrections.[25] Although Martin's text became the most standard, widely-read book on International Law in Japan for a long time, the Japanese quickly translated other

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[21] Motegi, *Henyō suru Kindai Higashi Ajia*, 32-43.

[22] Gong, *The Standard*, 164-200.

[23] Martin's translation was based on the reprinted version published in 1857. Involved in drafting the commercial treaty between China and the United States 1858, Martin had strongly felt the need to provide the Chinese with the knowledge of international law.

[24] Some note that possibility exists that before Wheaton, Japan had obtained the Chinese translation of Vattel's *International Law* translated by an American missionary, Peter Parker, in 1839.

[25] Uriu Mitora's work in 1868 and Shigeno Yasutsugu's work in1870 are such examples.

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books and articles that became available.[26]   The sheer number of translations and studies that the Japanese undertook during this period demonstrates their seriousness and devotion in learning and adopting the international law.   Traces of such an effort are difficult to find in China, for example, even though it had a longer history of concluding treaties with the European countries and must have had practical needs for learning international law.[27]

Although Wheaton's international law took an eclectic position with regard to the source of law, drawing both on natural law and positive law, Martin's translation tended to emphasize the natural-law aspect of the original text.[28]   This became apparent in the efforts that Japanese translators made in comparing Wheaton's original and Martin's Chinese translation.   Martin is said to have edited Wheaton's text so it would suit Chinese ideological and social background and his missionary objective.

> In introducing international law to China, Martin was acting on the conviction that he was giving the best fruit of Christian civilization to the Chinese, and that through this work the Chinese government might be brought closer to Christianity.   He wrote of it, to his friend Walter Lowrie on October 1, 1863, as 'a work which might bring this atheistic government to the recognition of God and His Eternal Justice; and

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[26] Mitsukuri Rinshō translated Woolsey's *Introduction to the Study of International Law* (1860) in 1873, and Fukuchi Genichirō translated Baron Charles de Martens's famous *Guide Diplomatique* (1864) in 1868, for example.   These efforts continue through out 1870s and 1880s until Japan finally started producing its own works on international law.

[27] Taoka Ryōichi conducted a thorough study trying to find such a trace, concluding that China was not as enthusiastic as the Japanese in translating and introducing the international law. Taoka Ryōichi, "Nishi Shūsuke 'Bankoku Kōhō'[Nishi Shūsuke's 'Law of Nations']," *The Journal of Law and Diplomacy* 70, no.2 (1972).   I assume that China's position and the pride that it had taken as the center of East Asia at least partially explains its slowness in reacting to the European international law and the absence of voluntary efforts to cultivate the field that Martin had opened up for them.

[28] This has been mentioned by many scholars who have examined Wheaton's original and Martin's translation. See, for example, Sumiyoshi Yoshihito, "Meiji Shokini okeru Kokusaihō no Dōnyū [Introduction of International Law in the Early Meiji]," *The Journal of Law and Diplomacy* 70, no.2 (1972).

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perhaps impart to them something of the Spirit of Christianity.'[29]

There may have also been, however, some reluctance on the part of Martin in revealing the basis of Western domination of the world implied in international law. While the British minister in Beijing praised his work as something that "would do good by showing the Chinese that the nations of the West have principles by which they are guided, and that force is not their only law," others feared that the Chinese might use Western methods to repulse the West.[30] When Martin's Chinese translation of *Elements of International Law* first appeared, therefore, a French chargé d'affaires residing in China strongly protested Martin's exposing the ugly side of European international law, saying that serious problems would eventually arise as a consequence.[31] In Chapter 4 of the *Elements of International Law* translated by Martin, Wheaton explicitly justifies the acquisition of the newly discovered lands of barbaric America, Africa and Asia by conquest. The Westerners rather wanted to keep this dark side of international law as unobtrusive as possible to states belonging outside "civilized" Europe.

Another important work on international law was Nishi Shūsuke's (later called Nishi Amane) *Vissering's Explanation of the Law of Nations*, published in

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[29] Hsü,*China's Entrance*. 126. The quoted part is cited from M.E. Boggs, "William Alexander Parsons Martin, Missionary to China, 1850-1916,"M.A. thesis (Presbyterian College of Education, Chicago, 1948), Appendix, 34.

[30] Anonymous, "The Life and Work of the Late Dr. W.A.P. Martin," The Chinese Recorder, 48.1(February 1917) cited in Hsü, *China's Entrance,* 138.

[31] On learning about Martin's translation of Wheaton, French chargé d'affaire, M. Klecskowsky is said to have protested by saying, "Who is this man who is going to give the Chinese an insight into our European international law? Kill him—choke him off; he will make us endless trouble." William Alexander Parsons Martin, *A Cycle of Cathay* (New York:1897): 234.

1868.[32] Unlike Martin's translation, Nishi's work introduced the positive

international law that he had learned from the Dutch scholar Vissering, which

was more standard in Europe then, with careful wording and precision. Taoka

Ryōichi thinks highly of Nishi's achievement and elaborates on how much care

Nishi took in choosing appropriate Japanese words in his efforts to transmit the

exact nuance of the lectures that he received during his two-year stay in the

Netherlands.[33] Nishi was in fact the first Japanese trained in European

international law and had clearly recognized that positivism took over natural law

in Europe, making a distinction between the two. By in fact contrasting positive

international law with natural law, Nishi contributed to introducing the essence of

reality of European international law of the time to the Japanese. The positivist

reality of the European international law entailed the "standard of civilization,"

which was to define the status and the qualification of the non-European states to

enter international society. While China relied heavily on naturalist

understanding of international law, European positivism was more appropriately

brought to Japan.

Mitsukuri Rinshō also introduced the positive international law of T.

Woolsey's *Introduction to the Study of International Law* (1860) by translating it.

The English "international law" was first translated as "bankoku kōhō," which

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[32] Nishi Shūsuke, *Professor Vissering's Lecture on International law* (Tokyo: Kanhanshoseki Seihonsho,1868). Although Nishi is more known as Nishi Amane, his name was Shūsuke when he published the book. One should note that Nishi was not just a student of international law. He was encyclopedic and versatile, contributing to many different fields such as esthetics, philosophy, history, psychology, economics and politics during the new era of Meiji government. While Vissering was also a versatile scholar, in the field of international law, he is said to have been influenced by the international law of Professor Heffter, the most authoritative figure in the field at that time.
[33] Taoka, "Nishi Shūsuke."

literally means "law of ten thousand nations."[34]   With its naturalist nuances and universalistic appeal, it was used by the early students of international law in Japan.   Mitsukuri, however, used the word "kokusaihō," which carries the more exact nuance of "inter-state" law, for the first time.   This simple usage of the word "kokusaihō" reveals his understanding of European international law based on positivism.   Although Mitsukuri translated the original work faithfully, he worked only on the part that dealt with the rights of sovereign independent states and the rule of non-interference.   He seems to have concentrated on the parts that would relate to Japan's future revision of unequal treaties with the West and the development of domestic law systems.   The practical application of international law for the negotiations and exchanges with the West was what concerned the Japanese leaders at that time, which also made their learning extremely rapid.[35]

Another characteristic of Japan's introduction of international law was its focus on the laws of war, which proceeded in parallel with the efforts to absorb the military knowledge of the West.   One of the foremost concerns for Japan was to maintain neutrality and independence in the colonial wars that imperialist powers were conducting.   At the time of Franco-Prussia War in 1870, Japan declared neutrality at the request of France.   Japan is said to have managed to

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[34] The word "bankoku kōhō" was the direct adoption from the Chinese translation, "Wang Guo Kang Fa."

[35] Martin also translated Woolsey three years after Mitsukuri, which was made easy to read and published in Japan 1878.   Sumiyoshi mentions that a big difference exists between Mitsukuri's translation and Martin's.   Martin, for example, still used the word "koho," or public law, reflecting a strong inclination of China to emphasize natural international law.   Sumiyoshi Yoshihito, "Introduction of International Law in Early Meiji," *The Journal of Law and Diplomacy* 70, 454-479.

submit the declaration of neutrality by somehow referring to Martin's translation but without truly understanding what it was. [36]   As the Japanese were forced to learn international law by the necessity of managing foreign relations, they restudied and retranslated the previous works of international law whenever practical needs arose, rendering the Japanese understanding of laws of war in particular close to that of Europe and based on positivism.   Martin's naturalist understanding gradually disappeared as more Japanese engaged in the study of international law.[37]

Leaders' Perceptions

Japanese leaders had gained knowledge of Wheaton's *Elements of International Law* and understood the gist of international law at an early stage of encounters with the West, thus becoming faithful students of it.   Their faithfulness was demonstrated in the attitudes that the leaders displayed during this period.   They became extremely careful in observing the rule of *pacta sunt servanda* [concluded treaties must be observed] in every aspect of external behavior.   Sakamoto Ryōma believed that unless Japan showed that it was behaving according to international law, the West would continue to look down

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[36] Takahashi Sakuye emphasizes the infancy of Japan's understanding of international law at this time.   He states that Japan was so weak in power and so inexperienced in the study of international law that it declared neutrality at the request of French chargé d'affaire, relying on some parts of Martin's translation, without ever understanding what neutrality meant.   Kōzai Shigeru, "Japan's Early Practice of International Law: The Law of Neutrality," *International Studies* (The International Studies Association of Ōsaka Gakuin University) 7, no.1 (June 1996).
[37] Sumiyoshi emphasizes that it took a long time for Japan to understand the European positivism due to the fact that Martin's translation first came to Japan and that Japanese social and ideological backgrounds tended to conform to naturalist law.   Taoka takes the position that the influence of naturalist thinking did not last long due to the introduction of positivism through Nishi and others.

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on Japan as barbaric and never as an equal partner. When the Iroha-maru ship sank due to the fault of the bakufu, Sakamoto tried to solve the problem according to international standard, making the incident the first example of a settlement that accorded with the world standard.[38] While showing sensitivity toward how Japan might look in the eyes of other countries, the Japanese leaders were in the end nationalist, believing that Western knowledge including international law is something that would replace "sword" in expelling the barbarians eventually and was to be used for achieving Japan's national objectives.

Leaders such as Kido Takayoshi and Iwakura Tomomi, who were to become key figures in directing Japan's foreign policy in the 1870's, understood international law from the beginning as an instrument for the strong to dominate the weak. They accepted the discrimination of the Western international society embodied in international law as a reality of international life, and eventually tried to apply that reality in managing relations with other Asian countries in the 1870's, as we will see in the next chapter. Keen on the reality of power politics among nations, they were skeptical of the superficial equality among nations and regarded international law as a tool of the strong. They eventually became strong advocates of the national slogan of "fukoku kyōhei" or "rich nation, strong army." In his Memorandum on Treaty Revision on February 1869, Iwakura says:

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[38] Sakamoto also tried to translate Wheaton's *Elements of International Law* and publish it by Kaientai, the shipping company he established, which became the first joint-stock corporation in Japan. He knew that when a new government was established, it had to deal with the foreign powers taking the place of the bakufu. International law was to him a must in dealing with the West, a stick for a blind man.

We must revise the treaties of commerce and navigation already concluded with Britain, France, Prussia and the United States and thus protect the independence of our country. Consular jurisdiction cannot be tolerated. If foreigners unreasonably refuse to revise their treaties, we must argue with them on the basis of reason. Foreigners have the spirit of the tiger and the wolf; and, if we are afraid of their tyranny, our country will become their slave. Whenever Japanese and foreigners have been involved in fights with one another, it was only Japanese who killed foreigners that have in the past been required to pay compensation and not the foreigners. The emperor's honor is thereby impaired; national rights are restricted; this is intolerable to us. We must devise laws to govern relations with foreign countries. If any clash takes place between Japanese and foreigners from now on, we should resolve it by these laws.[39]

Conclusion

The first phase of Japan's entry into the international society proved relatively smooth in the sense that Japan did not get colonized and did maintain its independence. Two factors made Japan's encounter with the West amenable to the necessary adjustment. First was the physical preparedness of Japan, which had modernized itself gradually since the Muromachi period and was far more advanced than other non-Western countries. If the "standard of civilization" entails both physical and normative aspects of the level of national development, Japan had already passed the large part of the physical test of the "standard." It possessed the domestic infrastructure developed well enough to meet the Western demands. These demands included the extensive network of communication and transportation that enabled the fast delivery of information on the Western threat throughout Japan; accurate knowledge of the outside world; the existence of the two political authorities, the emperor and the shogun, which

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[39] Iwakura Tomomi, *Iwakura Tomomi Jikki*, vol.2. 696-701

tended to make response to crises more flexible; a strong sense of national unity nurtured during the era of seclusion; large, educated population; and a well-developed economic system that substantially relied on markets. They were "functional equivalents," culturally different from the West but similar in institutional mechanisms. They only had to be reorganized or modified so they would fit the Western mold.

The question of why only Japan in Asia had achieved high level of modernization is not within the scope of this essay. This is, however, a question that contemporary historians have been engaged in solving. Unlike the conventional view that Japan's modernization started in Meiji with the arrival of the West, it has become almost a consensus among contemporary scholars of Japanese history that Japan's modernization had started long before Meiji and that its level of development competed well with the West.[40]

The second factor that facilitated Japan's adjustment in meeting the Western challenge was the leaders' realism in directing the future course for Japan, which created and crafted consistency between the Japanese domestic logic and the external demand. If an essential part of realism is the ability to

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[40] The nature of closedness of Japan ("sakoku") before the arrival of Perry has especially been a major area of contention among scholars. For Japan's level of modernization before Meiji, see Amino, *Nihon no Rekishi wo Yominaosu*. For the discussions on the nature of "sakoku" and on the status of Japan and Asia in the world, see, for example, Kawakatsu Heita, *Bunmei no Kaiyōshikan* [Maritime View of Civilization] (Tokyo:Chūō Kōronsha 1997); Irie Takanori, *Taiheiyo Bunmei no Kōbō* [Rise and Fall of the Pacific Civilization] (Tokyo: PHP 1997); Kobayashi Takashi, *Umi no Ajiashi* [Asian History from the Perspective of Sea] (Tokyo: Fujiwara Shoten 1997); Hayami Akira, Saitō Osamu & Ronald P. Toby, *Emergence of Economic Society in Japan, 1600-1859* (Oxford: Oxford University Press 2004); Bob T. Wakabayashi, *Anti-Foreignism and Western Learning in Early-Modern Japan: The New Theses of 1825* (Cambridge: Harvard University Press 1992); Ronald P. Toby, *State and Diplomacy in Early Modern Japan: Asia in the Development of the Tokugawa Bakufu* (Stanford: Stanford University Press1984).

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achieve long-term objectives by always consulting with the available means, political leaders at this time were truly acting on it. They were determined not to follow the fate of China and India and knew what they needed to do: avoid the unnecessary internal rivalry between domains and unite the country so that the West would not take advantage of the chance to intervene and colonize the country. This movement toward national unity succeeded just in time before foreign powers were to take advantage of the unstable bakufu.

Externally, they tried to avoid war with the West by acceding to the unequal treaties. Opening up the country was a compromise that Japan had to make in the face of the strong West. It was based on the assessment of Japan's inability to resist foreign pressure. After it had been decided that opening up the country was Japan's course, its objective gradually shifted to the achievement of first-rank status along with the European powers. Expulsionism[41] continued, but in a different form. After Meiji, it turned into a political, long-term effort to increase Japan's national capability to fight back against the West in the future, not a short-term emotional hatred.

Jansen notes that while the official restoration history emphasizes Shinto purity and imperial reverence "to the exclusion of broader national and narrower personal goals,"[42] the Japanese leaders' conduct was

> based on practical considerations and judgments. Total loyalism and complete ideological purity were luxuries that those with experience and responsibility could seldom maintain...... [It] is striking to note how seldom Sakamoto Ryōma, for example, articulated sentiments of belief in Shinto. For him the restoration of imperial rule was indeed a

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[41] A movement to expel foreigners (jōi). See p.3 in Chapter I.
[42] Jansen, *Sakamoto Ryōma*, 375.

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precondition of effective national unity,....It is perhaps this sense of individual purpose and daring, expressed in a period of national crisis, that most distinguished the Restoration heroes from so much of earlier Japanese and Chinese history.[43]

The first step and the challenge for Japan as a newcomer to the Western system was how to survive as an independent state, the very basis of international membership. After Japan's direction was generally set on building a modern nation centering around the emperor with equal relations with other powers, Japan started to vigorously learn about the West. By the time of Meiji Restoration, the "standard of civilization" often considered as "imposed" by the West was gradually changing into something that was to be positively adopted and adapted by Japan. "What began as outrage against intrusive foreigners had become anger directed at a polity that did not conform to international standards."[44]

While the actual Western threat was not as great as it is often considered, the sense of threat that Japan felt was extremely large due to two factors. First, Japan had been sensitive to whatever information that was brought from the dejima in Nagasaki. As has been previously mentioned in evaluating conventional wisdom in Chapter I, adopting ideas from abroad had been historically part of Japanese tradition. With the development of the information delivering system during the Edo period, the Japanese national had easy access to information. Second, the leaders exaggerated the threat and utilized it in uniting the country, convincing the public to bear the cost and insult. Japan was able to

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[43] Ibid., 376.
[44] Jansen, *The Making*, 310.

bring about a peaceful ending of the Tokugawa regime by avoiding significant civil wars. The moderate nature of the encounter saved Japan energy for socialization.

Japanese leaders in particular demonstrated a strong proclivity to learning positivist international law prevalent during this period. In international law the Japanese leaders saw utility in transforming the national energy to (1) building a modern nation; (2) revising unequal treaties; and eventually (3) changing and organizing the power relations of East Asia, as we will discuss later in the essay. Modern nation building started vigorously. Constitutional government with representative institutions was considered as the foremost item of the agenda, since it was the best way to imprint Japan's progress on the West.

The introduction of international law in Japan was remarkable and energetic, with many translations of various works on international law becoming available while Japan was in the middle of domestic turmoil from overthrowing the bakufu and introducing the new Meiji government. We have seen that Japan's interpretation of international law was more positivist than that of China and was more similar to the European original. This is particularly notable, as the positivist interpretation reflected more accurately the reality of the international law of the period, which had taken the place of natural law completely, starting with Moser and Martens in the late eighteenth century.[45]

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[45] Georg Friedrich Martens, *Primae lineae iuris gentium europaearum practici* [Summary of the Law of Nations Founded on the Treaties and Customs of the Modern Nations of Europe]. (Philadelphia: T. Bradford, 1795); *Johann Jakob Moser, Versuch des neuesten europaischen Volker-Rechts in Friedens- und Kriegs-Zeiten* [Experiment of the Newest European International

The adoption of positivist international law owes much to Nishi, who introduced Visserling's private lectures for him and his colleague Tsuda with an amazing precision that nobody could surpass. The Japanese leaders demonstrated a high degree of understanding that came close to the essence of international law in an extremely short period of time, even though most of them did not have any academic training in international law. It should also be noted that due to the many treaties that needed to be concluded and negotiations that needed to be conducted, the Japanese adoption of international law was based on the practical needs of dealing with the international law. From the time of adoption, therefore, international law was for Japan something for an immediate use.

Treaty revision was the representative issue placed foremost in the larger framework of the newcomers' conformity and adjustment to positivist international law. As treaties themselves constitute important parts of international law, Japan's efforts to put an end to unequal treaties are the story of Japan's socialization with international law and the story of its entry into international society.

Law in Peace -and War- Times] (Tode Kayser Carls, 1740).

CHAPTER V

TRIAL AND ERROR:
INTERNATIONAL LAW AS A TOOL OF THE STRONG - 1870'S

Iwakura Mission, 1871-1873, and Early Attempts at Treaty Revision

The Japanese Foreign Ministry was established in 1869 with Sawa

Nobuyoshi appointed as the first foreign minister (then called gaimukyō). The

dates for the negotiations on treaty revision with the Western powers were

approaching.[1] One year prior to these dates, Sawa notified the Western powers

of Japan's desire for the revision. After Sawa, Iwakura Tomomi (1825-83), a

court noble, who had felt a keen sense of foreign threat and was a strong

supporter of the early revision of the unequal treaties, took over the position in

July of 1871.

Iwakura is often called a founding father of Japanese foreign policy; his

complex character and policy ideas invite careful investigation. Ian Nish

characterized his political style as follows:

> He resented unequal treaties as hampering Japan's national
> development and devoted great energy for negotiating its reform; yet
> at the same time he demonstrated extreme prudence and moderation in
> achieving his objectives. Adhering to his view rather adamantly and
> building up a political base against the bakufu rulers with Choshu clan,
> he was capable of accommodating his short term interests, never
> resorting to any radical means that might incur domestic turmoil.

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[1] With Britain and Russia the date was set on May 26, 1872, with the United States and the
Netherlands, May 29 1872, and with France July 12, 1872.

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While in the end he shared the same anti-foreign feelings with other Japanese leaders, he felt that in order to survive in a world where the law of the jungle prevails, it must first build up its national power so it could "beat off the challenge of its enemies.[2]

Although he was an official of the court of the emperor, Iwakura never joined the radical anti-shogun movement. He was careful not to incite civil war in Japan, which would encourage foreign intervention and colonization. Moderation and prudence characterized his career as the foreign minister between 1869 and 1871 and afterwards. His service in the Foreign Ministry was in fact extremely short, as he was appointed as the Minister of the Right in October 1871.

Iwakura Mission, a delegation that was originally created to negotiate treaty revision as its foremost objective, visited nine cities in the United States, and twelve countries in Europe in a period of almost two years. It was one of the events by which Iwakura's reputation as a balanced, far-sighted foreign policy expert soared. Iwakura, Envoy Extraordinary Ambassador Plenipotentiary, influenced "the conception, the functions, and the composition" of the Mission, which became an important starting-point in any account of Japan's foreign policy."[3] The weight placed on the Mission can be easily recognized by its size and by the fact that almost all prominent young Japanese statesmen went on board, almost "emptying" the Japanese government for two years with important issues to be deferred until their return. Among the members on board were Kido Takayoshi, Ōkubo Toshimichi, Itō Hirobumi, and

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[2] Nish, *Japanese Foreign Policy*, 10.
[3] Ibid., 20.

Mori Arinori, for example, who became the central figures of the new Meiji government. As is well known, it had three major missions: first, to negotiate revision of unequal treaties; second, to observe, investigate, and learn from other advanced countries for purposes of domestic reform; and third, to enhance friendship among nations while visiting twelve countries in Europe and the United States.

With regard to the Mission's foremost objective of negotiating the treaty revisions, they met with difficulties from the start. The drafts for the revision that the Mission prepared in the first negotiations with U.S. statesmen requested tariff autonomy and abrogation of extraterritoriality upon the establishment of domestic laws based on the laws in the United States and European countries. They were, however, easily rejected during their first days of the Mission, as the United States officials perceived the conditions for the revision as too immature.[4] The unequal treaties would not be negotiated until Japan could demonstrate a system of adequate jurisprudence.

Itō and Ōkubo, the two deputy leaders of the mission, also had to return to Japan in order to obtain plenipotentiary authority for Iwakura that the American secretary of state, Hamilton Fish, requested, a requirement that Japan should have known about as a good student of international law. It was, in fact, quite embarrassing that it did not know such a basic international custom. It

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[4] The negotiations that started on March 11, 1872, came to a closure on July 22 of the same year. Kume Kunitake, *Beiō Kairan Jikki* [Commentary on America and Europe] (Tokyo: Iwanami Bunko, 2002), Vol.1. The English translation is also available. Kume Kunitake, *The Iwakura Embassy, 1871-73: A True Account of the Ambassador Extraordinary & Plenipotentiary's Journey of Observation through the United States of America and Europe*. Graham Healey and Tsuzuki Chūshichi, trans. and ed., (Matsudo: The Japan Documents, 2002).

took almost four months for Itō and Ōkubo to go back to Japan to obtain the authority and return to Washington, D.C. After all these trouble, the discussions on treaty revision were nonetheless broken off, disappointing many. Subsequently Iwakura decided to avoid formal negotiations and to hold informal conversations with the statesmen of the treaty powers, only letting them know the intention of Japanese hope for early revision. The conversations on negotiating treaty reforms remained exploratory in Europe, which they visited after the United States, with the issue to be further examined on their return.

The significance of the Iwakura Mission did not lie in achieving anything tangible in negotiating the revision but in affecting the perceptions of the Japanese leaders on international politics and on how Japan could enter the European club of international society. On the second objective of the Mission mentioned above, Kume Kunitake left fascinating records of what they observed in the United States and Europe.[5] The Japanese leaders came to clearly understand in what status and level of development their country was placed in the world in light of the requirements placed on a state as a modern nation, what they needed to do to join the great powers, and how they should achieve that objective. When they visited the United States and Europe, the Western countries were experiencing the golden age of peace and industrial development. The Japanese were selective in what to adopt for Japan's modern nation-building. While their overall models were Prussia and Russia, Japan was most influenced

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[5] Ibid., Vols.1-5. His records are excellent sources of study on Japan's enthusiasm about learning from the West and devotion to modern nation-building. They are impressive in the accuracy and the detailed knowledge of various aspects of Western societies that the delegation observed.

by the United States in the content of education, for example, while the educational system itself was copied on France.

Although the leaders did observe the Western superiority to Japan, they also came to learn that Western superiority was only a recent phenomenon and that Japan was not as far behind as they had thought. Except for Britain, which had been thriving for centuries already, most of the Western countries had achieved a rapid economic growth in just three decades or so. The Japanese leaders saw that even the recently formed countries such as Prussia could raise national prestige by utilizing international law tactically to the advantage of itself and achieve equal status with great powers in international society.

On March 15, 1872, Japanese leaders visiting Prussia heard Bismarck's speech on the hypocrisy of international law and learned that the realm of international politics is that of the law of the jungle. According to the record of Kume, Bismarck said:

> In today's world, it is said that every country interacts with other states on the basis of friendship, harmony, and protocol. However, this is merely superficial lip-service, behind which lies actual practice; the insults to which the strong subject the weak, and the scorn the big hold for the little. When I was a child, our Prussia was poor and weak, as I am sure Your Excellencies all know. At that time, I summarized for myself the histories of small countries, and the anger with which I burned then remains clearly in my memory. [I perceived that] the so-called law of all countries argued to the profit of the great nations. If it had any profit in it for them, the powerful would apply the law of nations to the letter, but when it lacked attractions, the law of nations was jettisoned, and military might employed, irregardless of convention. The small nations diligently consulted precedent and justification. Nevertheless, although they believed that if they did not cross any boundaries their sovereign rights would be defended, their governments were frittered away by foreign insults and contempt, leading, in almost every case, to an inability to preserve their independence. This happened all the time.

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I was consumed by resentment.

I considered that once a country increases its power, it becomes a nation that has to be treated as an equal by other states. Patriotism spurred me from the age of ten years to achieve my wish, which was, in short, nothing more than a desire to defend our sovereign rights against all states. It was completely against our national character to basely rejoice in a reduction in arms or vilely debate the injustice of an usurpation of a state's sovereignty when we saw the Powers placing armies on our borders. In the last war, in order to maintain its sovereign rights, Germany used military force as an unavoidable last resort, a fact that must be recognized by men of perception. The essential point was that Great Britain, France and other countries were seizing colonies, using their resources, and increasing their power while other nations watched with fear. In sum, in European diplomacy, trust alone is not yet sufficient., I believe I am right in saying that Your Excellencies also do not give free rein to negligence.

I was born in a small country, understand the conditions of small countries extremely well, and comprehend the character of small nations. Looking back on my activities, [I feel that] I have always hoped and wished to protect the rights of nations completely. Therefore, while there are today many nations that have friendly and harmonious relations with Japan, countries like Germany, which holds national rights and sovereignty so dear, must be the friendliest and most accommodating of them all.[6]

Bismarck further stated that the objective of his diplomacy lay in establishing equal diplomatic relations and that Britain and France were exploiting overseas colonies to the regret of all the other countries.[7] The leaders came to understand the great gap that existed between the ideal of international law, which is equality among nations, and the reality of international politics, where power consideration dominates. Iwakura Mission, thus, also marked a turning point in the Japanese perception and interpretation of international law. The leaders came to feel a stronger sense of inequality over the treaties concluded by bakufu.

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[6] Kume, *Beiō Kairan Jikki* 3: 329-30. Here I have used the translation that appears in Stern, *The Japanese Interpretation*, 88-9.

[7] Seki Shizuo, ed. *Kindai Nihon Gaikō Shisōshi Nyūmon* [Introduction to the History of Modern Japanese Diplomatic Thought] (Tokyo: Minerva Publishing Company, 1999).

Iwakura Mission also gave the Japanese leaders a sense of confidence that their country was faring better than other Asian countries, or a sense of superiority to them.   Since Japan had long been concerned with the situation in China, which became prey for Western countries, their recognition that their country had managed relations with the West better than did China with its greater wealth and population, led them to dissociate Japan from other Asian countries and gave them hope to join the West.

> The Iwakura mission had enabled them to measure Japan against the West and also the East.   While there were shortcomings in the first comparison, there was confidence and strength in the second. Iwakura returned not a cowed man but a confident one, aware that Japan had more effectively coped with the challenge of the West than China.   If she had feelings of inferiority, her feeling of superiority to China was double confirmed.[8]

After his return, Iwakura continued to influence the Japanese foreign policy behind the scenes.   Especially after Ōkubo was assassinated in 1878, he ascended to the top of foreign affairs until his death in 1883.   The moderate, realistic, prudent foreign policy behavior in the 1870s owes much to Iwakura. The cautious temperament with realistic statesmanship was in fact the attitude that leaders in the Iwakura Mission learned to adopt in the course of the travel. Those who contributed to the moderate diplomatic style were the leaders who were most exposed to the situations in foreign countries.   These general attitudes were displayed in managing relations with foreign powers, whether in settling territorial questions with Russia, in deciding on the treatment of Korea, or in the so-called Taiwan Expedition, as will be discussed in the next section of

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[8] Nish, *Japanese Foreign Policy*, 24.

this chapter. The leaders who returned from the Iwakura Mission especially argued against the radical proponents for foreign expeditions. Therefore, all the leaders on the Mission "had indeed acquired a cautious approach to foreign affairs and were appalled at the blatant adventurism which they found in the Korean policy with which they were confronted on their return."[9] The leaders felt an urgent need to develop domestic organizations, especially legal systems, instead of taking more aggressive means by dispatching troops abroad. The advocates of the need for a Japanese expedition to Korea were eventually contained by the leaders of the Iwakura Mission.

Especially after the Mission returned, Japan started to energize its powers in building a modern nation-state with the slogan of "rich state, strong army (fukoku kyōhei)" under Ōkubo's leadership. The political leaders strongly felt the need to reform some domestic institutions before European powers would entertain renegotiations, including a parliamentary system, public participation, and legal systems. While Japan had focused on developing a modern military in the 1850s and 1860s, they started to further modernize the nation in other aspects as well to obtain international prestige and respect.[10] It was in the 1870s, for example, when Western styles of tax, postal, monetary systems were established. Bringing the domestic legal system into line with the prevalent European ones was one of the agenda item that Japan had been facing since the 1860s. The Europeans demanded that life, liberty, and property of their nationals be guaranteed if the extraterritorial systems were to

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[9] Ibid., 21.
[10] Jansen, *The Making*, 59.

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be lifted. In the course of reforming the legal systems, therefore, Japan had examined the civil and criminal codes of numerous countries. These efforts bore fruit in the 1880's and 1890's with the promulgation of a constitution, and the enactment of criminal and civil codes.[11]

These administrative and legal reforms paralleled introduction of Western goods and all aspects of its culture.

> By 1873 soaps, watches, gold chains, umbrellas, Western hats, jackets, trousers, and shoes were the veneer of an adoration of things Western that went deeper to include Western literature, philosophies, politics, religion, architecture, painting, sculpture, and music. By 1875 gas lamps flickered at the Imperial Palace gates and the first brick building had been erected on the Ginza. In short, the changes in Japan's political organization, and in its diplomatic and legal sectors, were part of a much larger movement to emulate the general civilization of the West. A consequence of Japan's acceptance of European standards of 'civilization' was the Japanese recognition that they were 'uncivilized' and 'backward'. Emphasizing the universal, scientific nature of 'civilization' in general did not belie the fact that to embrace the ideas, institutions, and material symbols of European civilization meant to 'move away from tradition, to relegate some of its inherited ideas and institutions to history, usually with some dismissive phrase describing them as 'old-fashioned' or 'out of date'."[12]

As the Europeans demanded even the content of the prisoners' diet be changed into Western style, Westernization was truly something that needed to embrace all aspects of Western life style.

Changed Style of Japanese Diplomacy with Other Asian Countries

A notable change occurred in Japan's style of diplomacy during this

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[11] A revised Criminal Code was enacted in 1873, lessening the punishment of capital crimes and reducing torture and other forms of punishment.
[12] Gong, *The Standard*, 187.

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period in handling international issues involving its neighboring countries. The change in Japanese attitudes toward the Eurocentric international norms can be most clearly observed in its diplomatic relations with other Asian countries in the 1870's, where Japan applied several lessons that it had learned since the 1850s through its intercourse with the European powers.

In negotiating treaties with Korea and China, Japan consciously tried to employ Western legal concepts and used English. Alexis Dudden claims that Meiji government tried to change the power configuration of Asia by speaking English in those negotiations.[13] While Japan had traditionally complied with the Chinese diplomatic style in negotiating with Asian countries, Western legal concepts and terms turned out to provide useful guidance in directing negotiations to the advantage of Japan, denying the traditional Chinese leadership.

Taiwan Incident

The Taiwan Incident, or Formosan Expedition in 1875, came to constitute one of the seeds of the later Sino-Japanese conflicts. One of the foci of contention between China and Japan in the Taiwan Incident was over the jurisdiction and diplomatic position of Ryūkyū (present Okinawa Prefecture), where the Satsuma domain had been exercising its control. Japan had a garrison there since the end of the Edo Period and had declared its jurisdiction

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[13] Dudden, "Japan's Engagement," 165.

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over it on October 16, 1872.[14] China, however, had never admitted Japan's sovereignty over the Ryūkyū Islands. The incident occurred when a Ryūkyūan ship was stranded off the eastern coast of Taiwan in December 1871. Fifty-four out of the sixty-six Ryūkyūans were murdered in a cruel manner by the Formosan aborigines, about which the Ryūkyū government complained to the Japanese government.

Japan was well aware of the Western style of settling this kind of matter by this time and found a perfect opportunity to make the case an instance of applying the Western style of international settlement that it had been learning. In fact, a similar incident had occurred with a wrecked American ship, the Rover, in 1867, where all the Americans on board were killed by Taiwan aborigines. In this incident China claimed that the eastern Taiwan was "not under its jurisdiction (kegai)" and refused to take the responsibility. The U.S. settled the incident by sending a punitive expedition and discussing the matter with the aboriginal chiefs.[15] Following this example, Japan first decided to try negotiating with China with a possibility in mind of sending expedition in the case of China's refusal to take the responsibility.

As expected, China insisted that it had no responsibility for the murder on the ground that the eastern coast of Taiwan was not under Chinese jurisdiction. China's denial of its sovereignty over Taiwan justified Japan's sending of a punitive expedition. It was the first foreign expedition for the

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[14] The Ryūkyūan king in fact had a residence in Edo as all the other daimyos during the Edo period did.
[15] Roy Hidemichi Akagi, *Japan's Foreign Relations 1542-1936: A Short History* (Tokyo: The Hokuseido Press, 1936): 69-70.

Meiji state with Saigo Tsugumichi as the commander. China protested vigorously against the expedition.[16] China, then, started to maintain that "the eastern portion of Formosa was an integral part of the Chinese Empire and that Japan had invaded Chinese territory, not only without her approval, but against her protests."[17] At this point, Ōkubo Toshimichi, famous for his forensic style, was appointed as Minister Plenipotentiary and went to Beijing in September 1874 for negotiation. He is said to have prepared for the coming negotiations on the way to China by debating international law with Gustave E. Boissonade, one of the legal advisors employed by the government who was on the ship.[18] Ōkubo's diary records the considerable counseling that he received from Boissonade.

When he reached China, Ōkubo mentioned that China had denied jurisdiction over Taiwan, which meant Taiwan was a barbarian no-man's land from the point-of-view of international law. In the actual negotiation with Zonli Yamen[19], Ōkubo accused China of not dispatching troops nor setting up an administration on the southern part of Taiwan while claiming its jurisdiction. "By the law of nations newly discovered land belongs to whoever first exercises real power over it, builds an administrative center on it, and undertakes the actual management of its affairs..."[20] He had also prepared another accusation

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[16] Western powers also protested the expedition due to their position of neutrality over Sino-Japanese affairs.

[17] Akagi, *Japan's Foreign Relations*, 72.

[18] The foreign advisors employed by the government were called "oyatoi," literally meaning "the employed." Ōkubo is said to have treated him as a living book of reference "to be used and placed back on the shelf when no longer needed." Stern, *The Japanese Interpretation*, 120.

[19] China's diplomatic authority and is equivalent of a foreign ministry.

[20] Stern, *The Japanese Interpretation*, 122.

that could be raised against China in case China insisted on its sovereignty over Taiwan: "Why did China not take the full responsibility in protecting, under international law, the shipwrecked foreigners," if Taiwan did belong to China?

China continued to be evasive and vague, insisting on settling matters not by the "Western" international law but by justice and reason, thus irritating Ōkubo. Japan was tactically in an advantageous position, since if China denied its sovereignty over Taiwan, it should have no protest against Japan's protecting its citizens; if China was to claim sovereignty, it had to take responsibility for the massacred Ryūkyūans. When the negotiation was finally about to be settled by the arbitration of British Minister Wade, Ōkubo requested that written promises be made, not verbal ones. He demanded that China recognize the Japanese expedition as a "just attempt to protect its own subjects (Homin no Gikyo)" and that China pay 500,000 taels[21] as proposed by China itself and conveyed by Wade. A treaty was signed on October 31, 1874 with the acknowledgement of Japanese sovereignty over the Ryūkyūs, indemnity of China, and withdrawal of the Japanese forces from Taiwan.

While the expedition cost more than Japan received from China as indemnity, the significance lay in making China recognize Japan's sovereignty over Ryūkyū and in demonstrating the use of Western international law in settling disputes in East Asia. In the Taiwan Incident, Japan claimed a conflict settlement based on international law. Ōkubo utilized international law as an ethical standard to persuade China and to gain support from the West. "Ōkubo

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[21] A Chinese currency unit. The value of one tael was 37.7 gram of silver.

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felt that Japan was to be the diplomatic leader in Asia based on its superior understanding of the changing diplomatic situation in the East... Ōkubo was making sure that he would have the ability to make Japan the leader of Asian diplomacy in a way that would not alarm the West, but that would not rely on it either."[22]   Here the traditional cultural tie between Japan and China was taken over by an objective diplomatic exchange with Japan insisting on it.   In 1885, Taiwan Province was established by China.   By establishing friendly relations with the Western diplomatic community while maintaining relations with China and uniting the East under a modern Japan, Ōkubo successfully manipulated the international law.[23]

Kanghwa Incident

The Kanghwa Incident in 1875 and Kanghwa Treaty in 1876 were another important step in Japanese exercise of leadership in Asia, and they represent another change in Japan's stance in Asia and in the world.   The incident occurred after "Korea had gravely offended Japan by rejecting out of hand her overtures for recognition of the new state,"[24] Japan.

Korea had hated Japan for two reasons. First, Korea stuck to the Ka-i system (civilized China and barbaric others) and was worried about China's

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[22] Stern, *The Japanese Interpretation*, 120.

[23] Ibid., 120-127. Stern notes that Ōkubo "made fast friends with the French Minister on his arrival in Tientsin, and stayed at the American Ministry while in Beijing.   The first day after his opening talks with the Zonli Yamen, Ōkubo made a good will tour of the Russian, American and English legations; his diary records that Thomas Wade, and the Russian minister, and the Prussian minister soon came to him to discuss the talks.   Ōkubo was beginning to succeed in manipulating foreign opinion." When the negotiations with China were about to end in hostilities, Ōkubo managed to bring in Wade to support Japan's diplomatic objectives.   Stern notes that Ōkubo frankly admits that he "used" Wade. 121.

[24] Nish, *Japanese Foreign Policy*, 21.

reaction, while Japan wanted to have equal relations with Korea as two sovereign states. Second was the personal distaste of the Korean leader Tai-in-kun. He saw Japan's radical changes following its opening up of the country cutting Samurai hair, wearing Western clothes, building railroads, trying to catch up with European industrial civilization as sufficient reasons for Korea not to have any exchanges with Japan. In the eyes of the Koreans, it was the West which was backward and barbaric; and yet the Japanese were now implying that it was Asia that was barbaric. Korea thus declined Japan's requests for exchanges between the two countries for six years following the Meiji restoration. The rationale for Japan identifying Korea as an independent state was based on international law, as the Meiji government repeatedly emphasized. Korea at that time, however, was a protectorate of China and tried to maintain that status within a Confucian framework. To establish a basis for a colony in Korea, Japan needed to call it something that would be acceptable to international society in a universalistic sense.

In March of 1873, Foreign Minister Soejima visited Beijing to discuss Korea's recalcitrant attitude, as exemplified by a sign posted at the Public House earlier that year that called Japan a "country of no law." The hope was that China would give Japan freedom of action to send a military expedition to the peninsula. Japanese divided between those favoring punishment for Korea (Seikanron) and those opposed. Politicians such as Iwakura thought that Japan should wait to take a punitive line until Japan's wealth and power reached the standards of great powers. The pro-punishment group eventually lost. Japan

decided to use force in the worst case, but meanwhile would negotiate by just means.[25]

The Treaty of Commerce and Friendship (Treaty of Kanghwa) was concluded in 1876, opening three Korean ports to Japanese trade and securing consular jurisdiction and tariff immunity. The Treaty turned out to be similar to the first two treaties that Japan concluded with the United States. The way Japan persuaded Korea was also exactly the same technique and excuse that Perry used in entering the Edo Bay in 1854: "A combination of gunboat diplomacy in the interests of 'free trade imperialism'."[26] Thus, Korea was placed in a status similar to that of Japan in the earlier period.[27] By confirming control over Korea with a legal rationale, Japan also tried to impress other countries as the leader of Asia. This declaration of Korean independence denied its tributary status, humiliating China similarly to the way the Taiwan Incident was settled. It needs to be added, however, that it took almost ten years for the treaty to be implemented due to Japan's cautious attitudes.

> Iwakura and Ōkubo, when they were met by calls for expansion into Korea, opposed it on pragmatic grounds rather than 'enlightened' ones. Each man had his expansionist moments and his peace-loving instincts. But, for the seventies, they felt that bearing in mind Japan's national weakness, she must abjure a policy of conquests in East Asia.[28]

The Japanese leaders, therefore, initially avoided warlike measures against the Koreans, delaying the solution of the Korean problem for the next

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[25] Those who insisted on punishment included Saigō Takamori and Itagaki Taisuke, who proposed the use of military in the case of Korean refusal to open the country. Ōkubo and Kido, who were among the members of the Iwakura Mission, opposed it.
[26] Jansen, *The Making*, 424.
[27] Stern, *The Japanese Interpretation*, 133-134.
[28] Nish, *Japanese Foreign Policy*, 24.

few decades and eventually culminating in the war with China in 1894.

Border Problems with Russia

Still another example of Japan's application of international law in the actual negotiations was the border issue over Sakhalin, which had been a source of troubles between Japan and Russia for over a century that was to be settled peacefully. The Treaty of Peace and Amity concluded between Japan and Russia in 1855 (Treaty of Shimoda), recognized Russian jurisdiction over the Kurile Islands, and Japanese jurisdiction over the Islands south of Eterup. In Sakhalin both Japanese and Russians continued to live with its jurisdiction remaining vague. By the 1870s the border issue over Sakhalin had become stormy as both countries asserted their rights and attempted to colonize it. The Russians were trying to send emigrants and to establish a de facto government there. Since the late 1850s Japan had sent envoys to St. Petersburg several times, proposing to divide the Island at the fiftieth parallel.

After learning from the United States that it had bought Alaska from Russia, Soejima Taneomi, a State Councillor, proposed to purchase the north of Sakhalin for 2,000,000 yen, although the offer was eventually refused by Russia. Japan then negotiated to acquire the whole Kurile, including Urup, Kunashiri, and Eterup, in exchange for all of Sakhalin.

On May 7, 1875, a treaty to exchange Sakhalin with the Kurile Islands was concluded. The treaty granted to "Japanese ships entering the port of Kirsakov exemption from the customs tariffs and harbor duties for ten years and

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the right of appointing the Japanese Consul there, and to Japanese vessels and merchants of the most favored nations in regard to fishing and navigation in the Okhotsk Sea and along the coast of Kamtchatka."[29] By giving up the whole Sakhalin in exchange for the central and northern Kurile, Japan could retain important mining and fishing resources. Considering the power gap that had existed between Russia and Japan in terms of the size of arms and population at this time, it was not a bad deal for Japan at all. It was thus necessary for Japan to refrain from radical behavior even on the sensitive border issue tied to nationalism of a newly born state. The conciliatory line toward the Russians to avoid future rivalry was an indication of Japan's realism and prudence in diplomacy salient during this period. Not only was what Japan got in the treaty quite reasonable in itself but also the negotiations were conducted on an equal basis, which had great symbolic meanings for Japan in the process of striving for a full-fledged international membership.

In 1876 Japan also consolidated its sovereignty over Ogasawara Islands (Bonin Islands), which turned out to be a much easier process than the case of Sakhalin due to the voluntary renouncement of the United States. The border on the East was thus defined along with Taiwan and Kamtchatka.

Conclusion

The Iwakura Mission affected the conduct of Japanese foreign policy in this period in three ways. First, it eliminated the possibility of extremist

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[29] Akagi, *Japan's Foreign Relations*, 65.

moves on the part of Japan and fostered prudent attitudes among leaders in pursuing its national objective. Second, it gave Japan a strong incentive for nation-building based on the Western model. Third, it convinced Japan of its capability to be qualified as a member of the European international society. As Japan learned the reality of world politics that Bismarck described and accepted the law of the jungle as another side of the same coin of the law of nations, Japan's preferences started to change. The leaders learned to understand what precisely Japan needed to do for the treaty revision.

Japan thus came to acknowledge in the 1870s that international law was a tool of the strong, which could be utilized not only as an agreed-upon method of protecting each other's interests among great powers, but also as an enhancement of national power. Japan then started to demonstrate its clear desire to utilize the Western logic embodied in the international law for upgrading its international position in Asia, which would eventually place Japan as a member of the Western international society. Japan was extremely afraid of being looked down on as a barbaric country and displayed an unusual degree of adherence and care in observing international law during the period of its ascendance. Perhaps no country was more faithful to the norms of the international society dominated by the West than Japan during this period. In military college, for example, Japan spent a great amount of time making students learn international law, more than any other country, which came to bear fruit in Japan's conduct of the Sino-Japanese War, the Boxer Rebellion, and the Russo-Japanese War.

The concept of international law was thus gradually becoming the concept of power in East Asia. The Japanese government undertook treaties to justify its colonial policies by following the international standard embodied in international law. While China was still claiming its traditional suzerainty over Korea, the Japanese leaders understood that the Western international society would not pay much attention to it. Japan continued to appeal to the international community for the lawfulness of its foreign conduct, calculating how to look good to the West and thereby fulfilling national interests.

Europeans at this time called the Japanese "monkey," meaning that Japan was a nation that tried to imitate European civilization. It is quite well-known, for example, Nikolai II of Russia used the Russian word monkey, even in official documents. The Western disdain made the Japanese leaders all the more conscious of the need to demonstrate Japan's level of civilization and of adherence to international law in order to revise the unequal treaties. They strongly believed that observance to international law and living up to international credentials were critical components of "civilization" required for the international membership.

While in the earlier period Japan's radical compliance with Western norms was considered a must for national survival and independence, it gradually became a tool to enhance national prestige and honor, too, as Japan became aware of the reality of international politics, and at the same time became more confident about its capability and status. By the end of 1870s, Japanese leaders felt that their country had coped with the hardest trial by

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avoiding colonization and that it was dealing with Western countries better than other Asian countries. The foreign threat was certainly there, but it was not so crucial a concern as to threaten Japan's survival as an independent state any more. Japan started to engage in national development, in terms of both physical and soft power, externally and domestically. The leaders may have continued to emphasize threat and foreign pressure, but it is appropriate to assume that the threat was utilized to unite and urge the country toward national development. Nish notes that

> Japan was not as much under foreign tutelage as he liked to emphasize; nor were the Western Powers as anxious to take over Japan as he feared. But the threat was grist to his mill: it enabled him to appeal to his countrymen to increase their wealth and strength on Western lines.[30]

The driving force for Japan was the confidence that Japanese leaders had obtained through their contact with the West in the early 1870s. When survival ceased to be an issue, Japan concentrated on nation-building and the revision of the unequal treaties.

Adding to the historical events during this period, Japan obtained substantial control over tariff and trade regulations in the treaty concluded between Japan and the United States in July, 1878.[31] The acquisition of equal status in diplomacy continued to be taken as the foremost important item of the agenda for the Meiji government, eventually bearing fruit in the treaty with Mexico in 1888, which was based on complete equality between states for the

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[30] Nish, *Japanese Foreign Policy*, 12.
[31] Foreign Minister Terajima signed the treaty after the negotiations between Yoshida and Everts. The treaty, however, never came into effect.

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first time for Japan. By the 1880s, the Western powers were reaching out for colonies in every corner of the globe, making the issues of lifting extraterritoriality and regaining tariff control ever more pressing for Japan so it would not be late for colonial competition.

By the 1880 Japan decided to separate itself from the rest of Asia. Having learned that the source of energy for the West's expansion was imperialism and colonialism, Japan started to apply what it had experienced as a subordinate to Western superiority to its relations with other Asian countries. After the death of Kido and Saigō in 1877 and the assassination of Ōkubo in 1878, perceptions of Japanese political leaders about its role in East Asia dramatically changed. Until around 1880s, their objective was to cooperate with China and lead other countries as the Asian leader in order to eventually counter the West. After the 1880s, however, Japan started to display its strong stance to "leave" Asia.[32] One reason for these attitudinal changes was, first of all, that Japan was disappointed at the achievements of other Asian countries, especially China and Korea, in demonstrating willingness and capability to modernize. The Asian alliance, which had preoccupied the Japanese leaders' minds previously, thus failed to become a reality. Coincidentally, Darwin's theory of evolution was introduced at this time, and applied also to interpret the nature of international relations. In the "survival of the fittest," Japan started to identify itself with the stronger side of the game.

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[32] In 1879, Mori Arinori asked the great powers to separate Japan's interests from those of Asia in general. Fukuzawa Yukichi's "Datsuaron [Theory of Leaving Asia]" indicated that if Japan did not wish to be mixed with other underdeveloped countries, Japan must forget Asia. In the same year, Tokutomi Sohō mentioned that Japan needed to take independent actions in order to avoid the fate of China.

Fukuzawa, who had promoted the idea of the mutual diplomatic interest of China and Japan in 1874, was to give the answer in 1885. Embittered and disillusioned, Fukuzawa suggested "getting out of Asia," cutting free from the mainland, and letting every nation fend for itself against foreign aggression.[33]

While Japan's objective of becoming one of the civilized members of the international society became clear, the European powers were not ready to shed their privilege of extraterritoriality, which provided them with rights and protection. The Western powers still took a united front in maintaining their extraterritorial privileges. "It often seemed that the treaty powers stood together when the general question of the continued existence of extraterritorial jurisdiction came up... Even up to the time the unequal treaties were revised, many Westerners still felt that extraterritoriality was necessary."[34]

Japan reached the final stage of its efforts to revise the unequal treaty in the 1890's, when it engaged in actual negotiations with the West both inside and outside of Japan. The skillful tactics of negotiation were finally to bear fruit in 1899 in the form of abrogation of extraterritoriality, whose process I will now track in the next chapter.

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[33] Stern, *The Japanese Interpretation,* 127.
[34] Gong, *The Standard,* 188.

CHAPTER VI

JAPAN AMONG THE SOVEREIGN STATES:
ABROGATION OF UNEQUAL TREATIES, 1880's-1899

We have seen in Chapter V the change of perception that occurred among the political leaders with regard to the nature of international law and international politics in general. We have also learned that the Japanese leaders started to base their external conduct on the rules of international law in dealing with the disputes with neighboring countries in Asia, taking advantage of its legitimacy as a standard source of guidance in the management of international affairs on the one hand, and impressing the West with Japan's loyalty to the European code of conduct on the other. In the final stage of negotiating its qualifications for full international membership, symbolized by the lifting of extraterritoriality, Japan's efforts, skills, and tactics culminated in the act of finally convincing the European powers of the justice of revising unequal treaties. By this time Japan's faithfulness to the international law was firmly established in the West.

In this chapter I will provide an overview of the final negotiation process that evolved from the era of Inoue Kaoru to the era of Mutsu Munemitsu as foreign minister. The negotiation process became increasingly complicated and delicate, as leaders needed to treat public opinion and the power game

among the European powers carefully, in addition to the actual negotiations themselves. In the latter part of the chapter, I will outline the efforts and maneuvers that the leaders demonstrated in appealing to the West. The strategies and manipulations of the political leaders to convince the West during this era were indeed as remarkable as their degree of observance of international law itself.

Several incidents had occurred in the late 1870s that clearly demonstrated the priority of getting the extraterritoriality issues straight. In February, 1878, secretly imported opium by a British merchant, Hartley, was brought to light. Under the British consular jurisdiction, however, he was presumed innocent on the ground that the opium was a medicinal plant. Another agonizing problem that Japan had been facing since the arrival of the West was cholera brought by the West.[1] In the cholera-infected years, so-called "cholera riots" or "cholera uprisings" kept occurring. The years 1877, 1879, 1882, 1885, 1886, 1890, 1891, and 1895 were the most affected. The Japanese government had no right, however, to quarantine foreign ships, thus allowing the bacteria to enter freely. In 1879 Foreign Minister Terajima Munenori notified the Western powers of the regulation for quarantine, meeting with strong opposition from the West, which were afraid that once they followed the Japanese regulations, they would be forced to follow others. For this reason a German ship even passed the quarantine office and entered the port.[2]

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[1] Cholera was first brought after the Meiji Restoration by the US ship Mississippi from China in 1877.

[2] *Nihon no Rekishi* [Japanese History] 89, (February 2004).

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During the Normanton Incident of October, 1886, all the Japanese passengers on the British Ship Normanton were drowned while all the British crew were saved after escaping from the ship. In this incident, all the British crew were judged not guilty, enraging the Japanese. Even after the Japanese government convicted the captain of murder, the court decided only to put the captain in jail for three months for committing homicide by misadventure. No compensation was paid for the dead. The "evil" of consular jurisdiction by then became more than obvious to the eyes of the Japanese. The unequal treaties came to be increasingly considered as the root cause of the problem.

Negotiation after Negotiation

The Era of Inoue

Inoue Kaoru became foreign minister on September 10 in 1879. With the office of the foreign minister clearly defined in accordance with the development of the cabinet system during the era of Inoue, the title changed from "gaimukyō" to "gaimudaijin." Inoue was thoroughly immersed in the treaty reform issue, concentrating on the "legal right (extraterritoriality)" instead of "tariff right," which his predecessor had focused on. Japan needed to convince the West of treaty reform by making the West feel a sense of Japan's advancement and "Westernization."

Multilateral conferences on treaty reform were frequently held during Inoue's service. With the treaty revision becoming a pressing issue for Japan, the number of conferences on treaty reform reached as many as thirty-six in

1886.   Inoue was an enthusiastic modernizer, believing that the unequal treaties would only be lifted when Japan was sufficiently Westernized, including the law codes and access to the Japanese hinterland by foreigners.[3]   During the era of Inoue, the Westernization process was greatly facilitated with the help of foreign advisors employed by the government.   Inoue's sense of urgency, however, made his treaty revision plan rather modest, as he made many concessions to the West in order to bring about the revision.   Inoue cautiously proposed to create a Japanese court whose judgeship was composed of more than a half of foreign judges and to let foreigners be tried by them.   When the proposal was about to be accepted by the great powers, it was leaked, creating a storm of nation-wide protest against Inoue.   Viscount General Tani Tateki, also known as Tani Kanjō, expressed strong opposition against the secret style of Inoue, especially because even though the agricultural and commerce department, of which he was a minister, would be greatly affected by the treaty reform, he was never consulted.[4]   Led by Tani, the anti-government forces gained increasing ground for objecting to the proposals to appoint Western judges for cases involving foreigners.   In reply to Tani's opposition, Inoue argued that as Japan was lacking in modern military power,

> We must set up a new 'civilized state' here and our countrymen must become people of knowledge and vigour by free contact with people from the west....We need to build up a European civilization here on a par with that of European civilized states.   We must inaugurate here a new-style "European empire."   To this end Japan will for the first

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[3] The best example that illustrates Inoue's obsession with Westernization of Japan is the famous Rokumeikan [Hall of the Baying Stag] opened in July 1883.   The dancing party held there is considered as the epitome of the overt Westernization of Inoue's style, often criticized as "flirtatious diplomacy."

[4] Memorandum by Tani Kanjō, (July 3, 1887) *Nihon Gaikō Monjo* 20, no.26.

time by treaty occupy a position equal to the European Powers. For us to revise the present treaties will mark the very first step on the road to achieving this great purpose. There are certain items on which we should make concessions in negotiating for treaty revision because our present level of civilization is lower. Of course, extraterritorial jurisdiction is harmful because of the unlawful acts of foreigners and their possessing "immovable property." But Japan's law codes are deficient; our courts are in their infancy.[5]

It was Inoue's intention to complete the treaty revision before the constitution came into effect, so he could avoid the floodgates of political criticism.

From the government standpoint there was some urgency in completing the re-negotiation of the foreign treaties by hook or by crook during the 1880s before the inauguration of the Diet which, it was assumed, would be hostile to the government and would ventilate the xenophobic political opposition to the treaties. From the view point of the politicians striving to influence the constitution in favour of popular rights, the tactic was to spin out the revision of the treaties until 1890 when the Diet came into being and the popular will could be heard.[6]

The leaders thus came to need to play two games, external and domestic.[7] While Inoue engaged in negotiations for treaty reform, the content of the negotiation was kept secret from the Japanese public. Boissonade, a French law advisor to the Japanese government, was against the way Inoue was handling the matter secretly. He decided to publicize the treaty reform drafts that were being negotiated secretly, with the aim of raising the public opposition against the government over the treaty reform issue. This ended Inoue's attempt for treaty reform with the conference for the reform postponed indefinitely in July 1887.

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[5] Inoue's response to Tani's memorandum. July 9, 1887. Ibid.
[6] Nish, *Japanese Foreign Policy*, 29,
[7] Putnam, "The Logic of Two-Level Games."

Meanwhile, it was during the era of Inoue that Itō Hirobumi, the ambassador to China, who emphasized the importance of using international legal logic in the discussions over treaty revision, came to conclude the Tienjing Treaty in 1885 with China. Having mastered Western style negotiation technique during his stay in the United States and in Europe, Itō negotiated the terms of Chinese withdrawal from the Korean Peninsula. He referred to international law whenever the negotiation seemed to come to a deadlock, reorganizing the power relations in Asia by European international law. He succeeded, in other words, in shedding the suzerain international relations predominant in the Chinese international system by using the logic of the Western international system and by speaking international legal terms in English. [8] Japan was gradually utilizing the international law that it had just learned from the West in changing the power configuration in East Asia.

The Era of Ōkuma

Ōkuma Shigenobu took over after Inoue resigned on February 1, 1888. While Inoue tried to negotiate with treaty powers collectively, Ōkuma negotiated the revision problem on a bilateral basis, concentrating on Britain. He kept, however, the details of the negotiations under wraps as Inoue did. It was during Ōkuma's era when Japan concluded the first equal treaty with the

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[8] In the letter that he wrote during his stay in the United States between 1870 and 1871, Ito says that Japan became fully equal with other civilized nations in the use of international law by the Meiji Restoration. This was the perception Itō held toward international law, international system, and Japan's status in it. Dudden, "Japan's Engagement," 178-180; Shunpokō Tsuishōkai, *Itō Hitobumi Den* [Biography of Itō Hirobumi] (Tokyo: Tōseisha, 1940):81. Letter of April 17, 1871.

West by the treaty with Mexico in 1888. It included provisions on commerce and navigation, trading duties, and judicial autonomy, which would be carried out equally. Although Ōkuma had expected that a success with one country would lead to another with other countries, he could not yet obtain consent from other countries on treaty revisions based on complete equality.

Ōkuma was eager to distinguish himself as a leader of external affairs as opposed to Itō Hirobumi, who had rendered meritorious service in promulgating the Constitution, the most important preoccupation of Japanese leaders at that time. While the promulgation of the Constitution would work for convincing the West of Japan's qualification for a full international membership as a symbol of Japan's level of modernization, negotiations on treaty revision had to be "carried on in the face of Diet debates and questions and in the teeth of resistance from political parties which were anxious to test their new wings by explicating this emotive issue."[9]

Ōkuma modified Inoue's proposal on the revision by limiting the number of foreign judges to be invited to the Supreme Court (Daishin-in). The Japanese public, however, was still angry at the proposal to invite foreign judges to Japanese courts. The treaty revision had become such a sensitive issue for the anguished Japanese public as to invite violence against Ōkuma. Ōkuma lost one of his legs by a bomb attack on October 18, 1889. By this time foreign diplomats also became greatly preoccupied with the possible attack they might receive from the Japanese public. Pressures for the revision thus started to

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[9] Nish, *Japanese Foreign Policy*, 31.

come from many directions.

The Era of Aoki

The next foreign minister, Aoki Shūzō, negotiated a treaty with the idea of regaining complete legal and tariff rights within six years. He became foreign minister in 1889, a post that was taken over by Enomoto Takeaki in 1891, and he again assumed the post in November 1898. Aoki was known as a skilled diplomat, probably the most Europeanized of all, who became engaged in the most difficult talks with the Western powers during the whole negotiation process, when the real chance for success emerged. The Anglo-Japan Treaty on Commerce and Navigation (Aoki-Kimberley Treaty) concluded right before Japan entered into war with China in 1894, when Aoki was the Japanese Minister to Germany, is probably the biggest achievement of the shrewd Aoki diplomacy, renouncing extraterritoriality provisionally for the first time. Of great significance in the treaty was the fact that it became the basis for extracting similar treaties from other European countries, bringing a whole group of new treaties into force within five years after the British treaty was enforced. Japan concluded similar treaties with the United States in February 1895, France in August 1896, Germany in April 1895, and Russia in June 1895. These treaties promised to abrogate extraterritoriality by 1899.

Several conditions needed to be met for those treaties to be brought into force. For example, Japan had to complete modernization of its legal systems in time to demonstrate its "standard of civilization" to the Western powers.

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The civil code of 1893, which came into force in July, 1898, and the commercial code in July, 1899, paved the way for those treaties to take effect and for Japan to participate in many international conferences.

Aoki's role is said to have been especially significant in obtaining consent from Germany and Belgium to end the unequal treaties. As an experienced former minister to Germany, he tried to persuade the German government that Japan qualified to have the inequality lifted. When the Germans kept pointing out the inadequacy of Japan's laws and tariff proposals, Aoki went so far as to prepare a pamphlet defending Japan's standard in meeting requirements of a civilized legal system. He further made copies of the laws that Japan had newly introduced and delivered them to the German officials.[10] Proud of his achievement after his success in convincing the Germans, Aoki wrote to the then Foreign Minister Mutsu:

> Since I came here in February, I have had about fifty official and private conversations and have at long last clinched the talks and signed a satisfactory agreement... In the treaty... there may be a number of clauses which do not meet with the approval of Viscount Tani Kanjo and others but for the most part it is an understanding which is not inconvenient. Under it we can discard the insults we have suffered over the last thirty years and at once go enter the "Fellowship of Nations". Truly a matter for great congratulation. When we signed the treaty two days ago, Lord Kimberley (British Foreign Secretary) congratulated our cabinet and me, saying that "the importance of this treaty for Japan far outweighs the defeat of the great armies of China." From now on we must try to make our government and people act in accordance with "the Laws of Nations" and thereby cause civilization to flourish increasingly in our land. ...[It] would give rise to unbounded gratification at home and abroad and would certainly reap exceptional benefits for the future. Although there are some who do not approve of the treaty, you wanted to bring it to a positive conclusion and it has conferred a myriad of

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[10] Ibid., 47.

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gifts on our country.[11]

With these treaties taking effect, the long awaited end of extraterritoriality was finally achieved in August of 1899. It was indeed the fruit of thirty years' efforts on the part of Japanese leaders. At the same time, the most-favored-nation clauses in the treaties became reciprocal and unconditional. Although Japan did not acquire tariff autonomy at this time, the removal of unequal juridical treaties, needless to say, represented huge gains in substance and in prestige. The success in treaty negotiation in 1894 is said to have led to the Japanese decision to fight against China in the Sino-Japanese War at the final stage of decision-making. Victory in the war further won Japan a reputation as a qualified member of the international society.

Although Aoki's skill as a diplomat is widely acclaimed, another significant factor in Britain's allowing the reform was its fear of Russia, which was trying to expand into East Asia. Britain needed to approach Japan in order to counter Russia. Aoki's anti-Russian perception in fact blended well with the British suspicion toward Russia.

The Era of Mutsu

Mutsu Munemitsu is considered a representative of Japan's Realpolitik of the era, and also as one of the founding fathers of Japan's diplomacy, along with the previously mentioned Iwakura. He was in office from 1892 to 1896 and was also at the center of managing the crisis at the time

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[11] From Aoki to Mutsu. *Nihon Gaikō Monjo* 27/I, no.56 (July 19, 1894).

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of Sino-Japanese War. While he was in the United States, he served also as a minister to Mexico, signing the commercial treaty with Mexico, the first treaty that Japan concluded with the West on an equal basis. Signing of the Anglo-Japanese commercial treaty in July 1894 through the mediation of Aoki, who was then the Minister to Germany, was a true breakthrough and a major success for Mutsu as a foreign minister. It set the pattern for Japan's negotiations with the other powers and encouraged the others to clinch their own agreements, knowing that Britain with her large mercantile community was ready to contemplate the ending of extraterritorial jurisdiction.

Treaty reform had become a complex political game that involved numerous domestic and foreign interests. Mutsu had to negotiate the reform while dealing with the increasing domestic complaints about the unequal treaty. The government was often criticized for its easy-going attitude toward foreigners but a harsh one toward their own nationals (gaijū naikō). "As the treaty revision negotiations dragged on, it was vital for Mutsu to show that Japan was not being self-effacing towards the demands of other countries, was not giving too much away." [12] Mutsu firmly understood that complete reciprocity and mutual benefits need to be displayed in revising the treaty in order to satisfy the Japanese public. Apart from the sentiment of the public, Mutsu himself believed that what Japan had been requesting in the negotiations on the treaty revision was what Japan already deserved.

By this time the cost-and-gain calculation of treaty port merchants had

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[12] Nish, *Japanese Foreign Policy*, 29.

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started to change, too. They increasingly recognized that foreign settlements were not only inessential to expand the trade in Japan any more but also burdensome to maintain effectively. Above all the Japanese anti-sentiments toward them had become a serious preoccupation and fear. Many of them in fact felt that "if these extraterritorial rights continued in perpetuity, it might result in a revulsion among the Japanese which would result in the loss of a large market."[13] The Japanese leaders could effectively utilize the public anti-foreign sentiment in persuading the West. By frequently indicating the possibility of attack against the foreign diplomats, they were successful in inviting some changes in the attitudes of foreign powers during the process of treaty reform negotiations, making them more persuadable to the abrogation of extraterritoriality.

Mutsu's style was to continue to negotiate secretly overseas in order to prevent the debate leaking out to the domestic audience or to the treaty ports in Japan. He also utilized the competitions among the Western powers and negotiated with the powers individually, maintaining secrecy as much as possible. Although Western powers had tended to present a united front for maintaining extraterritorial jurisdiction helped by the most-favored-nation clause, Japan by this time could divide up the jealous powers and treat the problem individually, taking advantage, for example, of the Anglo-German rivalry. The Anglo-Russian rivalry also became an advantage where Japanese leaders could find its way out. Japanese leaders had learned some of the

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[13] Ibid., 30.

informal rules of the game of international politics.

The new draft treaty approved by the cabinet in July 1893 included a procedure to bring it into effect when the legal system was fully revised, and leading to the abolishment of consular jurisdiction and foreign settlements. The initial approaches were made to Germany and Britain, with Aoki in charge as the most experienced diplomat to handle the matter. In view of reluctant German attitudes, he entered into private negotiations with the British minister to Japan, Hugh Fraser (1889-1894). Meanwhile anti-foreign feelings over the treaty revision rose so high that Britain feared that the Japanese government might be forced to take strong measures over the revision problem. Further, the approaching crisis that was leading Japan to the Sino-Japanese war made the leaders hasten to conclude the treaty. The treaty was finally signed on July 16, 1894, consisting of three documents, including the lifting of extraterritoriality five years after its signature.

Sino-Japanese War and Japan's Appeal to the West

While negotiations with the West were becoming increasingly complicated games of balancing the external and domestic pressures, with each domain of policy influencing the other, East Asian international politics was in the process of immense structural change. Japan was to utilize the occasion of Sino-Japanese War to impress the West with its level of civilization, especially in observing the multilateral treaties it had concluded.

Japan became the first Asian country to join in the Treaty of Geneva

(Treaty of the Red Cross) in 1886 and the Paris Declaration in 1887, for example. The Treaty of Geneva included articles on the rules of humanitarian activities beyond national borders, prohibiting attack on them even during the war.[14] According to Takahashi Sakue, the signing of these treaties assured the Western powers of Japan's degree of civilization in the sense of being able to understand the importance of them. The Western powers, however, were not sure about Japan's capability to observe the treaties at the time of War. It was through Sino-Japanese War and Russo-Japanese War that Japan won their assurance and trust.

China and Japan declared war on August 1, 1894. One of the interpretations of the War is that it was a colonial war caused by Japanese imperialism, which resulted in the imperialist policy against Korea and China. Another interpretation is that Japan only needed to maintain Korea's neutrality for the purpose of its security and that China's insistence on its suzerainty was the cause of the problem. In the latter view, Japan's objective is taken as purely defensive with its interest in Korea as vital for its security. The leaders like Mutsu asserted that Korea's independence must be respected. In insisting on Korean independence, Japan stuck to the Tienjing Treaty of 1885, where Itō negotiated the terms of withdrawal from the Korean Peninsula with China, utilizing international law as guidance. [15]

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[14] Sano Tsunetami, who had established Hakuaisha (literally, "Philanthropic Organization"), made it into the Japan Red Cross, helping the injured during the Seinan War in 1877, the biggest civil war during the early Meiji.

[15] It had been decided by the Treaty that if there is a civil war in Korea, and if China or Japan needs to send troops, they exchange official letters and notify it to each other. When the turmoil subdues, both will withdraw.

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Apart from the debate on which side was to blame, Japan or China, the Sino-Japanese War can also be considered as a hegemonic war in East Asia in light of the contemporary dynamics of the international system, or as a big experiment between the worn-out order and the rising order in East Asia. More importantly, it was also the experiment of the Japanese "standard of civilization" to be tested by the West. The War proceeded in parallel with the treaty revision as a test for Japan's physical power as well as for its civilian power that would make it qualify as a member of an international society.

Up until the Sino-Japanese War, most of the Japanese studies on international law were focused on the import of Western concepts and practices through precise translation and meticulous study of it. Original Japanese writing on international law started to appear, however, around the time of Sino-Japanese War, especially on laws of war. Ariga Nagao's *Bankoku Senji Kōhō* [International Laws of War] in 1894 and Nakamura Shingo's *Kōwa Ruirei* [Cases of Peace Treaties] in 1895 are such examples.[16] The establishment of the Japanese Association for International Law and Diplomacy in 1897, ten years earlier than its US equivalent, American Association for International Law, can also be considered as an indication of Japan's keen interest in further development of the study on international law. At the time of its establishment, the Association mostly concentrated on the study of laws of war.

Japan was determined to fight with all its might, but only to the extent

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[16] Ariga Nagao, *Bankoku Senji Kōhō* [International Laws of War] (Tokyo: National Academy of Army, 1894); Nakamura Shingo, *Kōwa Ruirei* [Cases of Peace Treaties] (Tokyo: Tetsugaku Shoin, 1895).

that they could defend themselves against accusations of violating international law. It has already been mentioned that in military college, Japanese students spent a great amount of time learning international law. Before the War, Aoki is said to have" tried to educate British public opinion by using *The Times*, the *Daily Telegraph* and the *Daily Chronicle* to gain acceptance for Japan's activities"[17] Japan also made great efforts to record and make known its faithful adherence to international law in conducting the War. At the initial stage of the Sino-Japanese war, Prime Minister Ito ordered several international lawyers including Ariga Nagao, Takahashi Sakue, and Shinoda Harusaku, to accompany the military and write about the lawfulness of Japan's declaration of war and the conduct of its imperial army. In order to convince the European powers that the war was conducted lawfully by Japan, they needed to explain the war in the language of international law. Ariga in his *La guerre sino-japonaise au point de vue du droit international* [The Sino-Japanese War in Light of International Law] "faithfully"described the laws of war related to the ongoing war between China and Japan, and argued that Japan participated in the war lawfully, emphasizing the army's observance of all the major articles of international law.[18]

Not only did Ariga appeal to the West by displaying the lawfulness of the conduct of the Japanese Army but he also contrasted Japan's behavior with that of China as an "unlawful" behavior. Ariga mentioned that a critical

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[17] From Aoki to Mutsu, *Nihon Gaikō Monjo* (July 19, 1894).
[18] Ariga Nagao, *La guerre sino-japonaise au point de vue du droit international*. (Paris: A Pedone, 1896).

feature of the war between China and Japan was that one party (Japan) strictly followed international law while another (China) never observed any legal practice of war. Moreover, Ariga stated that Japan's unilateral observance in a case where mutual observance of international law was impossible truly showed the obligation for humankind that Japan was demonstrating.[19] In other words, he was trying to emphasize that Japan never sacrificed its faithful observance of law in pursuing its strategic gains and that the war between Japan and China set a precedence of wars between the "civilized" and the "uncivilized."[20]

Similarly, Takahashi Sakuye appealed to the international community by arguing that Japan always adhered to the international law in conducting the war and in protecting its interests. Relying on the international legal terms and logic, he also stated that the spirit of obeying law had been a characteristics of Japan since old times. In his *Cases on International Law during the Chino-Japanese War*, prefaced by T.E. Holland and introduced by John Westlake, both representing the authority of positive internal law, he wrote a section on "the law-abiding spirit of Japan in carrying on hostilities" in the introductory chapter. He stated that the spirit was embedded in Japan since ancient times.

> It must be confessed that this generosity is chiefly owed to European civilization, which was introduced thirty years ago, but in general it may be said that if the graft was from Europe, the stock was an ancient one, deep-rooted in Japan from the earliest times.[21]

Like Ariga, Takahashi also took the view that Sino-Japanese War was a

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[19] Ibid., ch.1.

[20] Fujita Hisakazu, "Nihon ni okeru Sensōhō Kenkyū no Ayumi [History of the Japanese War-time International Law]," *The Journal of International Law and Diplomacy* 96, nos.4 and 5 (1997).

[21] Takahashi Sakue, *International Law during the Chino-Japanese War* (Cambridge University press, 1899), 4.

war between the "civilized" Japan and the "uncivilized" China. [22] He

criticized China's not joining the Treaty of Geneva or the Paris Declaration and

its "barbarism" in conducting the war. He was on solid ground in stating this,

as the Japanese Red Cross helped one hundred thousand injured and sick people

during the Sino-Japanese War, including many Chinese, while being constantly

attacked by China, which had not joined the Treaty of Geneva. Their

dedication and efficiency was highly praised by the European powers,

contributing greatly to the reputation of Japan as a legitimate "civilized" country

qualified to join the European club of international society. [23]

T. E. Holland mentions Japan's faithful observance of international law

during the Sino-Japanese War, contrasting Japan to China. [24] Similarly,

Westlake mentions Japan's shaking itself free from the semi-civilized status, by

developing the same legal systems as European civilized nations.

> Japan presents a rare and interesting example of the passage of a state
> from the oriental to the European class. By virtue of treaties already
> concluded with the leading Christian states of Europe and America,
> she will shortly be freed from the institution of consular jurisdiction,
> and in her recent war with China she displayed both the disposition
> and in the main the ability to observe Western rules concerning war

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[22] His interpretation of Russo-Japanese War was different from that of Sino-Japanese War. He considered the former as a war between civilized states and named it "civilized war," defining it as a war fought for the purpose of the nation and the national development with the instruments of civilized war, which occurs due to the mutual exclusiveness of the national interests of each country. Japan understood that in such a war, unnecessary cruelty in treating war prisoners or people should be prohibited. Japan also regarded it as a war between countries and not between peoples. Japanese interpretation of "civilized war," therefore, basically is an adoption of the nineteenth-century European modern war.

[23] Gong notes that Japanese efforts conduct the 1894 Sino-Japanese War and the 1904 Russo-Japanese war according to the laws of war "won her the plaudits of Europe." While "the Boxer outrage against the comity of nations was... of sufficient gravity to make uncertain China's ability to uphold the standard of 'civilization'," it highlighted Japan's ability to contain such domestic turmoil, contrasting it with China. "In the eye of the West, the contrast was clear." Gong, *The Standard*. 28.

[24] T.E. Holland, *Studies in International Law* (Oxford: Clarendon Press, 1898), 112-4.

and neutrality.[25]

Further, Wheaton in his fourth edition of *Elements of International Law* in 1864 stated that Japan achieved a complete membership and status in the international society. In the section entitled "International status of non-Christian countries," he mentioned that Japan participated in important international conventions, including the 1866 Geneva convention and 1899 Hague Conference, that Japan fought a war against China according to "the highest standard of civilization," that Japan revised domestic civil code and criminal code "so that as of 1899 all persons of whatever nationality within the confines of Japan have been subject to the Japanese tribunals," that it abrogated the extraterritoriality by 1899, and that it became a British ally in 1902.[26] Other international lawyers such as Oppenheim and Phillimore are said to have recognized Japan's observance of international law and practices.[27]

The materials from the National Archive of Hague also record Japan's faithful observance of international law and respect for the international community. At the 1899 Hague conference, the agenda of which included pacific settlement of international disputes, laws and customs of land and naval warfare, etc., Japan was one of the few Asian countries that participated and voiced its opinion. According to the table that shows the ratification date of participating countries, Japan ratified all the conventions on October 6, 1900, about the same time as European states ratified. China and Turkey signed them

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[25] Takahashi, *Chino-Japanese War*, xvi; John Westlake, *Principles of International Law* (Cambridge: Cambridge University Press, 1894).
[26] Henry Wheaton, *Elements of International Law*. 4th ed. Beresford J. Atlay, ed.(London: Stevens & Sons, 1904).
[27] Gong, *The Standard*, 185-6.

but had not ratified them yet as of January 1904.[28]   While Asian participants

tend to be relatively quiet during the sessions, the record shows that Japan did

occasionally voice its views based on international law.   The Japanese

delegation, for example, stated their opinion on the wording of the draft of the

convention on the use of arms on June 30, 1899.[29]   Anand notes that among

the "five Asian countries [that] participated in the Hague Peace Conferences..."

"only Japan had an effective voice in international affairs."[30]

Further, Japan developed its good reputation as a faithful observant of

international rules and morality by inducing no plundering or looting at the time

of Boxer's Rebellion, when such acts were quite normal for any military, and by

carefully and strictly observing laws of war.   At the time of the Rebellion,

Britain, Germany, US, France, Italy, Austria, Japan and Russia sent troops.

While they were supposed to be troops of "justice" from the point of view of the

Christian countries, what they did after they entered Beijing was to rob and kill

on an unprecedented scale.   After the Powers occupied Beijing, each country

was in charge of a different city.   Only Japan's area is said to have had no

stealing or raping, making the Chinese return to the area and recover from the

disaster much earlier than the other areas.[31]

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[28] Ministerie van Buitenlandse Zaken: A-dossiers, 1815-1940, Bestanddeel:520. Nationaal Archief, Den Haag, The Netherlands.   I was able to examine the materials on the Hague Conference of 1899 by going through all the files 509-531 during my stay in the Netherlands from September 8-14, 2004.

[29] Bestanddeel: 529 shows Japanese delegate Motono, arguing for the protection of wounded soldiers on the basis of the 1864 Geneva Convention, which was taken to be discussed in the committee.   Ariga Nagao accompanied the delegate as an expert on international law.

[30] Anand, R.P. "Attitude of the Asian-African Countries toward Certain Problems of International law," *International Comparative Law Quarterly* 15 (1966): 60.

[31] While Japan received small share of indemnities of the Rebellion, its capability to suppress the uprising successfully in concert with the Western Powers won a reputation for qualified

Its extreme carefulness about adherence to international law and international morality indicated Japan's desperate need to amend the unequal treaties. These efforts as well as manipulation to imprint the West with Japan's observance of international law proved significant in promoting its status in the European-dominant international community, facilitating the abrogation of extraterritoriality in 1899. When Japan sent a letter to recommend that China surrender, it again demonstrated that it was following some values entailed in the international rule. It said: "In order to maintain independence we had to throw out the old system and change it to new order. China should do that too."

Due to the good international reputation that Japan obtained as a consequence of its painful efforts that extended over thirty years, however, the Triple Intervention by Russia, Germany and France turned out to be even more humiliating an experience than it might have been otherwise. When they demanded that Japan return the Liaodong Peninsula, Tokutomi Sohō said, "What it came down to was that sincerity or justice didn't amount to a thing if you weren't strong enough." "After conforming wholeheartedly to the spirit and letter of international law and diplomacy Japan seemed forced to conclude that, in the end, only force mattered in international relations."[32] The ending of the Sino-Japanese War, therefore, can also be considered a threshold to Japan's

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membership in the international society. Akagi, *Japan's Foreign Relations*. 186-90.

[32] Gong, *The Standard*, 196. Gong says that "no understanding of twentieth-century Japanese nationalism is possible without some comprehension of the bitterness and sense of humiliation that swept the country in the wake of the Triple Intervention."

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joining of the European colonial competition.[33]   And the bitterness and the humiliation was felt all the more because of the efforts that Japan had made in complying with Western standard of civilization, sometimes even sacrificing national pride.[34]   Japan's encounter with the West and the conformity with international law that it tried to demonstrate in the eyes of the West during the negotiations for the treaty revision, thus, can be understood as the seeds of Japanese diplomacy in the early twentieth century.

Conclusion

At the end of the nineteenth century Japan engaged in the most enthusiastic diplomatic activities in its history.   Although Japan's diplomatic skills were most abundant during this period, the ending of the unequal treaties was a slower process than is usually thought.   The final revision in fact was achieved after the long efforts of half a century.   One reason that it took much longer than expected was the concern of the treaty powers.   It was natural for them to want the extraterritoriality privileges to be maintained as long as possible to protect their lives and rights.   Even up to the late 1880's, therefore, many Westerners still felt that extraterritoriality was necessary.[35]   Officially, the treaties could have been revised as early as 1872, but it took thirty years of

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[33] Ibid., 196-7.

[34] Ibid., 197. Gong notes: "When the great powers began claiming ports in China in the same territory that they had prevented Japan from occupying, e.g. Weihaiwei, Port Authur, and Kiaochow, their blatant hypocrisy rubbed salt into old Japanese wounds."

[35] A letter written by a Westerner in *The Times* of 28 December 1889, for example, argued that "it is no exaggeration to say that the administration of justice, as understood by us, is wholly foreign to them, to their habits, their traditions, and their modes of thought." Gong, *The Standard*, 188.

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negotiation before the final abrogation. Japan's fast Westernization and rise to the status of great power is often exaggerated and obscures the struggles that Japan went through. Having examined the process of Japan's socialization into international society, it becomes clear that it was no miracle but only a consequence of realistic combination of what was available for Japan and what the leaders tried to achieve.

The pressures that Japan placed on itself in modernizing its domestic systems, especially after the Iwakura mission, propelled Japan's development, which was helped by the strong determination of the leaders. The above-mentioned statesmen like Inoue, Ōkuma, Aoki, and Mutsu found it politically necessary to create various institutions, such as civil and criminal codes, and a system of justice according to the European model. Ōkuma made a speech at the Diet while he was a Foreign Minister in December of 1897:

> Having devoted herself for years with ardour and diligence to national progress, and having come to enjoy the great friendship of the Powers of Europe and America, Japan, which for forty years past has been fettered with disadvantageous treaties, has now advanced to such a position that she, in conformity with international usage, is accorded the treatment of an equal. This is, in fact, the result of her own progress, and of England's consent, leading the rest of the world, to a revision of the existing treaties...[36]

As we have seen, Japan had grasped the gist of positivist international law with relative accuracy from the early period of its adoption. The positivism that Japan had learned since the 1860s was applied in rationalizing its foreign policy during the period of 1890s. Obvious in the writings of the

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[36] Speech by Ōkuma to the 11th Diet. Alfred Stead, ed. *Japan by Japanese: A Survey by Its Highest Authorities* (New York: Dodd, Mead, 1904): 219-21.

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Japanese international lawyers of this period is the constant drawing on the actual written laws as well as the application of those laws in actual practice. Japan's national behavior as a civilized state was thus displayed in a most convincing way to the eyes of the West, including Takahashi Sakue's adoption of the Harvard method of case system in his writing.[37]

Nish mentions that Japan was "unique among developing countries at the time in opening her country to foreigners without sacrificing her economy and her resources irretrievably. In persuading the world's powers to shed their privileges in her own territory, Japan was still able to enjoy privileges under her 'unequal treaties' with China and Korea." The multifaceted nature of Japan's foreign policy behavior during this period is the result of and indication of Japanese realism that the leaders employed in muddling through the hurdles to win an international status by convincing the West of treaty revision.

Japan found ways to utilize the international norm of the period, the standard of civilization, to convince the domestic public. While the rise of nationalism certainly made it difficult for the leaders to control the negotiation process as they thought was most efficient, and while nationalism became one of the major factors in prolonging the negotiations, it had positive effects, too. The leaders could utilize the pressures from domestic patriotism and emphasize the necessity of giving in to foreign demands in order to maintain Japanese independence. The Japanese leaders, in turn, utilized nationalism to convince the international community, too. They were able to make nationalism an

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[37] Takahashi Sakue, *Senji Kokusaihōri Senreiron* [Cases on War-time International Legal Theory] (1904).

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excuse for the need for early abrogation of extraterritoriality. Anti-foreign sentiments in fact were becoming a threat to foreigners living in Japan. Treaty port merchants were especially afraid of losing the big market because of the hatred against foreign goods. Here the cost and gain calculation of the great powers started to change, working favorably toward early abrogation.

In parallel with the treaty revision negotiations, Aoki repeatedly "called the attention of the British government to Korean affairs and tried to prevent it from leaning towards China."[38] He skillfully persuaded the Western powers of Japan's rights to occupy Korea by using the international logic and terms that would most appeal to them. He drew frequently on the Tienjing Treaty. Numerous letters and memoranda exchanged among Japanese officials reveal how well-equipped the Japanese foreign policy makers were with the Western sense of conducting international affairs. They often sounded like they had been part of the European international system for centuries. Afraid of the spirit of the Tienjing Treaty that might be violated, Mutsu even talked about "balance of power" between Japan and China as something to be maintained.

While the leaders negotiated the abrogation of extraterritoriality, they had to cope with and balance numerous factors that came into play: the increasing importance of public opinion concomitant with the establishment of the Diet, great power rivalry, power balance in East Asia, and incidents involving international law that highlight the salience of the issue. Two factors needed to be combined in order for Japan to convince the West of its

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[38] From Aoki to Mutsu, *Nihon Gaikō Monjo* (July 19, 1894).

qualification for a full membership in international society: First, Japan needed to actually meet the standard; Second, Japan needed to persuade the West that it met the standard. They made sure that no violation of international law occurred in its conduct of foreign policy and that they actually sought to support the Western norm as in the case of the Red Cross and Japan's treatment of war prisoners. The leaders of early Meiji skillfully and effectively appealed for the recognition of what they achieved.

This is the striking difference from their counterparts of thirty years after the end of the period, who tended to rely on spiritualism and blind loyalism in directing Japan's national course. The Meiji leaders' realism led to their nonideological assessment of Japan's status in the power configuration of international politics and their readiness to act on expediency. For the purpose of their national objective, they flexibly modified the legal system, created the Diet, and so forth, according to what was required by the European "standard of civilization."

PART 3. ANALYSIS AND CONCLUSION

CHAPTER VII

ANALYSIS:
SOCIALIZATION AND INSTITUTIONALIZATION DYNAMICS

This chapter aims at extracting several essential features of Japan's socialization into the international society from the previous case studies and to frame Japan's socialization process in the larger institutional dynamics of the international system. Japan's entry brought unintended consequences to Japan itself and to the international system. After discussing some factors of its compliance with the international society in the first part of the chapter, I will discuss in the latter part the relations between Japan's socialization as a newcomer and the change that it brought to the international system itself in the latter part.

Factors of Compliance

Japan had often been identified as a prize pupil of modernization and Westernization in the conventional wisdom on its engagement in the European international society. The case studies on Japan's conformance with the norms of international law and the "standard of civilization" in the previous three chapters reveal, however, several features of its socialization that stand in

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opposition to the conventional view or that have tended to be neglected in that view.

Existence of Functional Equivalents

During the late nineteenth century, entrance into international society was closely tied to the degree of domestic development and to meeting the standard of "civilized" Europe. The question of entrance, therefore, lay at the intersection of international politics and state-building. IR specialists are used to the idea of a "European vs. non-European" divide, and often find it uncomfortable to locate an entity that does not fit into the divide, compared with comparative political scientists and historians. It is often the case, however, that non-European powers were possessed with domestic institutions that could be easily translated into Western equivalents.

As we have seen in the case studies, Japan was more physically prepared to meet the Western challenge than had been conventionally believed. This feature of Japan's socialization has not drawn the attention of IR scholars that is due, although Japanologists in other disciplines have recognized it for quite a while.[1] Historians nowadays take it as common knowledge that Japan's modernization had started much earlier than 1853 and that the level of economic and social development in Japan at the time of the first encounters with the West far outreached other non-Western countries. Japan's modernization, in other words, was a slow process, while its Westernization was a rapid one.

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[1] Amino, *Nihon no Rekishi wo Yominaosu*, for example.

Japan possessed many modern institutions equivalent of those of the West when the West first arrived. The existence of domestic institutions functionally consistent with accepted practices of international society entail lower transaction costs than those that conflict with them. A country's degree of centralization, educational level, and sources and nature of authority (military or civil, single or dual) before modern state building, for example, may affect the degree of adoption of Western state-apparatuses such as a military bureaucracy, a tax system, nationalism and an educational system. In the case of Japan, cultural and religious homogeneity, a high level of education, skilled workers, a wide network of economic exchanges, the accurate knowledge of the outside world, and relatively large population had already characterized the society at the time of Western arrival. Tokyo, which was then called Edo, had become the largest city in the world by the late seventeenth century. Japanese literacy rates in the first half of the nineteenth century also compared favorably with those of Western countries.[2]

The autobiography of Fukuzawa Yukichi, an educator during the early Meiji and founder of Keiō University as well as a strong advocate of enlightenment and Westernization, contains numerous vivid descriptions of the excitement that the Japanese leaders felt during their stay in the United States, the first Western country that they had ever seen. He mentions, however, how bored the Japanese delegation was when the factory manager in San Francisco tried to explain the mechanisms of some factory equipment and the principles of

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[2] See, for example, Fairbank, Reischaur, and Craig, *East Asia*, 185.

plating or boiling water. "We all knew about them, but they were so proud to be teaching us something they thought we didn't know," he writes.[3] Fukuzawa records that the Japanese delegation was more impressed with the social custom, life style, wealth, social principles, and concepts of "right" and "democracy" than the level of Western science and technology.[4] The level of technological advancement in Japan can also be surmised by the fact that they made their own ships only a couple of years after they first saw the American fleet in 1853. Fukuzawa in fact visited the United States on board of the first Japanese ship that crossed the Pacific, Kanrinmaru.

Economically, while the domain system was based on heavily over-taxed agricultural production, other sectors that were undertaxed had been allowed to grow more freely.

> The wholesale merchants and entrepreneurs of the big cities prospered enormously in the seventeenth century.... By the nineteenth century the Japanese probably had the most advanced and thoroughly monetized economy in Asia and were well prepared for further economic development. They had, therefore, little trouble understanding and adopting the commercial and industrial patterns of the West—and there again they had a running start at modernization.[5]

As we have seen in Chapter I, the validity of applying traditional concepts such as "modern" era and "feudalism" to the Japanese context is often called into question by revisionist Japanese historians. Considering Meiji as a watershed between feudalism and modernity in Japanese history has increasingly become a minority view. Bito, for example, views the sixteenth

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[3] Fukuzawa, Yukichi, *Fukuō Jiden* [Autobiography of Fukuzawa Yukichi] (Tokyo: Iwanami, 1978),116-7. Translated by the author. He writes that the delegation was totally at a loss when they saw no American caring much about who the descendents of President Washington are.
[4] Ibid.,110-122.
[5] Fairbank, Reischaur, and Craig, *East Asia,* 189-191.

century as the key historical juncture at which the modern territorial entity of Japan emerged.[6] Economic historians in particular emphasize the continuity between the pre- and post- Meiji Restoration periods and argue that contemporary market-oriented society has its origins in the Tokugawa era.[7] We have also seen that Amino argues that Japan's modernization started during the fourteenth-century Muromachi Era.

The existence of the imperial institution in Japan also played a significant role in facilitating modernization. According to Steinmo and Thelen, one of the situations where institutional dynamism is observed is when "previously latent institutions suddenly become salient, with implications for political outcomes."[8] The Japanese imperial institution, which had been obscured for centuries, can be considered as such a latent institution that suddenly became available and was highlighted as an alternative political authority with the crisis brought about with the arrival of the West. Japan could justify and utilize the imperial institution by restoring it and dignifying it to a symbolic venerability as a native institution easily accepted by the public. Pro-imperial sentiment, which had existed long before Perry came, was activated as the modernization process started.

The domestic institutions conducive to national development were not limited to tangible ones. Intangible resources that might be called "social capital" facilitated the modernization process as well. A sense of

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[6] M. Bito, *Edo Jidai to wa Nanika* [What is Edo Period?] (Tokyo:Iwanami, 1992).
[7] A. Hayami and M. Miyamoto, *Nihon Keizai Shi* [Japanese Economic History] (Tokyo:Iwanami, 1988). Vol.1("Keizai Shakai no Seiritsu [The Establishment of Economic Society]."
[8] Steinmo and Thelen, *Structuring Politics*. 16-17.

responsibility for the society and for the state that was widely shared in Japan perhaps at least partially was due to the samurai (soldiers) ethics of devoting oneself to the public good, thus enabling the country to act together effectively for the national purpose.[9] Coordinated actions were facilitated by the existence of trustworthiness and social networks accompanied by a sense of obligation for the country. The social capital arguments used to explain economic performance, the level of democracy, or effective government can be applied to explaining a country's socialization and nation-building. A country's social capital can be translated into its foreign policy behavior, too. Countries with social capital would demonstrate a greater sense of obligation and cooperation for the provision of international public goods and are more sensitive to expectations by other countries. They are thus led to show greater compliance with international norms.[10]

Congruence in mechanism between the international and domestic institutions enabled the country to make the existing domestic institutions, both physical and human/social, conform to the international necessity. The domestic institutions culturally different from the West but equivalent in institutional mechanism can be called "functional equivalents," which could be recreated, reorganized, and modified so they would fit into the Western mold.[11]

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[9] For the social capital argument, see, for example, James Coleman, *Foundation of Social Theory* (Cambridge: Belknap Press of Harvard University Press, 1990); Robert D. Putnam, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton: Princeton University Press, 1993); Francis Fukuyama, *Trust: The Social Virtues and Creation of Prosperity* (New York: Free Press, 1995). I am aware of the danger of nonfalsifiability similar to the cultural explanation plagued by social capital arguments.

[10] Ibid.

[11] In this sense the arguments here do entail the same danger of logical lapses as cultural

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Noting the importance of domestic infrastructures that had already existed in Japan before the West's arrival, Kohno argues that Japan was already "sovereign" when the West arrived.[12] Drawing on the Namamugi Incident of 1862, he emphasizes the fact that Japan was already capable of cross-border movements and of exercising public authority, and that Western countries treated Japan as sovereign. He sheds light on how to treat Japan's debated international status during the nineteenth century, which had been overlooked in the stereotypical divide between civilized vs. uncivilized, modern vs. savage, and European vs. non-European.

One needs to note, however, that the existence of "functional equivalents" alone does not constitute a sufficient condition for the ultimate objective of obtaining membership in international society. Japan's repletion with the "functional equivalents" was rather one of the necessary conditions for Japan to be allowed membership. Sovereignty is a relational concept; it needs to be expressed not only domestically but also externally. Sovereign statehood needed to be achieved through international recognition by the members that constituted the international society. The biggest challenge for Japan as a prospective member of the society was this external dimension of sovereignty, which Kohno did not treat in his illuminating essay. Through treaty

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explanations. The essay does not aim at identifying the origin of those "functional equivalents."

[12] He uses the term "functional attributes" and defines them as varying "depending upon the nature of the environment that surrounds" them. "The defining characteristics... must be identified at the core of the entity/concept and must transcend such contextual variations." They include a professional bureaucracy, a standing army, a monopoly of coercive resources, an unitary judicial system and powers of taxation. Kohno Masaru, "On the Meiji Restoration: Japan's Search for Sovereignty?" *International Relations of the Asia-Pacific* 1(2001): 271.

negotiations and appeals to the West, Japan started to become vigorously engaged in the external dimension of sovereignty.

Expediency and Manipulations

The second feature that had often been misunderstood about Japan's socialization is that Japanese leaders acted more on the basis of self-interest than had conventionally been believed in manipulating and maneuvering the course of their country's affairs in achieving the international status. The leaders respected international law overall but never put too much confidence in it. Except for the early period of encounters with the West, most of the Japanese leaders had rather skeptical view of international law and knew that international law was Janus-faced: it could be the shield of the weak, facilitating reciprocity and protecting equality among nations; it could also be the instrument of the strong to dominate the weak as revealed in the speech made by Bismarck during the Iwakura mission. Japan's adoption of Western norms, therefore, was more realistic and instrumental than has been conventionally believed. One should also note that a country's socialization and compliance with international law cannot be explained in a strictly dichotomous terms between acceptance and rejection.[13]

At the early stage of encounters with the West, there was a practical need for Japan to convince the public of the necessity to increase national power by unifying the country, especially in order to cope with the domestic turmoil

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[13] Amitav Acharya, "How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism," *International Organization* 58 (Spring 2004): 241.

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that the country had been experiencing since the eighteenth century.[14]   The

need to open up the nation could be used as a way of solving domestic problems.

Lifting of unequal treaties was also an economic must for Japan, which needed

to expand trade and enrich the nation, as well as a symbolic necessity to be

recognized as one of the great powers in the European club.   Anti-foreign

attitudes during the early period needed to be transformed into energy for

creating a new modern nation by revising unequal treaties and obtaining the

deserved international status.   Nish mentions that Japan actually utilized the

foreign threat by exaggerating it.

> Looking back, it would appear that Japanese leaders greatly
> exaggerated the threat which was posed by the foreign powers.
> Indeed, this threat became something of a national neurosis.   But it
> was a valuable neurosis for a new nation-state which kept the need for
> national defence very much before the people and urged on them the
> necessary sacrifices.[15]

He also notes that

> [analyzing] Japan's situation in the 1870's, it is probable that she was
> isolated enough to prevent any invasion by a Western Power and
> strong enough to defend her own coasts.   To be sure, Western
> countries by their 'unequal treaties' were an obstacle to her national
> development but not to her national independence.[16]

In other words, room existed for Japan to discuss and choose the course

for the country: the choices were to open up the country, to end the bakufu; to

unite the country under an emperor; to modernize by vigorously adopting

Western technology; to engage in domestic political reforms, and to later join

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[14] Major domestic turmoil included the rebellion led by Ōshio Heihachirō to save the poor in
1837.   Peasants' uprisings had occurred in 1733, 1783, 1784, 1787, and 1836.   Other revolts
and riots due to inflation, crop failure, and famine occurred in 1652, 1712, 1723, 1754, 1764,
1781, 1793, and 1825.
[15] Nish, *Japanese Foreign Policy*. 3-4.
[16] Ibid.

the Western powers in colonial conquests. The choices were available because the Western threat was not serious enough to make national survival the sole question; therefore, not all of the nation's energy needed to be consumed for survival. With the premise that Japan's national independence and survival was not threatened, it could engage in national development and in achieving the international status in the European club of great powers. These factors, too, can also be seen as necessary conditions for Japan's rapid socialization into the international system.

We have seen that in concluding treaties with Korea and China, Japan consciously used English and "the term 'law of nations' as a guiding referent in response to various points of contention"[17] in negotiation. Demonstrating its compliance with international law, including the technicalities of language use, Japanese diplomats were also able to change and reorganize the power relations in East Asia, which were traditionally centered around China. Japan gradually came to aspire to become a leader of East Asia. The positivism as the gist of international law that Japan had grasped since the 1860s was applied for rationalizing its foreign policy during the period since 1870s.

Iriye Akira emphasizes the traditional Sinic notions of world order embedded in the mind of Japanese leaders and the importance of Chinese learning as a prerequisite for leaders. Referring to the backwardness of the thinking of the Japanese leaders, he claims that the leaders in fact relied on

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[17] Dudden, "Japan's Engagement." 178-80.

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Chinese translation of the treaties.[18]   Based on the documentation of Japanese

foreign affairs at the Foreign Record Office and the materials on the

international conferences that Japan participated in since the late nineteenth

century, my findings show, however, exceptional capabilities in Western

languages and Western legal knowledge of the Meiji political leaders that are

probably comparable to the most able of foreign officers of today.[19]

The leaders increasingly had to deal with rising nationalism and the

sentiment against the unequal treaties.   Particularly with the promulgation of

the Constitution, from around 1880, the treaty revision problem became a

precarious game where complex domestic and international factors intertwined.

As we have seen in Chapter VI, the leaders utilized domestic politics to pressure

the West, while utilizing the foreign pressure to convince the domestic audience

of the need to pursue modern nation building.   In order to avoid being swayed

by domestic opinions, they negotiated in foreign capitals.   They also utilized

the competition among the Western powers,[20] negotiating with each country

separately.

In the 1890s, several Japanese scholars appointed by the government

produced works that tried to rationalize Japan's conduct of foreign relations

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[18] Iriye Akira, *China and Japan in the Global Setting* (Cambridge: Harvard University Press, 1992), 30.

[19] Since the end of the Edo period, many leaders made great efforts to learn Western languages at schools called "juku," starting with Dutch and gradually shifting to English.   Teki-juku of Professor Ogata Kōan in Ōsaka was one of the most famous "juku"s that produced many important figures during the early Meiji, including Fukuzawa Yukichi mentioned above, and Ōmura Masujirō (then Murata Zōroku).   Ōmura is said to have walked for at least 30 kilometers from Tokyo to Yokohama everyday just in order to receive English lessons from a foreigner.

[20] Britain, for example, was afraid of Russia's increasing interest in Asia.   In order to counter Russian greed, Britain wanted to maintain good relations with Japan.   Lingering behind, therefore, was Britain's anti-Russia policy due to its tangible interests in Korea.

from the perspectives of international law. Obvious in the work of those international lawyers such as Ariga and Takahashi was the constant reliance on the actual written laws, as well as the proof from seeing those laws in actual practice. They displayed Japan's national behavior as that of a civilized state in a most convincing and appealing way in the eyes of the West. The manipulations of Japanese leaders in dealing with domestic politics as well as foreign relations were based on their clear sense of direction to which they want to lead their country.

It had been a common understanding that when the gap between the European and non-European standards needed to be bridged, it was bridged by the imposition of the former on the latter, since the latter was viewed as uncivilized. As many recent studies on colonialism and European expansion have revealed, a monolithic view of European imposition of their norms should be rejected. The European standards were in fact digested, recreated, adapted, and transformed into something that newcomer states could eventually utilize as a tool to enhance their national interests. More active learning and more choices have been observed on the part of non-Western countries in meeting with the Western "standard." Learning and choices took on many different aspects: calculation, self-interest, and rationalization accompanied the compliance processes. As Japan's case indicates, latecomers probably often "use" the existing international norm to direct their transition from novices to fully sovereign states and do not remain recipients of prevalent norms.

In the recent literature on norm dynamics, it is often noted that local

agents often promote norm diffusion and do not remain passive targets of it. Local agents not only reconstruct the prevalent norms but also try to build congruence between the norm and their domestic logic. Due to the existence of room for choices and manipulations on the part of the newcomers, congruence building between the domestic and international logic becomes a major task of political leaders in complying with the Western norms. How they make the two compatible in fact becomes the key to socialization. The role of leaders is important especially because "new norms never enter a normative vacuum but instead emerge in a highly contested normative space where they must compete with other norms and perceptions of interest."[21] How leaders cope with "normative contestation" becomes crucial to acceptance of the prevalent norms. They calculate the cost of inappropriate action and balance it against the benefit of compliance. Their maneuvering and manipulation become salient here.[22]

> [Norm] entrepreneurs ...seek to change the utility functions of other players to reflect some new normative commitment... Actors may face varied and conflicting rules and norms all making claims for different courses of action. Indeed, most significant political choices are significant and difficult precisely because they involve two or more conflicting claims for action on a decision maker. Actors must choose which rules or norms to follow and which obligations to meet at the expense of others in a given situation, and doing so may involve sophisticated reasoning processes.[23]

As the case studies have shown, Japanese leaders engaged in active borrowing,

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[21] Ibid; Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no.4, (Autumn 1998): 897. Finnemore and Sikkink use the term "norm entrepreneurs" in describing the agents who diffuse norms.

[22] The importance of leaders' role in conformance with international norms has been noted by several scholars who are concerned with states' compliant behavior. Ikenberry and Kupchan, for example, mention that "elite receptivity" is essential to the socialization process and for norms to have impact on state behavior. Ikenberry and Kupchan, "Socialization and Hegemonic Power," 284.

[23] Finnemore and Sikkink, "International Norm Dynamics." 914.

modification of domestic institutions, and congruence building, while using international norms to strengthen their position domestically. Their role was to reconcile and coordinate the competing norms to create logical consistency between the international and the domestic.

Systemic Constraints

While the calculations and strategies of political leaders are of central importance in explaining the socialization of Japan, the systemic imperative of the nineteenth-century international society also needs to be emphasized. Few studies have analyzed the constraints that Japan received from the norm of the international society in a systematic manner. This is the third feature of Japan's socialization that has tended to be ignored due to the nature of prevailing historical studies with their focus on the agents. The rational-choice approach in political science is also an agent-driven one and is viewed as the opposite of the structure-dominant approach. While the utility maximizing logic that underlies the rational choice approaches had been contrasted against what social constructivists call "the logic of appropriateness, in which actors internalize roles and rules as scripts to which they conform,"[24] with the former characterized by individualism and instrumentalism and the latter by notions of obligations and responsibilities, the rational choices by the actors and the norms that constrain actors are in fact inextricably related. As individual choices are always made in a given social environment, the behavioral logic itself cannot be

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[24] Finnemore and Sikkink, "International Norm Dynamics." 913.

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discussed in any meaningful way nor explained fully without mentioning the social structure where the agent is placed.[25] Shared norms, expectations, and beliefs about "appropriate behavior" can be the basis for acting rationally and for promoting national interest. Although rationality and norms are often counterposed in IR,

> The utilities of actors could be specified as social or ideational as easily as they can be material. One could model rational choice as producing social knowledge as easily as one could model social context as a background for rational choice, depending on the empirical question being researched...There are lots of possible reasons to conform to a norm, and scholars disagree about the motivations they impute to actors in their analyses.[26]

Rational choice and norms, thus, can be tied in many different ways. Actors may make rational choice among contesting norms or "appropriate behaviors"; they may aim at constructing new appropriate norms by rational choice. Finnemore and Sikkink, therefore, argues that the processes of actors' choice in complying with norms

> involve a different kind of reasoning than that of utility maximization. Actors may ask themselves, "What kind of situation is this?" and "What am I supposed to do now? Rather than "How do I get what I want?" Actors often must choose between very different duties, obligations, rights, and responsibilities with huge social consequences, but understanding the choice depends on an understanding, not of utility maximization, but of social norms and rule that structure that choice.[27]

Japan's socialization proceeded at two levels of international life. First, Japanese leaders needed to learn the general structural norm of the international system whose ordering principle was "anarchy" based on sovereign equality.

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[25] Ibid., 888.
[26] Ibid., 911-2.
[27] Ibid., 914.

States' behavior is molded and constrained in accordance with the imperatives of international structures. As Tilly's famous thesis goes, Japan as a latecomer faced more systemic constraints than the early members of the West in international society. [28] Japan, however, not only had to learn the general principle of international life that transcends time, but also needed to learn the historically contingent Euro-dominant norm of the nineteenth century. It had to conform to the positivist norm of international law, which all the other non-European countries came to conform to during this era. In this sense, history matters. It is essential to pay attention to the historical constraints of the norms of the nineteenth century in explaining the features of its entrance into the international society. [29]

Japan's entrance took place under nineteenth-century positivism. Under positivist international law, the "standard of civilization" emerged as the Christian international society of the sixteenth and the seventeenth centuries declined and was replaced by a more secular one. Legal positivism was based on the distinction between civilized states and non-civilized states. "Its foundation was the teleological view that it was the world's destiny to become civilized and that those who promoted civilization had more rights than those who were not interested in it."[30] As international law was to be applied only to the civilized sovereign states in the European sense, the empowered European

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[28] Tilly, "Reflections on the History."
[29] Anghie categorizes several forms of socialization with the Western international society under the positivist constraints: becoming a colony; concluding unequal treaties (under the legal positivism, it was legal to use coercive means to compel other countries to conclude treaties that were mutually binding); meeting the standard of civilization and join the European club. Anghie, "Finding the Peripheries." 20-28.
[30] Fisch, "The Role of International Law." 13.

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states needed to determine the conditions for admitting non-European political entities to the membership of the international community that they themselves formed.   Increase of national power and conformity to European norms and conventions became objectives of non-European countries that tried to enter the European club of nations.

The "standard of civilization" involved all aspects of domestic and international life: (1) norms of liberal European civilization: guaranteed basic rights and respect for life, liberty, dignity of the individual, property, freedom of travel, commerce, and religion; (2) effective political organization: an organized, honest, efficient political bureaucracy and the ability to defend itself against external aggression; (3) domestic and international legal regimes: internal and external law systems, including maintenance of independent domestic courts, publicized civil and criminal codes that guaranteed legal justice for native and foreign nationals within the jurisdiction, and a constitution; (4) the ability to engage in diplomatic intercourse and communication: participation at international conferences, adherence to international law; (5) abstention from practices such as polygamy, slavery, suttee, and conformity to Western habits and customs of clothes and diet; (6) external boundaries or demarcation lines which separate those within from the excluded outsiders.[31]   The standard needed to be exercised both domestically and externally, materialistically and normatively, in positive and negative senses, explicitly and implicitly.

Some of the criteria for the "standard" could be recognized more

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[31] Gong, *The Standard.* 14-21.

objectively than others. Unspoken assumptions, however, were often also an integral part of the standard. In such a situation, great powers often recognized the qualification of newcomers according to "the powerful and unpredictable expedience of competition for colonies."

> The ambivalent status of the non-European entity, outside the scope of the law and yet within it, lacking in international personality and yet necessarily possessing it, was never satisfactorily defined or resolved.[32]

Discretion on the part of the European powers was the biggest hurdle that Japan and other non-European powers faced in the process of socialization. Newcomers sometimes need to meet even higher standards than those of the dominant powers in order to convince them of their qualification for a membership. Japan's unusual carefulness that never allowed any conduct that might go against international law demonstrates this fact.

Above all, the political implication of the positivist turn to international law was significant. The positivist turn rationalized the use of force against non-European countries and justified the ability and the employment of military force. The standard of civilization was in many ways tested by how much "might" a country possessed. Materialistic power, both economic and military, came to be a measurement of a country's success in meeting the European standard of the family of nations. "Might" indeed became "right."

> The nineteenth-century shift toward positive law and the tendency to describe civilized rights on threat basis gave a new name to an old practice---the willingness to use military force when basic rights, as defined by European conceptions of international law, were perceived

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[32] Anghie, "Finding the Peripheries." 26-7. Anghie cites Oppenheim's argument that "European states interacted with non-European states on the basis of discretion, and not International Law. The matter is resolved not in accordance with these detailed and elaborate principles, but rather on an almost completely ad hoc basis."

to have been denied....What changed was not so much the European willingness to use force to impose a standard of civilization as the European ability to do so. Increasing use of European military force against non-European countries coincided with increasing availability of superior European fire-power.[33]

The West demanded that Japan demonstrate national power as a legitimate member of the international society of great powers. Material power including economic and military power became synonymous with European civilization and also the indicator of meeting the European standard. The military became the most significant expression of the capacity and the will of one country and a nation. This explains Japan's rapid armament as well as concentration on the learning of the laws of war in adopting the Western international law, and its eventual participation in the colonial competition with other Western powers. It was under this positivist pressure of the nineteenth-century international norm that Japan braced itself against the possible invasion by the West and prepared itself for equal membership in the international society.

Historical case studies have often blinded us to systemic forces that operate at the global level. To see the whole picture of the Japanese process of socialization and entry into international society, we need to frame the historical case studies in the international structure that embodies the power configuration and the nature of international relations of the nineteenth century and to consider the systemic imperative entailed. Japan's physical preparedness and willingness needed to be vectored toward the Western sense of modernization

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[33] Ibid., 43.

and compliance with international norms.

The Institutional Dynamics and the International System

How can we place Japan's entrance on the map of institutional evolution of the international system? In order to identify the dynamic relations between systemic constraints and the behavior of latecomer actors, I will first examine what it meant for Japan to enter the international society during this particular stage of history, and, second, what Japan's entry meant for the international system.

The Meaning of Entry into International Society for Japan

Japan's socialization with international society brought with it several consequences, both positive and negative, for the future course of Japan. Under the positivist international law, Japan received an incentive for modern nation-building, as entry into international society and nation-building were necessarily simultaneous processes in the late nineteenth century. With all the unjust, unequal treatment that Japan had endured during the negotiation process of the unequal treaties, and with all the insults, frustrations and resentment it bore in order to be admitted to the European club, it was now endowed with opportunities for creating modern statehood. At no time in history were the incentives for crafting sovereign statehood stronger than during the late nineteenth century. It is only under the strong pressure from the Eurocentric "standard of civilization" that Japanese "functional equivalents" were remolded

and recreated so they would fit the Western mold.

Becoming a member of the European club during the nineteenth century itself meant becoming a modern, "civilized" state. International recognition meant having achieved a certain level of national development that accorded with that of the West. The positivist norm, therefore, facilitated Japan's national development and achievement of the international status. Compared with the long, brutal process of European state-building, or with that of today's third world countries, which can easily enter the international society but tend to face enormous difficulties of effective state-building in the absence of the external incentive, Japan's entry and national development at least on the surface seems to have been achieved relatively efficiently and peacefully.[34]

A country's nation-building is thus historically contingent. The international norms of different historical periods define the problematique of statehood. How to respond to the historical contingency depends, as we have seen in the case studies, on the attributes of a country, including the physical preparedness for nation-building and leaders' capacity to build congruence between domestic logic, as well as on the systemic imperative of the international system.

Today's nation-building encounters a problematique quite different from the one of the nineteenth century; states that do not have de facto control and jurisdiction or states that do not even meet such basic international norm as

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[34] Barrington-Moore points out a negative side of the story, identifying Japan's militarism and the consequent policy failure with something that inevitably occurred as a consequence of top-led nation-building. Moore, *Social Origins,* chapter 4.

human rights are allowed to survive. The death rates of states today have dramatically declined with the prevalent norm of the right to self-determination, non-aggression, and de jure equality of sovereignty. No single "standard" exists for countries to conform to in obtaining membership in international society. Heterogeneity in the level of civilization, development, and in national strength is preserved on entering the international society. Statehood requires only defined territory and international recognition today.[35]

This change in the nature of statehood brought serious consequences to nation-building. Prospective newcomers to the international society today do not receive as many motivations for effective nation-building as the newcomers in the previous periods did. While effective nation-building and socialization with the international society were simultaneous processes during the nineteenth century, nation-building has become irrelevant to the obtaining of membership in the international society.[36]

Westernization was something that involved alterations in all aspects of the Japanese life style. When Iwakura Mission was sent to the United States, the President told the Japanese delegation that the Western custom dictated Western-styled dress and hairstyle. From today's standpoint it is difficult to imagine how the delegation could tolerate such a dictate, which would go against the mutual respect and could probably be taken as humiliation. Iwakura himself had his topknot (chonmage) cut off during the Mission after the

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[35] Jackson, *Quasi-states*; Ayoob, "The Third World Security Predicament."
[36] Ibid.

U.S. newspaper criticized his "adherence to the Japanese style."[37]   This type of dictate was possible only under the dominant nineteenth-century international norm.   This does not mean, however, that socialization under positivism required changing cultural identity of the country.

One important feature of Japan's entry was that Japan achieved modern statehood without changing its cultural fabric.   The above mentioned change in hairstyle and life style rather belongs to behavioral compliance; it is instrumental and practical.   While the criticism is often made that Japan's modernization is a superficial adoption of Western norms, few countries ever truly "internalize" norms of others in the course of compliance.   It is also doubtful whether internalization is necessary for effective compliance with international norms.   Although various degrees and levels of adaptation occur during the process of state socialization, complete acceptance and internalization of international norms as something legitimate rarely occurs; nor is it necessary in order to coexist with other members of international society. Behavioral compliance rather than internalization is what characterized Japan's entry into international society and perhaps the entry of other newcomer states as well.   In his critique of Kai Alderson's theory of state socialization, Cameron G. Thies makes this point clear:

> ...[No] matter how hard members try, novices do not internalize norms, rather they simply alter their behaviour to avoid sanctions....It will often be the case that states do not alter their identities, interests, or behaviour as a result of internalizing the norms promulgated by other

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[37] Cutting the topknot off in fact caused a tremendous social upheaval domestically.   Many wives divorced their husbands due to the shock that they received with their changed hairstyle. "Danpatsu rikon (divorce due to the cut topknot)" became a social phenomenon during the early Meiji.

member states in the international system. Sometimes they alter their behaviour for strategic reasons, or they may simply adapt in order to avoid negative consequences... Placing socialization and rational action at opposite ends of a continuum is not theoretically justified, nor is it necessarily empirically accurate.[38]

Japan's Entry and the Institutionalization of the International System

It is difficult to be very precise about the effects of Japan's entrance on international society. One can speculate, however, about some impacts that it brought to the community of states.

First, Japan's entrance reaffirmed the European dominance of international society, contributing to further "autonomy" and "coherence" of the international system of the nineteenth century as an institution, whose "adaptability" was to be tested in the new environmental challenges. As was discussed briefly in Chapter III, the positivist turn of international law affected the development of particular international norms of the nineteenth century. One of them was the emergence of the Eurocentric concept of "standard of civilization," a development that enhanced the integrity and legitimacy of the European state system. While the expansion of the originally European international society may have looked like an open process, where newcomer states gradually became accepted as a member, it also led to reinforcement of the European standards that newcomer states came to comply with. European dominance was not only maintained but also in a way enhanced by the entrance of newcomers. Anghie mentions that the recognition of non-European states as

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[38] Cameron G. Thies, "Sense and sensibility in the study of state socialization: a reply to Kai Alderson," *Review of International Studies* 29 (2003): 547-548.

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sovereign

> was not merely, or even primarily, concerned with ascertaining or establishing the legal status of the entity under scrutiny; rather it was about affirming the power of the European states to claim sovereignty, to reinforce their authority to make such determinations, and consequently, to make sovereignty a possession that they could then proceed to dispense, deny, create, or grant partially...Recognition does not so much resolve the problem of determining the status of unknown entities as obscure the history of the process by which this decision-making framework came into being.[39]

Similarly, Gong describes Japan's conforming behavior as a turning point where the European standard was reaffirmed.

> When Japan gained recognition as a civilized power by adhering to it, the standard of civilization took its place as a universally valid principle, applicable to all non-European countries seeking to enter the Family of Nations as civilized states.[40]

Second, if Japan's entry increased the "autonomy" of the international system as an institution, it is also important to note that international society grew to incorporate "complexity" and "durability" as an institution with Japan's entrance facilitating the socialization of other non-European states, especially Asian countries. Japan's entrance convinced the Europeans of the capability that non-European countries could develop to meet the European standard. Some countries in Asia emulated Japan's conforming behavior. Thailand, for example, adopted Japanese style of legal reform and educational system under the modernization movement under the King.

Japan's entrance, therefore, marked the beginning of the transformation

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[39] Anghie, "Finding the Peripheries."36. Anghie tends to overemphasize the perpetuity of colonialism and interpret the creation of the nineteenth-century international law as centered around it. He suggests that "Colonial encounter, far from being peripheral to the making of international law, has been central to the formation of the discipline." Ibid., 44.
[40] Gong, *The Standard*. 29.

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of the international system from that of a positivist nineteenth-century to the one based on legal globalism. With the subsequent entrance of other non-European countries into the international system, the concept of national self-determination gradually emerged by the end of WWI, expressed more explicitly by the decolonization process after WWII. Japan's conformity to the "standard of civilization" bridged the de facto sovereignty regime of the nineteenth century and the de jure sovereignty regime of the present,[41] while international society obtained greater homogeneity in diplomatic intercourse and in its definition of sovereign statehood. This homogeneity was the consequence of the globalizing world, where some kind of objectivity needed to be created in defining statehood with increased heterogeneity in domestic characteristics of member states.

In this sense, Japan's entrance, as the entrance of any newcomer states did, produced certain institutional dynamics between agents and structures. What we see is the complicity between socialization of newcomers and institutional change of the international system. In order to see the institutional dynamics of the international society more completely, further studies will be required on the side of the norm provider, the West. The study of institutional dynamics would be inadequate unless we seek an answer to why the West in the end agreed to revise the unequal treaties.[42]

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[41] Jackson calls them "positive sovereignty game" and "negative sovereignty game." Jackson, *Quasi-State*.
[42] Few studies have treated the logic on the part of the West as norm providers so far. Just as Japan's "functional equivalents" lowered the costs of adapting itself to the West, Japan's loyalty to the Western norm probably lowered the costs for the West to accept Japan into international society.

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While many fruitful discussions on the different stages of norm diffusion and the relations between norm and rationality have been conducted in the norm dynamics literature that started to draw scholars' attention recently, norm itself has usually been treated as something static and given. The discussions have almost always been focused on how agents accept, digest, and conform to norms and never on how agents affect norm change. Although the article of Finnemore and Sikkink is one of the best systematic treatments of norm dynamics, for example, their analysis remains essentially actor-oriented with norms treated as given, bringing changes in political landscape but never affected by the agents.[43]

Norm dynamics literature

> tends to assume that agents at the systemic level have relatively unobstructed access to states and substate actors from which to diffuse new normative understandings. Once actors are interacting inside institutions, the diffusion and homogenization of values in the 'world polity' seems virtually automatic, even, and predictable. This leaves variation in the degree of socialization across units---the degree of contestation, normative 'retardation,' the processes by which unit-level actors understand, process, interpret and act upon lessons that are 'taught' by international institutions as agents—unexplained.[44]

The expansion of Eurocentrism and the socialization of the newcomer states are "synchronic" phenomena. The Western concept of sovereignty, the European international system, and the "standard" were also reconstituted and reshaped through the addition of the newcomers.

Whether imposed against the will, reluctantly accepted, or eagerly

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[43] Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics."
[44] Alastair Iain Johnston, "Treating International Institutions as Social Environments," *International Studies Quarterly* 45 (2001): 492. Drawing on Finnemore, Johnston mentions that the literature stops at "the point where agents at the international level deliver norm-based lessons to rather passive students."

embraced,[45] the emergence of the "standard of civilization" and the efforts of non-European countries in complying with it contributed to the institutionalization of the international system. Newcomers' conformity to an international system thus strengthened the durability as well as the autonomy of the existing international system as an institution.

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[45] Gong, *The Standard.* 9.

CHAPTER VIII

CONCLUSION:
THE SOVEREIGN STATE AND ITS CONFORMISTS

In titling this final chapter, I have in mind Hendrik Spruyt's *The Sovereign State and Its Competitors*, published eleven years ago. During the wave of "new institutionalism" in the scholarship of Comparative and World Politics since the 1990s, Spruyt explained how sovereign states emerged as the most efficient political entities in dealing with externalities by developing a nonlinear model of institutional selection.[1] His insightful analysis was mainly based on domestic logic, however, which emphasized the functional capabilities at which the state excelled other political entities as an institution. While Spruyt argued persuasively about the causal mechanism of state emergence, he left out of the account an external logic of sovereignty in explaining the maintenance of the state-system and its survival. As his formulation treats the state as an institution, but not the system of states, the external logic of sovereignty is eliminated from his analysis.

Tilly, on the other hand, was aware of the importance of an external logic of sovereignty operating on latecomer states as the international system matured. Although his primary interest remained state formation in Western

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[1] Spruyt, *Sovereign State*.

Europe, with an emphasis on how the state excelled over other political entities by its military capability, he stated that internal logic alone cannot explain the nature of state-building in the later period. [2]

If Spruyt's *The Sovereign State and Its Competitors* depicts the origin of the contemporary state and state-system, the explanation for its adaptation and institutionalization will require a model of "the Sovereign State and Its Conformists," where not only the state but also the state system itself is considered as an institution that constrains the behavior of latecomer states. In this sense, this study is not so much an antithesis to Spruyt as a sequel to the model of West European sovereign statehood that he presented. It is also an elaboration of what Tilly briefly mentioned about the external logic of statehood. Further, the study is a prologue to the "negative sovereignty game" that Jackson presented in an elegant and persuasive way, as discussed in Chapter III.

I have emphasized the systemic imperative that the international society placed on actors seeking membership, trying to shed light on the system-level causal mechanism that historians had not often dealt with. While conceding the credit that should be given to the contributions that historians have made in this field, they have tended to examine the subject from the perspective of either social movement or diplomatic history. Their analyses remain at the interstate level. Few studies had examined the subject from the system level, which would enable one to locate Japan and Asia in the transforming structure of power relations in international politics.

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[2] Tilly, "Reflections on the History."

Japan's entrance was achieved by the existence of domestic infrastructures and by their leaders' sense of expedience, as well as by their long-term goals of directing the country by balancing the international and domestic constraints. Exclusive attention to these domestic attributes is insufficient in explaining its socialization, however. To see a more complete picture, one needs to examine the international pressures that the leaders faced, which eventually defined the nature of Japanese statehood. Japan's vigorous adoption of international law and rapid armament proceeded in parallel. Japan's insistence on the abrogation of unequal treaties on the basis of equality and its imposition of unequal treaties on other Asian countries proceeded in parallel. These apparent anomalies can be understood only by examining the interactions and dynamics of several factors involved: Japan's domestic preparedness as well as the systemic imperative of the international law, especially in light of the positivist turn of the nineteenth century.

Studies on a country's entrance into international society contribute to bridging IR and other disciplines. A country's entrance is inextricably bound up with studies on international law, comparative politics, foreign policy studies, and history. The dynamics of socialization and institutionalization in particular have implications for the studies on norm diffusion, compliance, institutions, state-building, and other related fields of study. The entrance question also cuts across rational choice and reflectivist theories, with the former stressing the utility maximization of the agents and the latter emphasizing the social environment. Microfoundations for Japan's

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conformance demonstrated how norm-based rational behavior is produced through the agent-structure dynamics of international relations, bridging the gap between rationality and "logic of appropriateness." [3]

The process of treaty revision, the evaluation of the Iwakura Mission, and the role of foreign pressures in modernization and national development of Japan still leave much room for further studies. As is typical of the state-building literature based on history, this study tends to suffer from the smallness of the number of dependent variables and the difficulty of falsification. The findings in this essay should therefore be extended to more thorough cross-sectional studies on the entrance of other non-European states into the international society. Japan's abrogation of extraterritoriality was accomplished by 1899. Turkey accomplished it in 1923, Thailand in 1939, and China in 1943. Comparison with these cases along with those of Ethiopia, Korea, the United States, Russia, and other latecomer states would increase the number of observations for more generality and be extremely useful in enhancing our understanding of the dynamics of the newcomers' socialization and the systemic logic.[4] The current literature on norm dynamics is often criticized for ignoring the variation across microprocesses of the units' adoption of international norms.[5] Endogenous sources of pro-norm behaviors need to be more clearly identified as well as their dynamics with exogenous factors.

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[3] James March and Johan P. Olsen, *Rediscorering Institutions* (New York: Free Press, 1989).
[4] For problems on case studies, see George and Bennett, *Case Studies*; Gary King, Robert O. Keohane, and Sidney Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research* (Princeton: Princeton University Press, 1994). George and Bennett offer more sympathetic views on single-case studies.
[5] Johnston, "Treating International Institutions."

The findings in this essay can also be extended to longitudinal analyses of Japanese foreign policy in crisis situations. Japan is said to have been traditionally adaptable and skillful in meeting external shocks. A parallel seems to exist, for example, in the way Japanese leaders faced external crises during the negotiation process for the San Francisco Peace Treaty after WWII, where a congruence between the Japanese self-interest and the contemporary international environment was built by the craftsmanship of political leaders.[6]

The story of Japan's socialization with the international society continues even after the abrogation of unequal treaties. The process of entry in fact sowed seeds of Japan's later diplomatic course that proceeded to the early twentieth century. Although Japan's meteoric rise to great power status and its modernization have always been more emphasized than the long struggles that it experienced in obtaining the international legal status, its painful efforts made during the period toward the abrogation of unequal treaties cannot be ignored when one tries to comprehend its foreign policy behavior in the period that follows the flamboyant era of Meiji. Japan's loyalty and faithfulness to the international norms and rules later turned to frustrations and complaints against the international society. This was all the more so due to the previous efforts that it made to conform to them.

In complying with the "standards of civilization," Japan needed to bring

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[6] Other examples may include the sixth-century unification of state by Buddhism in meeting threats from the Continent. The oil shocks of the 1970s are said to have been absorbed in relative calm.

its domestic law into line with the expectations of European powers and to demonstrate its willingness and ability to uphold international law. The scrupulous efforts that Japan made in order to obtain an equal status in the international society made it more sensitive to the treatment that it received from the international society than otherwise might have been the case. Japan felt, for example, betrayed when its appeal to secure a clause of prohibition against racial discrimination in the Covenant of the League of Nations failed. It was also dismayed at the rejection of the endorsement of the principle of the equality of nations and the just treatment of their nationals at the Paris Peace Conference, despite a majority of eleven out of the seventeen states voting in favor. Other examples include the US "Gentlemen's Agreement," in the 1913, the California citizenship acts in 1917, and the American Immigration Act in 1924, all of which discriminated against the Japanese immigrants. While Japan had officially become a civilized state, the West failed to treat it that way in the eyes of the Japanese. The unfair reality of the international life came to be firmly engraved in the mind of the Japanese. [7]

Similarly, when the possibility of making peace was brought up for the first time during the Russo-Japanese War by a French initiative, the French Foreign Minister, Theophile Delcasse, proposed that peace would be possible as long as Japan did not demand any territory or compensation.[8] The Japanese

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[7] Although I am aware of the risk of sounding apologetic, my intention here is to try to understand the puzzling irrationality in Japan's foreign policy behavior that characterized the early Showa.

[8] France was the largest creditor power for Russia. Worried about the prospect of war, France unilaterally declared the no-time-limit postponement of undertaking Russian bonds after they heard of Japan's victory in the battle of Fengtien. France feared that if Japan demanded

chargé d'affaires in France, Ichiro Motono, was appalled to come to know how much Japan was looked down on by the West, since everyone knew that it was the European custom that a loser country pays compensation to the winner and gives territories. By this time Japan had already defeated the Russian fleet in Port Arthur and won the battles in Fengtien.[9] Japan's faithful observance of wartime international law had been so thoroughgoing that during the Russo-Japanese War, it was extremely careful not to interfere with the land, or the property of the people in China, which became the battlefields for Japan and Russia. For Russian war prisoners during the Russo-Japanese War, Japan offered every possible hospitality that a country could afford. For Japan trying to stick to the good old international law and custom, it seemed obvious that Japan as the winner of the war would take compensation from Russia, just as Britain took Hong Kong, as France took Vietnam, and as Russia took the Liaodong Peninsula.[10] The French proposal, however, was to deny such common European customs to an Asian newcomer. The faithful observance of international custom, for which Japan spared no pains since the encounter with the West, at this point turned to a sense of betrayal and resentment.

> Japan turned against the 'civilized' Powers in part because it perceived itself to have struggled hard to join them, only to be denied a fair place after fulfilling the requirements set forth in their standard of 'civilization.' If anything, Japan took the standard too seriously and naively, on face value, not understanding that even 'civilized'

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compensation, Russia would use the money it borrowed from France for the compensation and that France would never get even the warranty of the capital.

[9] Today's Liaoning Province in China.

[10] Japan itself had records of paying due compensations for the West. When Chōshū fought against the four powers and when Satsuma fought against the Britain, the bakufu paid the compensation. Meiji government paid the unpaid part of the fee after the bakufu was overthrown.

international society was characterized by anarchy (the absence of a monopoly of legitimate violence) and hierarchy (because without civil society, rights depend largely on might).[11]

The "standard of civilization" thus eventually turned out to be "double standard" for Japan. When it came to understand that other civilized nations were disregarding the "standard" in their treatment of Japan despite its fulfillment of the requirement for the international membership, Japan left the international society in the 1930s, whose membership it had demonstrated unusual dedication to and sacrifice for. Moreover, Japan rationalized its foreign policy behavior from this point of view. The seeds of Japanese imperialism in the 1930's had thus been sown in the efforts themselves that Japan devoted to the treaty revisions. The norm of imperialism, which was the flip side of the "standard of civilization" that Japan tried so hard to meet, however, had become out-of-date when Japan finally caught up with the West.[12]

Considering these processes that continued into the twentieth century, it becomes difficult again to identify a clear-cut landmark of Japan's entrance into international society. Japan achieved its full international legal rights in 1899 with the abrogation of extraterritoriality, followed by the 1902 Anglo-Japanese military alliance on an equal basis, the Hague Conferences in 1899 and 1907, and the victory over the Russo-Japanese War in 1905. On the other hand, events such as the 1895 Triple Intervention after the Sino-Japanese War, the denial of a racial equality clause in the League Covenant in 1919 to 1920, and

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[11] Gong, *The Standard.* 165.
[12] For the Japanese foreign policy behavior of the 1930's, see, for example, F.C. Jones, *Japan's New Order in East Asia: Its Rise and Fall, 1937-1945.* (London: Oxford University Press, 1954); Richard Storry, *The Double Patriots* (London: Chatto and Windus, 1957); Herbert Feis, *The Road to Pearl Harbor* (Princeton: Princeton University Press, 1950).

the 1924 passage of the anti-Japanese American Immigration Act mentioned above make it difficult for one to recognize the full membership in international society that was supposed to have been rightfully given to Japan.

By around World War I, world-wide international society gradually started to emerge; by decolonization after World War II, the international society has become truly global. With the decline of Europe, "the standard of civilization" is not a standard for the membership of international society any more. The concept of nation states has also changed. The international society, which demonstrated the highest degree of cultural and moralistic coherence based on the European "standard of civilization" at the time of Japan's entrance, transformed itself into one based only on legal equality today. The international recognition of states is conducted according to the simple criteria of defined territory and population.

Japan's continued struggle for recognition by the international society was another indication of the institutional forcefulness of the European international system that was operating at a structural level. It is also an indication of the tension that exists between "autonomy" and "complexity" as criteria of institutionalization of the international system. The Eurocentric international system, in other words, was also in the middle of maintaining a certain level of "autonomy" and "coherence" based on "the standard of civilization," while adapting itself to become a more complex, durable system by incorporating new elements brought by newcomers. Japan's entry brought

unintended consequences to the institutionalization of the international system as Japan tried to accommodate itself in the unfavorable international environment dominated by the West.

Rules and norms based on common culture are in fact rather rare in the history of international society. They are created rather by the recognition of common interests among states than by common culture. In that sense the positivist era is unique in history. Today the international system adapted itself to a new international environment by transforming its rules of coexistence among states. The international society survived well by adjusting itself to changes brought by new members, acquiring greater institutional autonomy and flexibility. While new rules of international society, such as the right of self-determination and human rights, emerged, behind these new features of the twentieth and twenty-first centuries remain the basic European institutions and rules of international law, sovereignty, diplomatic procedures and customs, and international organizations that non-European countries embraced since the nineteenth century and that have become structured and firmly institutionalized.

The sovereign state system that originated in Europe is an institution that constrains the behavior of its members and at the same time transforms itself by accommodating changes in its membership and environment. Since its inception it transformed itself from a Christian international system to a European dominated one to a universal one based on legally equal states. The core elements of the system as an institution have remained, however. The

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survival of de jure sovereignty for more than 400 years since Westphalia in an environment of radically changing membership in the international society, changing technologies, the onset of economic interdependence, improved military capabilities, and concomitant change in the power configurations among states is truly notable.

> European domination of the world was replaced by a universal system of sovereign, legally equal states... [There] remained not a single area of the world that was not--- at least in theory--- part of a state built upon the model of the modern European state and integrated into the all-encompassing international legal community. International law in the form in which it had originally been developed among the European states became a global law, which until now has incorporated only a few elements of extra-European origin.[13]

While de facto control of the state has differed in degree, "there has been no challenge to juridical sovereignty; that is, no effort to replace sovereign statehood with some other authority structure."[14]   The autonomy of the system as an institution was preserved while the system obtained flexibility and complexity by incorporating new members.

By applying the idea of institutions, this study examined the complex process of a country's socialization into the sovereign state system, which involved a striking degree of conformity and contestation on the part of newcomers and institutionalization of the norms of international system. Both intrinsic and contextual aspects need to be taken into account in explaining newcomers' entry into the European state system.   In his book on sovereignty, Stephen Krasner emphasized the frequency of violation of the sovereign state

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[13] Fisch, "The Role of International Law," 5.

[14] Stephen D. Krasner, "Economic Interdependence and Independent Statehood," in *States in a Changing World: A Contemporary Analysis,* eds. Robert H. Jackson and Alan James (Oxford, Clarendon, 1993): 318.

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norm, calling it "organized hypocrisy."[15]   But is violation more significant than observance of international norms?   Persistence of the international norms furthered by the institutionalizing tendency of the system and the socializing tendency of the actors may be more noteworthy than the occasional violations.

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[15] Stephen D Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999).

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