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Form and Function of the Meiji State in Modern East Asia

Shin’ichi YAMAMURO

1. Nation-State Building as a Project

Modern world history may be understood as a process through which the political system of the nation-state, which arose first in the West, spread to the non-Western world and eventually covered the entire world. In order to build a nation-state, it became necessary to study the legal and political theories of the West and use them as the foundation for creating such state machinery as government, parliament and courts.

The single most important political task tackled by the Japanese ruling elite during the second decade of Meiji was that of consolidating a new political and administrative system based on a national constitution. The Meiji government sought to accomplish this objective by sending bureaucrats and students to countries such as France, Germany and America. Not only that, but they also invited specialists in political and legal studies such as Gustave Emile Boissonade from France and Karl Friedrich Herman Roesler from Germany in order to teach Japanese students but also so that they would offer advice on diplomatic policy and the compilation of legal codes.

In the process of carrying out this task, however, the elite was sharply divided as to which particular Western country would make an ideal model on which to base Japan’s efforts at state building and unifying the people.

The question of which Western state Japan should model itself on was one of life and death for rising young intellectual bureaucrats fresh from their studies abroad with a mastery of the languages and political system of specific Western countries. The choice of one specific form of political system for Japan with its accompanying constitutional framework at its core would simultaneously determine the distribution of power among various groups and classes. It would
therefore affect the political fortunes of individual members of the bureaucratic elite. This choice also implied a judgment concerning the usefulness or uselessness of knowledge one had acquired abroad. Moreover, since power arrangements would vary depending on the kind of political system chosen, the adaption or rejection of a certain system would naturally be affected by various political forces. This is why those bound by common political ideals or interests formed political associations or groupings to broaden their influence. And in fact, associations of bureaucrats and intellectuals went about trying to sell their political ideals to the people at large by searching for Western theories that would support their ideals, translating these into Japanese, organizing academic and political lectures, and publishing newspapers and magazines.

To be sure, the method of education proved effective in instructing newer generations of Japanese bureaucrats in the concept of contract law and other legal matters vital to the growth of capitalism. It also enabled them to actively partake in politics. However, it should be pointed out that no matter how remarkable the modernizing and educational activities of the bureaucrats, these activities reached only a minuscule portion of the population. To disseminate Western knowledge to the majority of Japanese, anchoring the new social, political and legal systems deep in Japanese society, other means of propagation were indispensable.

In this manner, Japan was the first in the East Asian world to achieve the goal of building a nation-state, and it did so in the short period of about twenty five years. In doing so, Japan became the model for nation-state building in such political societies as China, Korea and Vietnam. Thus, not only did bureaucrats and intellectuals come to Japan from China and Korea as observers, but foreign students competed to visit Japan. And many Japanese legal scholars like Okada Asatarō and Iwaya Magozō went to China. Just as Westerners like Boissonade had done earlier, Okada and his colleagues lectured on law and politics and even engaged in the compilation of legal codes.

But what made Japan the model for nation-state building was its victory in the Sino-Japanese war over China, a country that until then had been regarded as the center of the civilized world. The reason Japan was able to defeat China was because it had formed a diplomatic alliance with England. This means that Japan’s interests and England’s diplomatic strategy in the East Asian world were in agreement. Moreover, when Japan took possession of Taiwan after its victory in the Sino-Japanese war, it began to develop as a colonial empire. As a result, Japan also came to be regarded as “Asia’s common enemy” since it was a state that not only was capable of serving as the model for nation-state building in the
region, but which also possessed colonies in Asia.

In employing the narrow lens of the history of legal thought to study the nation-state in modern Japan, I felt it necessary to start from the following premises. First, it is necessary to consider the formation of the nation and state-building as distinct phenomena. Second, in Japan the process of nation-state building lasted until 1945. Third, regarding the particularities of the Japanese nation-state building, it is necessary to consider the intersections of the introduction of Western logic and institutions with prescriptions inherited from established social institutions in Japan, as well as intellectual links to the rest of East Asia. Starting from such premises, it is possible to examine the Meiji state as a system and to consider the building of the Japanese nation-state from the Meiji Restoration to 1945 within the spatial context of the West and East Asia.

At the same time, however, herein lies a perplexing problem. That is to say, how are we to also understand the fact that this same Meiji state possessed colonies in Asia just as the West did. In my view, studies of the nation-state up to the present, including my own, have completely avoided addressing the problem of the nation-state as a possessor of colonial territories. Certainly, it could be argued that since the nation is a kind of "imagined community" as defined by Benedict Anderson, this was the proper manner in which research should have proceeded. The very term used to refer to the colonies, gaichi (外地) or literally external territories, suggested spaces outside "our Gemeinschaft".

To be sure, since the acquisition of colonies was considered to be a product of Japanese militarism and imperialism, their loss was a necessary step in escaping from the nightmare of Japanese militarism and imperialism, as well as rebuilding. Yet however much the Japanese might have forgotten memories of "empire" and forged a self-portrait upon that amnesia, the fact of having been an "empire" will not simply disappear. Instead, it is especially imperative to consider the significance of the Meiji state's duality: namely, that is held colonial possessions while in the process of becoming a nation-state, and that even while remaining in what might be called its infantile form, it became a colonial empire.

In this article I will proceed from such a perspective to consider how the experience of nation-state building, which began with the unification of different ethnicities within Japan, expanded and adapted itself to the colonial situation. I wish to clarify the particular character of the Meiji state through attention to its double nature as both a nation-state and as a "national empire" (国民帝国 kokumin teikoku). At that point, the project will be to explain through the framework called the "chain of thoughts", the process by which theories and systems of law and politics moved from the West to Japan and from Japan to China and Korea. Since
I have already outlined this the “chain of thoughts” elsewhere, the project here will be to explain the double nature of the Meiji state as a nation-state and as a national empire.

2. Nation-State Building and Japanese Legal Organization

Since the nation-state is to be found in its establishment of rules by which individuals might form a collectivity within a fixed territorial base, it is impossible to assess the nation-state’s place in world history without elucidating its legal organization. At the same time, since modern nation-states historically adopted a minimum basic standard of legal organization, a comparison of differences among legal organizations can be expected to illumine the particularity of each nation-state. This minimal standard was nothing other than the “standard of civilized nations”, and as long as a particular state did not possess a system of legal organization equal to those of Western civilized nations, it could not exist as a sovereign state. The only alternatives were either to become a protectorate or a colony, or to be forced into accepting unequal treaties. Therefore, the Iwakura Mission of 1871 soon discovered that the compilation of legal codes and preparation of a judicial system based on the notion of “Western laws or Western principles as paramount” was the condition for opening talks on treaty revision. Meeting this condition meant nothing other than integrating the Japanese legal system into the dual framework of the capitalist world economy and the system of Western nation-states.

Yet, the legal system that regulates one society cannot simply be transferred en toto into another society. Adjustments to the established laws and customs of the receiving society must be made. The mode of coupling in Meiji Japan was varied, sometimes taking the form of direct importation from the Western legal system, in other cases more closely following the customs and laws unique to Japan. While keeping in mind the necessity of comparing it to the later national empire, here I wish to briefly examine the legal organization of two elements of the state that were thought to be of particular importance, namely, the land and the

people.

We may begin by considering how the “state”, within the concept of the “nation-state”, was viewed by those involved in its construction and administration. This question was directly taken up by Itô Hirobumi’s commentary on the Meiji Constitution, Kenpō gige (Commentaries on the Constitution). While the actual author of this text was Inoue Kowashi (1843–95), it nevertheless crystallizes the opinions of those who wrote the Meiji Constitution, and it is possible to glean from it the Meiji state’s official view of the state. The commentary on Article 1 states; “Territory and a people are the two elements out of which a State is constituted. A definite group of dominions constitute a definite State, and in it definite organic laws are found in operation”. This makes it clear that securing land and people and ruling them through the common application of laws are necessary conditions for the establishment of the state.

Of course, the term “land” presupposes the essential preliminary step of fixing the nation’s borders in order to establish sovereignty vis-à-vis the outside world. Urgent tasks for the Meiji state included, for instance, conclusion of a treaty to exchange Karafuto (Sakhalin) for the Kurile Islands, establishment of the Home Ministry’s jurisdiction over the Ogasawara Islands, and taking control over the Ryūkyū Islands. In doing so, the state proceeded with zoning in a manner appropriate to a territorial state. With regard to securing sovereignty within its borders, the locus of political authority was made clear by the formal “restoration of government to the emperor” (大政奉還 taisei hōkan) and the subsequent “restoration of land and people to the emperor” (版籍奉還 hanseki hōkan). The memorial “restoring the land and people to the emperor” explained that “the land where the emperor’s retainers reside is the emperor’s land, and those whom the emperor’s retainers shepherd are the emperor’s people, so why should they be privatized?” This reflects the East Asian traditional theory of monarchical land and monarchical retainers (王土王臣 ōdo ōshin). However, this did not legally restrict actual land ownership. Instead, in order for the state to continue to exist as a state, it became necessary to guarantee the legal right of individual land ownership and to collect taxes based upon this system. This is why the 1872 repeal of the ban on buying and selling land liberalized such transactions, and private land ownership was recognized through the issuance of land ownership certificates. Yet it is important to note that since government bureaucrats understood Western property ownership only in terms of the absolute valuation of

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individual private land ownership, customs of land usage such as village ownership, rotating land allotments, as well as common use of forests or uncultivated plains, were all rejected as antiquated practices. Since the system of land ownership in place through the Edo period was thought to have stifled individuality and to have made people lazy through fostering their mutual dependance, the bureaucrats determined that they could only introduce modern Western agriculture and increase productivity by establishing the right to individual land ownership. Thus for farmers, the legal systematization of private land ownership based upon Western legislative principles resulted in the destruction, through foreign legal concepts, of land usage customs that had been formed over the course of hundreds of years. However, for government bureaucrats who equated communal practices with feudal ones, this was precisely in keeping with the standards of civilized nations.

Conversely, a distinctive feature of the Meiji state’s policy with respect to governing people was that it rejected the tendency toward individuation, which was based upon Western principles. To be sure, the Meiji government dissolved the social estate system, and in declaring the equality of the four estates it sought to unify a nation of equals. The Ministry of Civil Affairs (Minbushō) also expressed this desire when it put the family registration (戸籍 koseki) system in order so that all members of the Japanese nation would be incorporated into one uniform legal system. It stated, “by breaking up the pedigree of particular clans, the four estates will all be endowed with equal rights”. This system differed from the temple registry system (宗門人別帳 shūmon ninbetsu aratamechō) employed by the earlier Tokugawa bakufu, which had only registered the non-samurai population. Following dissolution of the outcast status in 1871, the new policy attempted to register all of the Japanese people; and in the sense that it aimed to achieve legal uniformity, it was consistent with the principles of the nation-state.

However, the method for the actual compilation of the registers followed the legal traditions of East Asia in taking the family (戸 ko) of a residence as the unit for governing the people of the nation. This differed in principle from the situation in Western countries in that the latter sought to govern the people of the nation through the identification of individuals. Moreover, policy makers of the time clearly recognized that the method of governing through the family unit and family head (戸主 koshū) differed from the method found throughout the West, which took the individual as the unit. Also, following the axiom that “the Family Registration Act is the great principle of morality”, adoption of the family registration system enabled the government to make the family head responsible for protecting and overseeing his family. In short, the government intended to
have the family head fulfill public security and welfare policy functions while attempting to secure the effectiveness of its various measures by designating him as the smallest unit of administration.

Inclusion in a family register became a necessary condition for being recognized as a Japanese national. As the preamble to the Family Registration Act put it, “anyone not included is not eligible for protection by the government and is ipso facto not a Japanese national”. The Family Registration Act was adopted as a law applicable to the entire nation, even to ethnic groups within Japan. Thus Koreans in Naeshirogawa of the former Shimazu domain, who had been excluded from the Edo period temple registry system on the grounds that they were ethnically different, were incorporated under the Act. Likewise, the Ainu and people of Western descent inhabiting the Ogasawara Islands were given Japanese style names and family registers. With revision of the Family Registration Act in 1886, family registers were also compiled for Okinawans. Tax administration, military conscription, education, and hygiene were all advanced through the family registration system, and as stated in the 1872 “Official Notice on Military Conscription”, this was a way of “leveling differences between high and low and equalizing human rights”. In other words, governing the people as national subjects through the family registration system represented, if only formally, the equalization of rights and responsibilities. Hence until passage of the Nationality Act in 1899, those persons included in family registers were regarded as Japanese nationals under the de facto principle that family registration was tantamount to national registration.

The political activist and theorist Ueki Emori (1857–1892) contrasted the nation-state constituted by the association of individuals with one made up of the association of families. He strongly argued that in order for Japan to "evolve" from the latter to the Western type, which was based upon the association of individuals, it was necessary to establish civil law. However, the household system (家制度 ie seido) enacted under the 1898 Meiji Civil Code simply gave legal form to the family that had materialized through the family registers. It also served to normalize the ieor household ideal as a tradition in Japanese civilization, even though it had earlier been confined to samurai families. The latter made up less than ten percent of the population during the Edo period. Conversely, other inheritance systems such as that of the eldest daughter or the youngest child succeeding as family head, were considered antiquated customs and eliminated.

Moreover, the household based on patrilineal succession became fused with the idea that the Imperial Household was the head family of the nation and all others were branch families. This “view of the state as a family” (家族国家観
kazoku kokkakan) in turn became the basis for the theory of the kokutai, or the national political essence, which made claims about the uniqueness of the Japanese state. This also gave birth to arguments similar to those of Robert Filmer, which imagined the emperor as a racial father and provided the opportunity to shift the basis for the legitimacy of the state towards the unity of the nation based on shared blood. Hozumi Yatsuka (1860–1912), an ideologue for such a theory of the national polity, argued in his Kokumin kyōiku aikokushin that “we Japanese people have a distinct system based on blood groups. ... The imperial ancestress Amaterasu is the first ancestor of the nation and the imperial household is the founding house of the nation”.3 Hozumi developed a national polity theory which had as its pillars the idea of the homogeneity of the Japanese people as a blood lineage and that all Japanese, monarch and people alike, shared the same ancestors.

However, by the time Hozumi’s work was published, the Meiji state had already moved toward incorporating those who in Hozumi’s view would absolutely not have been included within the common blood lineage group or who did not share the same ancestors with the people and the emperor. In response to Hozumi’s regard for blood lineage and shared ancestry as the foundation for the national polity and national ethics, the philosopher Ōnishi Hajime (1864–1901) retorted that such ideas “make it difficult to include those who do not share the same ancestors into the nation”. And he added, “I would like to ask how we should regard people of the new territories and how they should deal with those like Mr. Hozumi, who talk about the blood lineage group”.4 In short, the new problem of how to legally and conceptually incorporate the “newly registered people” of the new territories as “Japanese nationals” had emerged.

4 Ōnishi Hajime, Sosenkyō wa yoku sek'yō no kiso tarubeiki (Can the Ancestor worship lay the foundation of the Secular moral?) in Rikugō zasshi. 大西祝「祖先教は能く世教の基礎たるべきか」『六合雑誌』, No. 201. 1897. pp. 44–49.
the objective of maintaining independence as a state, but they did not realistically
dream of the acquisition of colonial territories. Even after acquiring Taiwan,
there was serious debate about selling it for one hundred million yen. Therefore,
there was absolutely no prior preparation concerning the legal status of colonies, or
how these should be managed in the event that they came to be possessed.

Because of this, the first issue to be debated was whether or not the
Constitution applied to new territories. This problem was closely related to how
one interpreted the Constitution’s understanding of the space of the nation and its
“people”. Nogi Maresuke (1849–1912), the third governor-general of Taiwan,
argued that the Constitution applied only to territories envisaged when the
Constitution was promulgated and that as such its subjects were defined as “the
descendants of the imperial ancestors’ loyal subjects”. In his view the
Constitution would have to be revised in order to include Taiwan. In response to
this situation the government, believing that a revision of the Constitution coming
only six or seven years after its promulgation carried the danger of damaging the
prestige of the emperor and the government as well as the dignity of the
Constitution, took the position that while the emperor’s sovereign power extended
to Taiwan, the rights of subjects as well as the duties of military service and
paying taxes did not automatically apply to Taiwanese.

In this manner the application of the Constitution to the colonies continued in
a direction which did not guarantee uniform laws for nationals from the metropole
and from the colonies. However, from the outset there were politicians such as
Hara Takashi (1856–1921) who advocated a uniform legal system based on the
idea that the colonies should be an extension of the metropole, or Naichi
enchōshugi, and who sought a system of control from the home government. In
any case, whichever policy was taken, particular laws and regulations could not be
adopted without considering the legal conditions, that is, the established
customs and previous laws of the relevant societies. Thus the Meiji state was
forced to adopt an imperial system comprised of a union of different legal zones.
In terms of legal theory, Minobe Tatsukichi (1873–1948) saw the Meiji state as one
state territory (Staatsgebiet) that was made up of five legal zones (Rechtsgebiet): the
Japanese Mainland, Taiwan, Korea, Karafuto (Sakhalin), and Kantōshū. What
kind of legal systems, then, were devised for these other legal zones? Here I

5 Nogi Maresuke, Kengisho (Petition) in Gotō Shinpei Monjyo 乃木希典「建議書」. 1897.
「後藤新平文書」(R-23-7-3).
6 Minobe Tatsukichi, Nihon shokuminhō ni tsuite. (On the Japanese Colonial Law) in
Kokka gakubai zasshi. 美濃部達吉「日本殖民法に就て」,「国家学会雑誌」, Vo. 26, No. 1.
S. YAMAMURO

would like to consider this question while focusing on an issue discussed earlier, the legal organization of land and people.

In 1898 Kodama Gentarō (1852–1906) was appointed governor-general of Taiwan. At that time Gotō Shinpei (1857–1929), who became head of Civilian Administration, drafted his "Major Principles of Ruling Taiwan". Gotō maintained that in order to establish a long term policy for ruling Taiwan, “long term surveys should not be neglected. In other words, following this principle, it is necessary to survey land and human registries”. Gotō thus argued that maintenance of land and human registries was a primary condition for colonial rule. This emphasis upon surveying followed Gotō’s policy of applying “biological principles” to colonial rule, and depended upon the idea of implementing a system which could accommodate individual differences and levels of development. He argued that however civilized one might consider the Japanese legal system to be, importing it en toto to the colonies would amount to a “tyranny of civilization”. Thus he consistently affirmed the principle of differing legal zones while also stressing the necessity of “scientific surveys” for carrying out that policy.

In one sense Gotō’s advice was hardly necessary since the determination of land rights was a necessary condition for collecting land taxes, in other words to provide colonial management with a sound financial foundation. It was also indispensable for proceeding with industrial development. In July 1898, when the Civil Code went into effect in mainland Japan, it was determined that with regard to Taiwan, “for the time being land rights will be determined not by the second article of the Civil Code, but by established customs”. Thus for practical purposes it became absolutely necessary to investigate the former laws and regulations of the Qing period, as well as Taiwanese conventions. The governor-general established regulations for land registration and land surveys, as well as a temporary land survey bureau, so that proprietary rights could be settled, just as they had been on the Mainland in the early Meiji years. In 1901 Gotō set up a temporary Committee for the Investigation of Old Taiwanese Customs for the purpose of conducting “scientific investigations of old customs”, and out of this emerged the majority of reports on old customs, as well as other publications including, Taiwan shihō (Taiwanese Private Law) and Shinkoku gyōseihō (Qing Administrative Law). In 1919 the Committee for the Investigation of Primitive

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Peoples (Banzoku Kanshū Chōsakai) was established and later published such works as Banzoku chōsa hōkokusho (Report on the Investigations of Primitive Peoples) and Banzoku kanshū chōsa hōkokusho (Report on the Investigations into the Customs of Primitive Peoples).

While it is difficult to determine the type of changes this series of investigations brought about for land ownership in Taiwan, the first article of the 1898 "Regulations on the Management of Government Forests and Fields" stated that "forest and uncultivated fields whose ownership cannot be determined by a land deed or other proof of ownership will be considered government owned". This suggests that in places where the concept of clarifying exclusive ownership did not exist and such a division between government and privately owned land was undertaken, the custom of communal possession would inevitably have been rejected, just as it had been in Japan. As long as the absolute right of individual land ownership was presumed to be "civilized", other forms of land ownership were necessarily regarded as "pernicious customs".

Such tendencies can be observed in the treatment of land ownership involving the Taiyal people. At the outset, the colonial administrator Mochiji Rokusaburō and others acknowledged that indigenous Taiwanese actually occupied land; but they also argued that since there was no basis for this other than "the concepts of the natives themselves, these primitives (生蕃 seiban) do not have any proprietary rights. All the lands of the primitives belong to the state". In short, he did not recognize the indigenous Taiwanese right of land ownership. Yet this was solely because the Western standard of property ownership was applied, and through such works as the first volume of Banzoku kanshū chōsa hōkokusho (Report on the Investigations into the Customs of Primitive Peoples), which was edited by Kojima Yoshimichi and Koizumi Tetsu’s Taiwan dozokushi (An Ethnography of Taiwan), it gradually became clear that the Taiyal people did have their own distinct concept of land ownership.

Nevertheless, the 1937 report Shinrin keikaku jigyō hōkokusho (森林計画事業報告書 Report on the Forest Project) did not recognize their land ownership rights based upon the reasoning that their culture and lifestyle were not sufficiently developed. Furthermore, it was determined that reservations should be established and that "the land must be administered by the government authorities until such time as the primitives uplift their culture to a level which will allow them to be independent". Thus, not merely the land but everyday life itself was placed under governmental administration. Incidentally, this type of land policy was similar in some respects to the legal regulations applied to the Ainu. The Ainu also had no concept of private land ownership, but instead recognized
communal ownership based on territorial groups called *kotan*. Initially, the Meiji government encouraged private land ownership in conjunction with the migration of settlers to Hokkaido, but the 1876 “Regulation on Issuance of Hokkaido Land Certificates” placed all Ainu lands under government ownership and in 1899 the “Hokkaido Former Aborigines Protection Act”, while granting land without compensation, did not recognize the right of land ownership itself.\(^8\)

In this way, the land survey based determination of proprietary rights in Taiwan, which categorized land as either government or privately owned, resulted in the *de facto* confiscation of land and the occurrence of many disputes. This was similar to the situation of not only the Ainu, but to all of Japan.

Yet such practices produced an even graver and lager scale problem in Korea. There, in 1908 the Legal Code Investigation Bureau, succeeding the Real Estate Survey Committee which had been established in 1906, published the “*Kōshū chōsa hōkokusho*” (Customs Surveys Report). Then from 1910, for almost eight years, the land survey project continued. During this time, because a system of filing for registration of ownership was employed, if ownership could not be verified and land was not registered, it reverted to the government-general and then ultimately passed into the hands of the Tōyō Takushoku and other Japanese real estate companies, and Japanese landlords. Regarding forests and field, because of the custom of non-individually owned lands reverting to the government, out of 16 million *chōbu* (15.9 hectares) of such land, 13 million *chōbu* (12.9 hectares) became state owned. It is widely known that such surveys of fields and forests put severe economic pressure on tenant farmers, who made up 77 percent of all farmers, forcing many to engage in slash-and-burn farming or to wander, and also causing a large exodus abroad. Thereafter, land surveys and registration projects were conducted in the League of Nations mandated territory of the South Pacific Islands (南洋 Nan’yō), with Japan pursuing its domination with the idea that the determination of proprietary rights over all land under its rule should be its first priority.

Of course, as Stein Rokkan has pointed out, the state is “in essence an organ of real estate management”. Since colonial domination was even more so about the control and management of land, it might appear natural that the determination of proprietary rights was treated with such urgency. However, at

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\(^8\) Land ownership issues in relation to Taiwan and the Ainu are described detail in an article by Yamaji Katsuhiko, *Mushu no Yabanjin to Jinruigaku*. (Unattached Aborigine and Anthropology) in *Kanseigakuinindaigaku Shakaigaku Kiyō*. 山路勝彦「(無主の野蛮人)と人類学」.「関西学院大学社会学部紀要」, No. 64. 1991. pp. 47–71.
the same time the survey of old customs continued and these customs were in principle accorded proper respect. Nonetheless, it is undeniable that the absolute priority consistently given to exclusive private property rights had the practical significance of facilitating tax collection, the buying and selling of land, and profit making from land use, while also connoting on the ideational level that this was a system of rule based upon civilized law.

In this way, despite the immense variety of forms and concepts of land ownership in the various regions, the form of ownership found in the home country was uniformly imposed upon all the different legal zones. The management of people contrasted sharply with this situation in that although all were uniformly called “Japanese nationals”, their conditions were far from identical, whether legally or as nationals.

First, let us take the Nationality Act. With respect to Taiwan, Article Five of the Sino-Japanese Peace Treaty stipulated that after a two year period during which a change in nationality would be recognized, those who did not depart before 8 May 1897 would be considered Japanese nationals. Then, after the 1899 Nationality Act went into effect on the Mainland, an imperial ordinance also made it effective in Taiwan. However, the same procedures were not applied to Korea and the Nationality Act was not enforced there during the entire period of Japanese rule. Moreover, since the Family Registration Act did not in principle apply to those in the colonies, or gaichi, the legal basis for the jurisdiction of those “nationals” who resided in the external legal zones differed by region. Relevant legal steps included for Taiwan the “Households and Inhabitants Regulations” (戸口規則 kokō kisoku), for Korea the “Civil Registration Code” (民籍法 minsekihō) and the family registration stipulations of the “Korean Civil Ordinances” (朝鮮民事令 Chosen minjirei), and for Karafuto the “Aboriginal Household and Inhabitants regulations” (土人戸口規則 dojin kokō kisoku). Furthermore, there were no special laws or regulations that applied to Kantōshū or Nan’yō. Finally, in Karafuto the 1924 Family Registration Act was applied to those who had transferred their registries from the Mainland, and this was extended to the Ainu in 1932.

Thus from the 1920s those within the territory of the Japanese Empire who were recognized as Japanese subjects or nationals included those legally classified as Japanese, the Ainu or “former aborigines”, Koreans, the Taiwanese majority (hontōjin) and “primitives” (banjin) in Taiwan, and the indigenous or “aboriginal” (dojin) people of Karafuto. While “Chinese” in Kantōshū and “South Pacific Islanders” (tōmin) were subjects of Japanese rule, they were not included in regional population registries and in this sense were probably not considered
Japanese nationals. However, it was said that there was a seven-tiered system of social estates which encompassed all Japanese subjects: members of the imperial family (皇族 kōzoku), former Korean royalty (王族 ōzoku), former Korean royal family (公族 kōzoku), Japanese nobility (華族 kazoku), Korean nobility (朝鮮貴族 Chōsen kizoku), former samurai (士族 shizoku), and commoners (平民 heimin). In addition, the form and application of laws and regulations differed among the empire’s legal zones and trials were held in each region’s distinct judicial organs. To be sure, there were criticisms of the mixed character of the legal situation and in 1918, in an attempt to realize the ideal of one legal zone for the entire nation, a common law establishing rules for the application of civil and criminal laws and regulations throughout the different legal zones went into effect. Furthermore, in response to the “problem of marriages between Taiwanese and Mainlanders” that arose as a consequence of the increased flow of people between Taiwan and Mainland, the so-called “common marriage law” (共婚法 kyōkonhō) was established. This enabled the entry into family registries of marriages between Mainlanders and majority Taiwanese, as well as adoptions. Moreover, a cabinet resolution of December 1944 entitled, “On the Improvement of the Treatment of our Korean and Taiwanese Compatriots”, proposed making it possible to transfer family registers from one legal zone to another, although ultimately this was never realized.

At the same time, the advance of total war and scheme of the Greater East Asia Co-prosperity Sphere produced further legal zones that were extensions of the colonies. For administrative purposes it also became necessary to establish uniform standards of efficiency, and in July 1942, in the interests of “standardizing the administration of the Mainland and the colonies”, the affairs pertaining to Korea, Taiwan and Karafuto were placed under the jurisdiction of the Home Ministry. Furthermore, in April 1943 Karafuto was incorporated into the Mainland.

Paralleling these administrative measures, military conscription came to be enforced in Korea and Taiwan in 1943, thereby making military service a duty; and, as if in compensation, adjustments concerning suffrage, albeit with limits, were made. While there were colonial appointments to the House of Councilors, however, no one from Korea and Taiwan was to ever serve in the House of Representatives. In short, the Meiji state was ultimately unable to shed a legal

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structure which was comprised of a combination of separate legal zones. For those in the different legal zones who were coerced into becoming imperial subjects, their obligations seemed far out of proportion to their limited rights. Furthermore, this double standard returned to haunt them in the postwar period. In the aftermath of defeat, those convicted of B and C class war crimes were considered formerly Japanese and held accountable for their crimes; but those who sought various forms of postwar compensation were considered ineligible because they were no longer Japanese.

4. The Meiji state as a National Empire

In the above we have seen, albeit from a limited perspective, how the Meiji state’s experience of forming a nation-state affected its possession of colonies and also what changes were imposed as the Meiji state became a colonial empire. Considering the level of uniformity of the people and the law, it has become clear that following acquisition of Taiwan, Japan was not simply a nation-state. Moreover, it was not merely formed as a composite of multiple ethnic groups that had already existed. Instead, it resulted from the territorial growth that accompanied the policy of imperialist expansionism. Moreover, within this empire peoples as well as the laws and regulations applicable to them did not just intermingle. Instead, differential rights and obligations were consciously constructed, with the home country in the most privileged position. The Japanese empire differed from the Ottoman and Chinese empires because the latter two countenanced hybridity and a type of “hands off” policy, and it is for this reason that I have employed the term “national empire” (kokumin teikoku) in reference to those empires that emerged from the late nineteenth century.

I have not invented the term “national empire” de novo, but have instead slightly revised terms that were used by contemporaries during the relevant period. For example, in his Nihon shokumin seisaku ippan (An Outline of Japanese Colonial Policy) Gotō Shinpei used the term “nationalistic imperialism” (国民的帝国主義 kokuminteki teikokushugi) in order to describe the global political trends of the twentieth century. In other words, in modern times “ethnic nationalism or nationalism” had replaced the medieval ideal of the “world state” in world politics and in the nineteenth century nationalism had become the great force. Moreover, because this nationalism followed the iron law of the survival of the fittest, in which the weaker were forced to assimilate, it gave birth to chauvinism. This resulted in intense competition and “when this desire reached its height, the national territory finally began to seem restricted and it became necessary to
increase population and to expand territory. With this, "for the first time, imperialism was added to this nationalism" (emphasis in original). Thus Goto believed that the distinctiveness of twentieth century imperialism stemmed from its inevitable development out of nationalism, and that Japan had entered this stage.

However, Goto also did not invent the term “nationalistic imperialism”. Instead, it is clear that he borrowed the concept from Paul S. Reinsch’s theories of imperialism. Reinsch had a great impact upon Japanese colonial policy studies and became widely known through such works as Teikokushugiron (On Imperialism), which had been translated by Takata Sanae in 1901. In short, Reinsch’s theory of the stages of state formation, which also had a major impact upon the political theories of the late Qing thinker Liang Qi-Chiao (1873–1929), emphasized the transition from the ethnic nationalism of the nineteenth century to the nationalistic imperialism of the twentieth century. It also stressed the significance of the political methods employed in the formation of nation-states for the construction of national empires. While Reinsch’s arguments are suggestive, it is my ultimate objective to employ the concept of national empire in utilitarian fashion in order to clarify the character of the Meiji state. In this regard, I wish to first emphasize that the concept of national empire is meant to incorporate the dual dimensions of both the nation-state and the colonial empire. Secondly, however, precisely because of this, it contains tendencies that contradict the national empire itself.

Here it is necessary to point out that since the national empire was the product of an imperialism that emerged after the formation of the nation-state, it was fundamentally different from former empires that expended as a result of the mercantilist desire of kings, aristocrats and licensed merchants to amass wealth and power. Rather, the people of the nation themselves became agents in the competition for colonial possessions. What this means is that the people, even while admitting that they manned the military and were manipulated to some extent, supported this policy and that they matter-of-factly came to demand a privileged position for themselves in the colonies. In 1911 the Council for the League of Japanese Residents in Korea urged the government-general to expand the privileges and guarantees accorded to Mainlanders while passing a resolution which stated: “superior people require a superior system while the uncivilized require an uncivilized system”. This was not limited to Korea. The resort to a polarizing discourse which contrasted the civilized and uncivilized, the low level of

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the people with the most current standards, was nothing other than the demand for such a hierarchy of rights. It might then be argued that the establishment of differential legal zones became an attribute of the national empire.

Nevertheless, since the national empire was in essence an expansion of the nation-state, it is also important to note that it continued to seek national uniformity even as it came to incorporate other ethnic groups. This resulted not only from the desires of the home country, but was also an unavoidable response to the demands of the subject peoples for the ethnic self-determination and nation-state building. Thus, another attribute of the national empire was the dissolution of differential legal zones and the tendency of colonies to become increasingly like the Mainland.

In sum, the “principle of differential legal zones” (異法域主義 ihōkishugi) and the “principle of the colonies as extensions of the Mainland” (Naichi enchōshugi), which are usually regarded as polar opposites in colonial policy, are not at all incompatible but reflect the dual character of the national empire. Moreover, this was a contradiction that inevitably accompanied the Meiji state’s nineteenth century incorporation into the nation-state system and its twentieth century participation in imperialist rivalries.

I believe I have shown clearly the chain of thoughts that linked the incorporation of Western ideas and systems in Japan, as the Meiji state developed from a nation-state to a national empire, to the application of this system by Japan, in Taiwan and Korea.

However, it would be tempting to conclude that these legal and political theories that encouraged the conversion to a national empire were not important to Chinese and Koreans who were most immediately concerned with building their own nation-states. But in reality, people like Liang Qi-Chiao were deeply interested in and concerned about Japan’s imperial expansion. They were certainly not disinterested in the imperialist theories of men like Takata Sanae (1860–1938), Tokutomi Sohō (1863–1957) and Ukita Kazutami (1859–1945), but were extremely active in introducing these theories and appealed to their fellow nationals to avoid colonization.

Thus, my research had as its goal an investigation into how legal and political theories used in the nation-state building in Japan were received in China and how those theories were institutionalized in the formation of the nation-state and social sciences in China. The perspective of a chain of thoughts, which I adopted, will

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contribute to a greater clarification of the historical significance Japan had for the East Asian world, but there are still many topics that need to be pursued. I intend to address this problem by a concrete explication of these systems.12

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