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Formal Rules in Institutional Transitions: An Examination Based on the Meiji Restoration and the Xinhai Revolution

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Abstract
This paper focuses on the roles of formal rules (laws) in institutional emergence, sustenance, crisis, and transition based on an examination of the Meiji Restoration and the Xinhai Revolution. It describes how formal rules in the polities of Qing China and Tokugawa Japan were enforced, supplemented, or modified by the strategic interactions among the ruler, the intermediate organizations, and the peasantry. It then discusses how the strategic complementarities between the ruler and the intermediate organizations were transformed into strategic rivalries in response to changes in the economic and foreign environments, resulting in the demise of dynastic rule in each country. The post-transition constitutional design was affected by the ways in which the strategic reconfigurations had led to the demise of the dynastic rulers. This historical narrative suggests that formal rules per se do not necessarily create institutions in the sense of an integral pattern and process of social behaviour and ideas. A formal rule can function as a substantive form of an institutional process if, and only if, it mediates between a recursive state of strategic interactions among agents and individual belief formation in order to sustain the social order.

Keywords: formal rule, endogenous institutional change, institutional complementarity, Meiji Restoration, Xinhai Revolution

1. INTRODUCTION

This paper compares the respective institutional transitions from pre-modern political economies in Japan and China through the Meiji Restoration and the Xinhai Revolution. Why and how did these "political" events occur? Did they usher in a completely new pattern of social interactions and ideas? If not, why? New Institutional Economics (NIE), as put forth by North (1990) and Acemoglu and Robinson (2012), identifies institutions as the formal rules (together with the informal rules) that are designed and enforced by government. From this perspective, the Meiji Restoration and the Xinhai Revolution may be regarded as attempts to rewrite the body of formal laws, including the basic constitutional law. Then, we

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may ask, why and how did such attempts evolve within the existing framework established by prior rules: did the post-transitional formal rule-making proceed smoothly according to the intentions of the reformed governments? And, if not, what were the basic underlying forces that constrained such formal rule-making? In my view, these questions call for a fresh inquiry into the relations between formal rules and institutions.

Following my previous work,[1] this paper identifies institutions with the salient recursive features whereby the ruler, organizations, and individuals interact strategically, and are expected to interact, in the economic, political (legal), and social domains. These features may be publicly represented by the formal rules. However, I posit that in order for the formal rules to be enforceable, informative, enabling, and moralizing, they must also be consistent with, and publicly representative of, the recursive states of the incentive-based interactions (strategies) among agents. This conceptualization of an institution is derived from game-theoretic thinking, but I will try to present the insights without resorting to the manipulation of mathematical symbols. The concept is essentially similar to Berman's jurisprudential approach to law as "an institution in the sense of an integral pattern or process of social behavior and ideas." Berman argues that it is "foolish to approach law through the body of rules which is nothing but one of the devices that law employs."[2]

The theoretical premise suggested above is deployed and substantiated by the following comparative historical narrative on institutional paths of China and Japan. Section 2 describes formal rules of the polity in Qing China and Tokugawa Japan and compares stylized institutional features that evolved within the frame that they set. The most advanced regions in the Chinese and Japanese economies during the eighteenth century had rather similar characteristics. The basic units of management of productive activities (in advanced regions) were conjugal peasant families engaged in (wet) farming on owned or leased small plots, with part of their working time allocated to textile handicrafts and other goods for domestic uses and markets.[3] Unlike in the West, manufacturing did not develop in the cities[4] and wealth accumulated by merchants was largely invested in landholding and was taxed as such (this was less the case in Japan). The major source of the rulers' fiscal revenues was taxes on farmland. Thus, for the sake of convenience, these economies may be referred to as *peasant-based economies*.[5] On this somewhat similar economic basis, China and Japan developed somewhat different "formal" legal rules of political governance. In order to understand the institutional nature of their polities, however, we should examine how these rules were applied, substantiated, and modified in practice to sustain an equilibrium state of strategic play. The strategic approach is able to shed light on aspects of the political states of both countries that were not explicitly stipulated in formal laws.[6]

1. Aoki (2001, 2011, 2013b, Part III).

2. Berman & Saliba (2009), pp. 4–5.

3. For example, for China, Perkins (1969); Zelin (1991); Li (1998); and for Japan, Smith (1959, 1988); Hayami et al. (2004).

4. Rosenthal & Wong (2011).

5. Aoki (2012, 2013a). Of course, this characterization is based on a highly stylized abstraction. See Zelin (1991) for a more nuanced survey of the "family-firm"-based economy in Qing China. Also, for the qualifications of the stylized characterization in the text and the regional differentiations, see Aoki (2013a).

6. The English word "state" derives from the Latin "status." Status applies to something that is established, recognized as fixed or permanent in a particular position, as do its derivative English words "static" and "stable." As such the political "state" may be thought of as being amenable to "equilibrium" analysis, possibly yielding many varieties.

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In essence, respective overall institutional arrangements in Qing China and Tokugawa Japan are characterized as complementarities between a political state conceptualized as a "quasi-tax state" (as distinct from the feudal domain states in Europe) on the one hand and a peasant-based economy on the other, intermediated by organizations of the gentry in the case of China and the Han governments in the case of Japan. Section 3 then identifies the crucial endogenous strategic forces that emerged in response to constraints on the further development of the peasant-based economy in each country. It discusses how some strategic relations among agents are transformed from complementarities to rivalries, or vice versa, and shaped respective paths towards the demise of dynastic rule through the Xinhai Revolution and the Meiji Restoration. Section 4 discusses how the unique performances of the Meiji Restoration and the Xinhai Revolution may have impacted on respective debates and conflicts in post-transitional constitutional design. Section 5 concludes with a brief summary and a reflection on the generic nature of institution as an integral pattern and process of strategic interactions and the role of formal rule in it.

2. THE NATURE OF THE ESTABLISHED STATES OF PLAY IN QING CHINA AND TOKUGAWA JAPAN

This section describes, compares, and interprets some stylized institutional features of the political economies in Qing China and Tokugawa Japan. It begins with succinctly stating the formal rules in each polity. Such rules (at least in either of the countries) may already be well known to readers, but their reiteration here is inspired by two considerations: one is to initiate an inquiry into possible deeper institutional commonalities across the two countries in spite of their formalistic differences; and the other is to examine how the centralized rules in each polity were actually modified in practice by the interactions among various agents, including the ruler, the organizations, and the peasantry. For the sake of subsequent reference, the stable state of play thus observed in each country is referred to as the *established state* of play. Specifically, intermediate organizations of local elites in China are observed to be playing roles that are complementary to the dynastic rule on the one hand and to the peasantry on the other. The nature of Japan's polity is shown to be a quasi-fiscal-federalist state. The observed features of formal rules in both countries may appear to be different. But if they are viewed from a strategic perspective, there seems to exist an interesting parallel which involves an element of homeomorphisms as well, which may be helpful in developing an understanding of the nature of subsequent institutional paths in both countries in a comparative perspective.

2.1 Institutional Complementarities between the Quasi-Tax State and the Peasant-based Economy

The polities in Qing China (1644–1912) and in Tokugawa Japan (1603–1868) are often contrasted by historians as a centralized local administration (the so-called *junxianzhi*) in the former versus a feudal domain state in the latter. In this section, we point to one fundamental similarity between them in terms of their stylized forms of a quasi-tax state. Here, a *quasi-tax state* is conceptualized as a form of the polity comprised of the *public* financing of collective goods provisions, including legitimate political violence, *universal taxation* on "privately

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owned land," and a *permanent bureaucracy*. The concept of a "tax state" was originally advanced by Schumpeter (1918/91), but we refer to this set of three elements as a "quasi-tax state" in that the universality of taxation is directed to taxes on landholding, whereas in Schumpeter's original formulation a tax state refers to a public finance institutions in a private ownership-based market economy. Essential to our conceptualization is the autonomy of the public domain (the polity) from the private domain (the economy), even though, as will be discussed shortly, they are linked through the strategies of the ruler and the taxpayers. Thus, the nature of the polity is different from the feudal state in medieval Europe, where the distinction between the polity and the economy was ambiguous and not clearly separate, and even taxation on farmland was not necessarily universal for all cultivators.

As is well known, the conquering Manchu court that established the Qing dynasty ran an administrative structure in which the magistrate at the prefecture (district) level reported to the governor at the provincial level, and the latter reported to the imperial court. All bureaucrats in this structure were recruited from among those who passed one of the four levels of the imperial examinations—prefecture, province, metropolitan, or palace—based on their literary achievements.[7] According to the so-called rule of avoidance, the bureaucrats were not assigned to official positions in their native regions as a measure of controlling countervailing power based on collusion between officials and local interests.

In the heyday of Qing China, about three-quarters of recorded public revenue was from land taxes (the remainder was mainly from the salt taxes that were derived from the licensing, of the production, transportation, and sale of salt). Theoretically, individual land ownership was registered on a "fish-scale register" held in the magistrate's office (a so-called "fish-scale" because the figurative record of the individual holdings in the village looked like fish scales). This register originated during the preceding Ming period and was revised only in unsystematic ways under the Qing. Conventionally, ownership of farmland was inherited equally among sons, which led to frequent sales of ownership due to the fragmentation of wealth holdings. Wealthy buyers, for instance the gentry (degree holders) and merchants, permitted impoverished sellers to continue to cultivate the transacted plots, whereas the latter could sell a portion of the leasing rights to others or were entitled to redeem ownership if so allowed by improvements in financial conditions. Ownership and leaseholdings were thus bought and sold like stocks without the intervention of government as a major means of wealth transfer and accumulation. These practices obviously resulted in very complex property rights arrangements.

Nevertheless, the formal bureaucratic structure of the Qing government was small in size. It is estimated that there was only one magistrate per 200–300,000 peasant families.[8] As a result, there were various moral hazard problems at the level of the magistrate and their clerks and runners in terms of keeping the land register up to date and imposing taxes accordingly based on the officially set rates. In Section 2.2 we discuss ways in which these problems were dealt with by the strategic moves of the various agents, generating a strategic equilibrium to create a specific institutional pattern. For now, let us accept for the basis of this discussion that the major source of public finance was the land tax that was universally imposed on

7. Scholarly titles could be purchased, but their assignments to (high-level) government offices were rarer in comparison to titleholders who passed formal imperial examinations.

8. Chang (1955).

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landowners, while landownership and leaseholding were largely dispersed among the peasantry.[9] Taxes were spent on consumption by the court, compensation for scholar-officials (mandarins), the maintenance of monopoly military forces, public works such as large-scale irrigation projects, the provision of social securities in the form of grain reserves for periods of famine and natural disaster, and fiscal reserves in the coffers. The Qing dynasty never borrowed from private sources until the second half of the nineteenth century, when the Board of Revenue started to take out loans from foreigners.[10]

Thus, at its height, public finance, universal taxation, and bureaucratic administration constituted the basic features of Qing governance. Government capacity to sustain itself was supported fiscally by universal taxation on landlords and landholding peasants. The system of scholarly-based selection of officials and the centralized monopoly of legitimate political violence helped the dynastic ruler constrain the emergence of land-based, violence-backed political powers that could threaten their weak governing capacity at the grass-roots level. The nurturing of self-reliant economic incentives for independent peasant families stabilized the fiscal revenues of the dynastic court, while disputes between leaseholding peasants and landowners brought before magistrates were often judged in a manner to set a standard of "fairness" that would contribute to sustaining the rural order of the peasant-based economy.[11] Abuses of power by magistrates and their clerks and runners to extract excessive surcharges on the land tax often incited peasant protests. The Qing court maintained an elaborate intelligence system and selectively intervened and punished wrongdoings by lower-ranked officials.[12] Thus, peasants' property rights and contractual rights in lease-holdings were in effect secure under the Qing government that acted for its own benefit, albeit not as a neutral third party. At the basic level, the Qing quasi-tax state and the peasant-based rural economy thus mutually complemented each other. The principles of filial piety from below and paternalistic benevolence from above may be considered a salient public representation of this complementary order. It was not the case that Confucian principles produced this order. However, this basic institutional complementarity needed in practice to be intermediated by the more complex strategic relations involving intermediate organizations of the gentry between the dynastic ruler and the peasantry, which is to be discussed in Section 2.2.

Turning to contemporary Japan, the Japanese polity during the Tokugawa era (Edo period) appears to be different from that of the Qing polity. Many historians, in Japan and the West alike, have tended to characterize the former as a feudalist state somewhat akin to how the pre-modern rural economy in Western Europe was governed. I will attempt to refute this view and argue, instead, that in spite of formal differences between China and Japan, there

9. Because of the great cross-regional variations of ownership and the lack of reliable data, a precise understanding of the distribution of land ownership during the Qing era is unavailable. However, surveys conducted in the twentieth century indicate that landlords, comprising 3–4% of the population, owned about 40% of all cultivated land; see Esherick (1981). But there was a vast number of petty landlords. So Esherick and Rankin (1990) note that local elite families may have owned less than one-quarter of all cultivated land within the Great Wall: much less than that which was owned by British gentry families during the late nineteenth century; see Esherick & Rankin (1990), p. 307.

10. For additional revenue, the Board of Revenue also lent its surplus stock of silver to merchants-financiers; Kuroda (1994).

11. Hung (2011); Zelin et al. (2004).

12. The imperial court dispatched secret members of the Censorate nationwide and utilized a "secret memorial system" in which selected officials at the provincial level monitored their peers and reported any malfeasance directly to the Emperor; see Hung (2011).

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was one essential similarity in terms of relations between the polity as a quasi-tax state and the peasant-based economy.

Tokugawa Japan was divided into some 300 hundred *Han*, each served by the corporate body of samurai holding exclusive rights to legitimate political violence as well as to land taxation and legal enforcement within its geographical territory. "Han (藩)" is usually translated as "domain" in English, but as shown below this is conceptually misleading, thus it is not translated in such a way in this paper. The Tokugawa *Bakufu* (Shogunate) was similar to the Han on these accounts, although its territory was much larger in size and more resourceful. National defence and the provision of other cross-Han public goods and projects were the collective responsibilities of all Han (or they were shared among some selected Han) based on assignments of their respective shares by the Bakufu. An important distinction between the Bakufu and the Han in such a Baku-Han regime was the power of the Bakufu to abolish a Han or to transfer a lord and its samurai body to a less resourceful territory, somewhat reminiscent of the power of the feudal lord in the West. This action was not supposed to be invoked arbitrarily, however, for example because of the personal disloyalty of a lord to the Shogunate. It was legitimate only when a Han was negligent regarding an assigned responsibility to sustain overall order, as discussed in more detail below.

The landownership register in Tokugawa Japan originated from the Land Survey conducted by Toyotomi Hideyoshi on the eve of national unification under the Baku-Han regime. As in the Chinese dynasties, the intention was to remove any challenges to his national unification by the local landownership-based political and military powers. This survey examined in detail the size and productivity of all farming plots and attributed the property rights and tax obligations to the actual cultivator of each small plot. The survey was enforced against the resistance of the large patriarchal families, such as the *myoshu* (literally, the "name-holders"), who managed relatively large farming units with quasi-domestic subordinate labourers (*nago*, literally, a "name-holder's child"). Their family heads were forced to reside in castle towns as members of the Han's samurai corporate body. The landownership register was kept in the village office and managed by officials who were themselves cultivators. The register was revised as cultivating practices changed through inheritance, intra-village transactions, and so on. Potential ownership disputes were resolved within the village by arbitration by the village official. When property rights disputes crossing village boundaries were brought before the magistrate's court, judgments were made, if possible, based on evidence from Toyotomi's original registry.[13]

The collection of the land tax was contracted out to the village office by the Han government. The Han government did not intervene in village affairs as long as the village contract was observed. This increasing village self-governance was the basis of the Baku-Han regime. Even though there was no clear separation of contract law from civil law, peasants thus became the *de facto* and *de jure* owners of their cultivated lands and they engaged in land transactions within the village, and gradually via outside merchants, despite the Bakufu's original prohibition of farmland leasing and sales by independent landholding peasants. The Han government became a bureaucratic corporate body of samurai who derived their income according to their rank from the land-tax revenue (similar to the Chinese scholar-officials), even though they were armed themselves (unlike the Chinese scholar-officials).

13. Ishii (1966).

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It was not rare that incompetent or dissolute lords were confined to forced retirement by an agreement among major retainers or after fierce factional fighting.[14] The sustainability of the Han as the corporate body thus became a priority over the personal honour of the lords.

As a whole, the Baku-Han regime may also be regarded as a quasi-tax state, mutually complementary to the peasant-based economy, by the same logic as applied to Qing China. The property rights of the peasantry were protected on the condition that they fulfilled their tax obligations under the village contract, while the bureaucratic bodies of the Bakufu and the Han were fiscally supported by universal taxation on all household members of the village in their respective territories. Although the decentralized nature of the quasi-tax state in Japan differed in terms of its formal structure from the centralized quasi-tax state in China, as we will see later, this difference tended to become somewhat blurred in practice towards the end of the respective eras.

Discussion about complementarities between the quasi-tax state and the peasant-based economy needs to be qualified in the following two respects, however. First, the complementarities between the two do not imply that the latter was an efficient economic arrangement, even with the technological possibility of the time as a given. Some economists argue that small-scale peasant farming was an efficient response to the technological imperatives of wet farming in monsoon regions, where attentive, continual human care for the plants was necessary, deep ploughing by manual labour was helpful to make the soil more fertile, and so on.[15] However, some evidence has shown that ploughing by husbandry could have been more productive, but it largely disappeared during the transitions from the Ming to the Qing in China[16] and from the Warrior period to the Edo period in Japan.[17] Perhaps the small-scale management unit of the conjugal peasant family could not make use of the scale economies of technology that required costly investments. This possibility appears to indicate an instance where institutionalized strategic complementarities may have economic efficiency. Second, complementarities between the quasi-tax state and the peasant-based economy never implied static harmony. It was only a stable equilibrium state extracted at a high level of abstraction. It embraced potential tensions that could be revealed openly during occasional disturbances, such as the sporadic peasant revolts. Even worse, the economic development of the peasant-based economy could sow the seeds for destabilizing the complementary relations. In order to see this, we must go beyond a macroscopic view of relations between the quasi-tax state and the peasant-based economy. We do this in Section 2.2 by focusing on the roles of organizations intermediate between the quasi-tax state and the peasant-based economy in China and on Bakufu-Han relations in Japan.

2.2 Comparison of the Overall Institutional Arrangements in Qing China and Tokugawa Japan

2.2.1 Dual complementarities involving gentry organizations in China

Section 2.1 alludes to the possibility that the magistrates and their staff in Qing China became negligent about keeping the landownership register up to date and precise, and even worse they revised it arbitrarily for ease of recording, tax collection, and malfeasance, often in

14. Kasaya (1988).
15. For example, Oshima (1987); Hayami & Otsuka (1993).
16. Li (1998).
17. Hayami (2009).

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collusion with large landholders.[18] Further, because of the relatively weak organizational and fiscal basis of the local administration, the magistrates often farmed out tax collection to the local gentry: this collusive practise is known as *baolan.* Through this informal practice the gentry gained relative autonomy from the lower-level administration for its own benefit, while the small, weak peasant households sought protection from the gentry against arbitrary surcharges by the magistrates. In southeast China, where agricultural development was relatively late, tax collection was farmed out to village-based clan organizations.[19] In the Yangtze delta, where commerce and agriculture were most advanced, resourceful gentry formed formal organizations, known as landlord bursaries (*zuzhan*). These organizations collected rents from tens of hundreds of leaseholders, paid taxes out of revenues, charged fees, and distributed the remainder to member landowners. These were often disguised as clan organizations for political correctness, but in fact they assumed corporate characteristics such as voluntary participation, perpetual life, and specialized administrative organizations possessing coercive force.[20] Further, in the early nineteenth century and thereafter, when the security of property rights was increasingly threatened by bandits, secret societies, rebellious religious groups, and so on, the powerful and resourceful gentry became active in organizing village-level militia training groups called *tuan*, in some tension with the official local security forces. These local, private groups were then mutually interconnected to wider associations through their personal relations with the leading gentry.[21]

Thus, the formally centralized polity in Qing China actually entailed increasing assertions of the gentry's property-rights interests, backed up by quasi-official armed force. However, during the height of Qing rule, informal and formal tax farming by the elite gentry helped the magistrates who had only weak fiscal, social, and personnel resources. Merchants likewise contributed to public revenue through tax payments on the owned farmland in which they invested, if not directly on the commercial profits. The gentry's ability to punish the peasants' rent arrears was aided by local police under the control of the magistrate, while the merchants' ability to engage in local and long-distance trade was safeguarded by the relative domestic peace provided by the imperial order. In these regards, governments at lower levels on the one hand and the gentry and merchants as local groups on the other strategically complemented one another, interpenetrating one another's domain.[22] But it should also be noted that there was an element of strategic complementarity between the gentry and the peasants as well. The latter's property rights were protected against external threats by participation in the *tuan* led by the gentry as well as from the magistrates' abusive use of power by entering into (disguised) leasing contracts with the powerful gentry to benefit from the lower tax rate applied to the gentry, while the latter extracted rents from the peasantry as *de facto* taxes for self-armament and protection fees. Also, a great deal of the practical

18. For comprehensive treatment of the moral hazard behaviour of the magistrates and their clerks as well as Emperor Yongzheng's reform attempts to control the problems and their eventual failure, see Zelin (1984). For a recent analysis of the moral hazard problem from an agency-theory perspective, see Sng (2014), and for a survey, see Brandt et al. (2014).

19. Baker (1979) p. 160.

20. Muramatsu (1966, 1970); Aoki (2012). For the corporate characteristics of organizations disguised as clan organizations, lineage trusts, *hui*, and so on, see Sangren (1984) and Ruskola (2000).

21. Kuhn (1970).

22. A similar historical view, although not explicitly in game-theoretic terms, is advanced in a brilliant China-Europe historical comparison by Wong (1997) pp. 108–13.

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management of local public goods, such as the repairing of roads, building of bridges, construction of dikes, earth walls, and the like, was in the hands of the local gentry, as the actual terms in office of district magistrates were short, say one to at most five years, according to the principle of avoidance.[23] Dual complementary relations of the gentry vis-à-vis the dynastic government above and the peasantry below were an essential element of the established state in Qing China.[24]

This somewhat latent order became increasingly overt during the nineteenth century. The dramatic upheaval of the Taiping Rebellion (1850–64), led by a self-proclaimed brother of Christ, Hong Xiuquan, initially advanced from Guangxi, one of the poorest rural provinces, and at one point occupied the most productive agricultural region in China, the lower Yangtze delta, and established an elaborate dynastic palace in Nanjing à la dynasty. By then, the military strength of the official army of the Qing court had weakened to such an extent that it took more than ten years of battles fought by the regional Xiang, Huai, and other armies for the Taiping Heavenly Kingdom to be finally defeated. These armies were organized by elite scholar-officials like Zeng Guofan, who took leave from his official duties. They evolved from the nested associations of the village-based, self-defence training groups (the *tuan*).

The emergence of these quasi-official organizations of political violence distinct from the official military troops was epoch-making and raised the interesting issue of whether they should remain as a strategic complement to the court's political governance or whether they should become a substitute for the court's governance. During the Taiping Rebellion, the gentry-led regional military powers were certainly helpful in supporting the court's goal of preventing its weakened centralized control from further declining, while the extraordinary self-reliant efforts by the local gentry and peasants, who were recruited as soldiers to protect their own property rights, were aided by the semi-official networks of gentry leaders. In this respect, the gentry's autonomous organizations of armed peasants and the court's political governance remained mutually complementary. However, at the same time, the gentry leaders financed the heavy costs of supporting their armies through regional control over not only the traditional salt and land taxes but also the newly created local commercial taxes (*lijin*). This was a major departure from the principle of avoidance under dynastic rule to safeguard against the emergence of land-based regional power. Once a major revolt was quelled, independent assertions of elite-gentry power could become potential threats to dynastic rule. Indeed, some factions in the Xiang Army later staged revolts. However, Zeng Guofan, Li Hongzhang, and other major leaders chose to return as officials in the dynastic administration and attempted to reform the unstable established state through the Self-Strengthening Movement in areas such as diplomacy, arsenals, "bureaucracy-supervised merchant-managed" enterprises, education, and so on. Some of these reforms took place prior to or parallel with the industrial policy of the Meiji government in Japan.[25]

23. Chang (1955).

24. Implicit in the discussions on complementarities here and below is the rigorous game-theoretic notion of strategic complementarities analyzed through the supermodular analysis. For this see Aoki (2001), chapters 8, 10, and (2013b), Part III.

25. There were 15 officers in the Xian Army who later became viceroys of provincial governments. A recent work on Empress Dowager Cixi by Jung Chang (2013), based on heretofore unused court documents, reveals some interesting aspects of the relations between the dynastic court and the elite gentry.

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2.2.2 The nested structure of all-inclusive coalitions in Japan

In order to assess the comparative workings of the quasi-tax state under the Baku-Han regime vis-à-vis that in Qing China, it is important to first re-examine the nature of relations between the Bakufu and the Han. It has already been noted that the Bakufu was entitled to punish the Han for negligence in the sharing of collective responsibilities. In one case, the lord of the Matsumae Han in Hokkaido was temporarily transferred because of his alleged failure to make defence preparations for a possible Russian intrusion into the northern island. When severe political repression and heavy taxation by the Shimabara Han incited a bloody peasant rebellion led by Catholic militants that was crushed only after military intervention by the Bakufu and the neighbouring Han, the Shimabara Han was abolished and its lord was executed (this is the only case where the "honourable" ritual of *hara-kiri* was not applied to samurai). This particular Bakafu power was generally understood to be exercised only if it was legitimized by common interests with the Han to punish a deviant who threatened the order of the Baku-Han regime built on the peasant-based economy. Conversely, as the subsequent unfolding of events discussed in Section 3 will reveal, the hegemony of the Bakafu was not taken for granted and could become problematic when its policy orientation was questioned by the Han. All these characteristics indicate that the institutional nature of the Baku-Han regime was actually that of an all-inclusive coalition of the Han, with the Bakufu acting as the leading player that formulated the focal points for sustenance of the order (this characterization is supported by a game-theoretic analysis[26]). The coalitional nature of the Baku-Han regime then attached an aspect of quasi-fiscal federalism to its quasi-tax state, whereby each Han enjoyed complete autonomy in taxation and public expenditures, except for the sharing of collective responsibilities for national defence and the like. However, it was "quasi-" in the sense that the state was administered by a body of hereditary samurai-bureaucrats who were not accountable to the tax-paying members of the state.

It should be noted that there was also an increasing trend towards village autonomy from the Han government under the village contract system. Initially, there were variations in the tax-rate determination across the Han and over time. In some places, the tax rates tended to be fixed in practice from the early eighteenth to the mid nineteenth centuries.[27] In other places, the magistrate's office examined the potential crops in a village each year and accordingly adjusted the tax rates, but this determination was subject to bribing officials by the village, as well as bureaucratic intervention at the time of the harvest. In 1722, the Bakufu converted to a fixed-rate tax method, subject to periodic revisions and with an exception clause in the case of extraordinarily poor harvests.[28] Under the fixed-rate scheme, the village peasants as a collective became the residual claimants. The member households of the village therefore were collectively interested in controlling free-riding on local public goods projects, such as the construction and maintenance of irrigation systems that were essential for wet farming. Thus the norm of mutual compliance and co-operation among member households in the village evolved with the threat of ostracism of deviant households, known as *mura hachibu*, except in instances of fire or death that could jeopardize the security and health of the

26. Aoki (2014).
27. Smith (1988), chapter 2.
28. Oishi (1961), chapter 4.

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village community. This norm can be referred to as a membership-based norm in that it was only binding on all members of the village.[29]

Thus the complementarities between the quasi-tax state and the peasant-based economy were institutionalized in Tokugawa Japan as an all-inclusive coalitional structure, embodying the quasi-fiscal-federalist Baku-Han regime on the top and nesting the village community therein.

Section 3 will discuss how the nature of the quasi-tax states in China and Japan generated endogenous strategic forces that would eventually bring about the respective demise of the established states of play under dynastic rule.

3. TRANSITION FROM DYNASTIC RULE

In the first half of the nineteenth century, the dynastic rulers in China and Japan faced major challenges to their governability and legitimacy. The fiscal capacities of both Qing China and the Tokugawa Bakufu declined as their power to extract taxes from the expanding peasant-based economy declined, as famines became more frequent, and (especially in China) as a consequence of the population explosion in the previous century combined with the diminishing returns to land reclamation. The austerity policies in response to these fiscal crises failed to exploit opportunities from market development, thus creating a vicious cycle. Furthermore, the advent of the Western powers that had just emerged from their military and industrial revolutions placed the governability of both dynastic rulers under scrutiny. Notwithstanding, such destabilization of the established states also gave rise to powerful new strategic forces in non-central spheres. Market development, partially stimulated by the opening of international trade, rendered some provincial powers economically resourceful and thus politically more assertive. The foreign military threats stimulated concerns about military technology and general industrial development. Sections 3.1 and 3.2 focus on how these developments led to the final successive historical demises of the Baku-Han regime and the Qing dynasty. In this process of moving away from dynastic rule, changes from strategic complementarities to strategic rivalries among some agents played important roles.

3.1 Towards the Meiji Restoration

In the face of the threats from foreign powers, albeit later and milder than in China, the Bakufu ordered the building up of defence facilities for all the Han facing the sea, while also engaging in negotiations with the foreign powers over the opening of ports for trade to circumscribe their open hostility. Informed of the unfortunate experience of China during the Opium Wars, the Bakufu regarded an opening as inevitable. However, unanimity among the Han on this issue soon became problematic and accordingly threatened the stability of the coalitional structure itself. The dynamics of the polity eventually leading to the Meiji Restoration was initiated by strategic moves by some resourceful Han to challenge the

29. It is interesting to note in this regard that in 1712 the Kangxi Emperor in China also attempted to freeze nominal taxes in perpetuity; Ma (2011). However, this attempt was in effect nullified at the county level due to the various surcharges imposed by the magistrate. Further, in places where farmland transactions across villages were frequent, it was relatively more difficult for the co-operative norms, such as those binding on all members of the village, to evolve unless the security of both private property rights and lives were threatened by external aggression. In China, the formation, observance, and sustenance of co-operative norms appear to be limited to within a network of selected members who mutually invested in their own reputational capital, that is, social practices known as *guanxi*; see Aoki (2012, 2013a) and Herrmann-Pillath (2009).

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authority of the Bakufu in the Baku-Han coalitional structure. These Han included Satsuma, Chōshū, Tosa, and Hizen, each of which was unique in terms of the resources that they could command, both human and material, as well as their policy orientations.

The Satsuma Han, one of the largest Han but lacking in quality farmland, had been engaged in trade with China via the Ryukyu Kingdom throughout the Tokugawa era, in spite of the Bakufu's official monopoly over foreign trade, by taking advantage of its geographical location at the southern tip of the Japan archipelago. In 1862, samurai troops of the Satsuma Han killed a horse-riding Englishman near Edo, who had allegedly behaved in a disorderly fashion against a procession of their lord. The Satsuma refused British demands to provide indemnities for the damage, leading to the bombing of the Satsuma castle by British navy battleships. This retaliation convinced the lord of Satsuma and his samurai staff of the need to build a strong military force and to avoid futile open conflict with the Western powers. They began by making deals with a British trading company to import weapons.

Chōshū was one of the most advanced Han in terms of the market development of its peasant-based economy.[30] Hizen, near the Nagasaki port, promoted exports of indigenous rural products through its own trading house, while allocating 20% of its agricultural tax revenue to imports of military equipment and other industrial products. In this way, it quickly mastered the production of weaponry and other industrial manufactured goods. Tosa, on Shikoku Island, was not particularly distinct in terms of economic performance, but its rather unstable internal politics produced political and economic entrepreneurs from among the lower-ranked samurai with rural roots, including the later founder of Mitsubishi Zaibatsu, Iwasaki Yataro. Thus the ability of all four of these Han to become active in the reform movement was based on the development, in one way or the other, of the peasant-based rural economy in their respective territories.

Initially, there was no consensus among these Han regarding their foreign and reform policy orientations vis-à-vis the weakened leadership of the Bakufu. Lower-ranked samurai in Chōshū, who had been taught by a charismatic nationalistic ideologue, Yoshida Shōin, took control of the governance of the Han by a *de facto* coup d'état and openly opposed the "soft" diplomatic policy of the Bakufu. They bombed European ships passing through a strait facing their territory but ultimately ended up paying large indemnities. They then modified their policy stance by focusing on the restoration of imperial rule as means to end Tokugawa hegemony and to build a strong nation-state. The more moderate Tosa Han proposed the establishment of a two-tiered parliamentary system so that the decision-making process in the coalitional structure would be more open and participatory: the system was to be made up of an upper house whose members were the lords of all the Han, and a lower house with selected samurai bureaucrats as members. Hizen remained rather aloof from the political scene, focusing on its own economic development. Although a variety of public propositions still continued to compete for saliency, Chōshū mobilized its military power in Kyoto, where the Emperor resided. This premature uprising, known as the Forbidden Gate Incident (1864), was crushed by the united forces of the Bakufu, the Satsuma, and their allies. Chōshū was officially declared to be an enemy of the royal court and some powerful Han openly

30. The development of rural domestic industry in Chōshū has been well studied by authors such as Smith (1988), chapter 3 and Nishikawa (1987). Saito estimates that if non-agricultural earnings are properly taken into account, the average income of its leaseholding peasant households might have exceeded the wage income of labourers in England in the late eighteenth century by 10%; Saito (2005).

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supported the Bakufu. But this did not restore stable order to the coalitional structure under the hegemony of the Bakufu.

As the polity continued to be unstable, the pace of open discourse as well as covert meetings among samurai bureaucrats across the powerful Han was accelerated, sometimes including activist court nobles and reformist Bakafu staff persons. In spite of an initial divide in terms of their political agenda, the enormously popular Saigo Takamori from the Satsuma Han succeeded in forging a formidable alliance among the said four Han. They agreed to limit their common agenda to the return of supreme power to the Emperor as a symbolic public proposition, while virtually shelving other policy-agenda differences. They were able to force the Bakufu to "voluntarily" surrender its entitlement to govern to the imperial court in 1867. They took over the governmental position and in 1871 the Baku-Han regime was formally abolished.

3.2 Toward the Xinhai Revolution

The process leading to the Meiji Restoration was initiated by resourceful Han who had their own military force and autonomous fiscal resources. These unique features of the Baku-Han regime originally did not exist in the established state in Qing China. But decentralized military power and fiscal autonomy at the provincial level gradually took shape towards the end of the nineteenth century, opening up a path to the Xinhai Revolution.

After the defeat of the Taiping Rebellion, the Wai Army led by Li Hongzhang became the quasi-official army of the Qing dynasty. The relative peace sustained by the strategic coalition between the imperial court and the elite scholar-officials was shaken, however, by the defeat of the Li-led army and the navy during the Sino-Japanese War (1894–95), which primarily took place on the Korean peninsula and in the Yellow Sea. Even the conservative imperial court was then forced to become aware of the need to strengthen its military capability through modern training and improved weaponry. After 1900, the imperial court was thus to create the New Army for each province, relegating the traditional Green Standard Army to the local security forces. Taking advantage of this move, Li's disciple, Yuan Shikai, manoeuvred to build the formidable Newly Created Army as a quasi-private force in Zhili (the capital district ruled directly by the court). After the abolition of the centuries-long tradition of the imperial examinations in 1905, many hundreds of aspirant youths entered the newly created military academies or were sent by the government to Japan for training, where they were exposed to the anti-Manchu movement led by Sun Yat-sen. They eventually were appointed commanders, councillors, or officers in the provincial new armies. Members of indigenous peasant families with records of three generations residing in a village and with no history of crime or opium consumption were recruited as soldiers in the New Army troops.[31]

Each province was to bear the costs of supporting their New Army troops, in addition to sharing the rising obligations for foreign loans and various indemnities.[32] Some provinces, such as Hubei, which was governed by a former officer in the Xiang Army, Zhang Zhidong,

31. Hatano (1973), chapters 2–4.

32. At the conclusion of negotiations with the foreign powers over payment of indemnities for the Boxer Rebellion, the total obligations of Qing China, including the indemnities for the Sino-Japanese War as well as various loans, amounted to 4,200 tael per annum up to the year 1940. The expected receipts of custom duties administered by British consular official Sir Robert Hart, who served as inspector-general of China's Imperial Maritime Customs Service, were in the amount of some 2,000 tael, thus insufficient. In order to arrange for payment of the remainder, annual payment of some 1,800 tael was assigned to 18 provinces.

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also became active in developing arsenals, steel mills, railroads, educational institutions, and port facilities, as well as in promoting commerce. In order to manage these and other public obligations and projects, the provincial governments needed new sources of fiscal revenues other than their traditional shares in the land tax. After hard bargaining with the Board of Revenue of the imperial court, the provincial governments were allowed to mint copper coins in high yuan denominations and to issue bills backed up by them. In Qing China, traditionally there had been two kinds of money: silver (ingots or coins, including those of foreign mintage), used as a means of settlement for long-distance trade as well as for tax payments, and various copper coins used as a means of local exchange and the peasants' store of assets. The exchange rates were negotiated to meet the public finance needs at the various administrative levels. But there was a chronic shortage of copper coins because of the fragmentation of the peasant-based rural economy, which led to an approximately 25% appreciation in the value of copper currency against silver between the end of the Taiping Rebellion and the turn of the century. A substantial amount of seigniorage was thus made possible for provincial governments to exploit the difference between the purchasing costs of raw materials from Yunnan province and Japan on the one hand, and the high exchange values of copper coins against silver on the other.[33] The Qing Court and its Board of Revenue continued to centrally control the kinds and rates of tax that the provincial governments could impose. But now there was a trend towards a modicum of fiscal federalism, although it was limited only to provinces open to cross-regional and international trade. The imperial Board of Revenue imposed increasing pressure on the poorer provinces to squeeze the embezzlement of tax revenue (*zhongbao*) by local bureaucrats, who in turn then placed increasing pressures on both large and small tax-paying landlords, thereby making them resentful of dynastic rule

As the provincial and local governments faced increasing burdens of fiscal obligations, the costs for the provision of local public goods, such as education, local security, poverty relief, and the maintenance of dykes and irrigations, were relegated to the local gentry and wealthy merchants who had obtained scholar-official status by purchase.[34] They were forced to bear these costs in the form of arbitrary tax assignments and "voluntary" contributions through their occupational associations, chambers of commerce (*shehui*), traditional charity organizations, and so forth. There have been debates among social historians about the nature of this development. Some see this as an emerging civil society or a public domain à la Habermas, whereas others regard this merely as the penetration of government control over private interests, and still others propose a new China-specific category of a "third sphere between state and society."[35] However, the development of an economic and social infrastructure that would facilitate the expansion of trade, as well as secure commercial and private property rights and the monopoly position of the gentry and merchants, was not entirely against the interests of the gentry and the wealthy merchants. In return for bearing the rising costs, they demanded that their voices be heard through the provincial consultative

33. Kuroda (1994).

34. Towards the end of the Qing dynasty, the fiscally weakened dynastic court's practice of selling scholar-official status to wealthy merchants became widespread. According to an estimate by Chang (1955), the number of such purchases reached 310,000, comprising more than one-third of the gentry class.

35. See Rowe (1984, 1989), Rankin (1986), and Esherick & Rankin (1990) for the first view, Wakeman (1993) for the second view, and Huang (1993) for the third. See also Kishimoto (2012) for an excellent survey of the contributions by Japanese scholars on this subject.

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assemblies that were created in 1909 by the central government as a means of relating directly to the local elites in preparation for the promised introduction of some type of constitutional governance system in 1916. In this way, the local elites were subtly shifting their strategic positions from complementing dynastic rule to substituting for its absence in terms of public goods provision. From this perspective, the first two of the above views capture only one side of the evolving situation, whereas the third view appears to introduce a redundant category.

It is important to note that trading centres such as Hankou, Guangdong, and Shanghai thrived by the intermediation of the trading of cash crops and handicraft products by "family firms" in their rural hinterlands that were connected by water and other transportation means, in addition to the rising importation of rice from the Monsoon Asia.[36] As revealed in quantitative studies by Brandt (1989) and Keller, Li, and Shiue (2012), only a small percentage of agricultural output was actually exported, and a large percentage of marketed goods was destined for domestic consumption. Peasant households changed their allocation of working hours and resources in response to changes in the price relations of raw cotton, yarn, and cloth. Thus, Brandt observes that "the greatest influence the international economy had may well have been exerted through its effect on domestic prices."[37] Furthermore, one of the important consequences of the expansion of international trade at the treaty ports was the undermining of the coherence of the traditional commercial order by "English-speaking" Chinese trading agents who made use of the tax advantages of internationally tradable goods for domestic marketing.[38]

Thus, in the first decade of the twentieth century, the organizational landscape of Qing China was substantially modified by the emerging decentralization of the military and increasing pressures in the direction of fiscal federalism. While failing to make substantive progress in the transition to a constitutional system, the central government attempted to nationalize the province-financed railroad lines connecting Hunan to Sichuan in 1911 and make them available as collateral for foreign loans. This prompted the New Army and activists in Hunan province to stage a revolt and declare independence from Manchu rule. This was immediately followed by action by New Armies and consultative gentry councils in 14 other provinces, thus opening the way for the Xinhai Revolution and the subsequent drama during the Republican era. These intra- and inter-provincial alliances were spontaneously formed, even to the surprise of Sun Yat-sen, who was then residing abroad. The removal of the Manchu court from the ruling position was their only common goal. As is well known, this was finally accomplished in 1912 when Sun yielded the Republican presidency to Yuan Shikai, if Yuan would coax the imperial court into "voluntary" abdication.

In comparison to the Meiji Restoration, which was promoted by the autonomous fiscal capacity and military force of the resourceful Han, the transition from Qing rule in China was accomplished by a spontaneous or ad-hoc alliance among the various actors, ranging from the (revolutionary) republicans following Sun Yat-sen to the reform-oriented local gentry to the centrists embracing political violence, such as Yuan Shikai, who later aspired to become Emperor. This difference in the two transition processes was destined to condition their respective post-Revolution institutional paths.

36. Zelin (1984).
37. Brandt (1989), p. 97.
38. Motono (2004).

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4. CONSTITUTIONAL ISSUES AFTER THE TRANSITIONS

The ways in which the Meiji Restoration and the Xinhai Revolution were carried out in practice suggest that, even if there are external diseconomies or strategic rivalries in the political agenda of the insurgents, such rivalries may be overcome by effective strategic complementarities in an attempt to overthrow the incumbent ruler. Conditions that would make it possible are analyzed in a companion paper[39] using a formal model of three-party games between the incumbent ruler, the challenger, and the third party who chooses its position between the two in response to the evolving situation, like Yuan Shikai in the Xinhai Revolution. However, even if a transition out of the old state is realized in this way, the absence of *ex ante* agreement on the post-transition political-economic agenda among the major players will likely precipitate another round of conflict situation *ex post*, which may twist or disrupt the subsequent institutional evolution. Let us illustrate these points with respect to the Meiji Restoration and the Xinhai Revolution.

4.1 Towards the Centralized Bureaucratic State in Japan

A unique aspect of the Meiji Restoration, as distinct from the Xinhai Revolution, is that the major reformers, that is, the rebel Han bureaucrats, had similar backgrounds and attributes in terms of their possession of an integrated military force and economic and human resources that may have been relevant to their transition. Further, even across Han boundaries they shared a culture of mutual communications, which was essential for soft conflict-management technology such as diplomacy, bargaining, persuasion, and so forth. This culture was nurtured as an unintended consequence of the institution of alternating the annual residence of the Han lords and their staff between Edo and their own territories. Edo, which was the capital of the Bakufu, was at the same time the melting pot of ideas and informational exchanges among visiting samurai-bureaucrats across the Han from throughout the country. It is estimated that some 20,000 samurai-bureaucrats were actively involved in the non-violent transition.[40] The proximity of their bureaucratic backgrounds that facilitated the transition took its toll, however, on the subsequent institutional evolution in which the outcomes of their bureaucratic game had a decisive impact on the post-transition constitutional design.

The quintessential issue in the post-Restoration constitutional design focused on which was to come first: the constitutional design and its promulgation by the interim government or the convening of a constitutional assembly, somewhat reminiscent of Tosa Han's pre-transition proposal. The skilfully engineered governmental dominance by the Chōshū clique nullified the latter option and an imperial ordinance was issued in 1881 to the effect that a constitution that would enable the establishment of a parliament was to be drafted by the interim government and authorized by the Emperor. The constitution promulgated in 1899 ascribed to the Emperor supreme commanding authority and state diplomacy prerogatives, as well as authority to appoint the prime minister, cabinet ministers, and bureaucrats à la Prussian constitution. As Banno (2008) argues, such authoritarian stipulations did not necessarily exclude the possibility that a government could be formed according to the preference of a two-party parliament. Indeed, between 1918 and 1938 the polity evolved in

39. Aoki (2014).

40. This estimate does not include former samurai who were engaged in military actions and other mass political actions simply to remove the Shogunate from its governing position; Banno & Ohno (2010).

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just such a direction. However, prior to this, the powerful Han cliques refused to form their own party to overrule the parliament, while thereafter the military bureaucracy gained *de facto* veto power over the formation of government by taking advantage of an interpretation of constitutional rules as stipulating the appointment of military ministers to be from among the incumbent military officers.[41]

Under such a highly centralized bureaucratic state, with an interlude of a modicum of parliamentary control, how were the complementarities between the quasi-tax state and the peasant-based economy in Tokugawa Japan transformed? Prior to the promulgation of a constitution, the interim governments dominated by elites from the four victorious Han decreed that the farmland ownership registry that was maintained in the village office should be transferred to the national registry, and any disputes over property rights or breaches of contracts were to be settled by the courts according to the law. In lieu of the village contracting system, farmland taxation was to be fixed in monetary terms and imposed on individual landowners. Thus formal modern property-rights rule appears to have been established, but this did not lead immediately to a fundamental change in the nature of the state or the peasant-based economy.

Peasants with small landholdings subject to a fixed-rate land tax suffered from the early 1880s deflationary pressures that arose in the aftermath of the vast fiscal expenditures to quell the Satsuma Rebellion in 1877. The proportion of tenancy lands increased from 20–30% in the 1880s, and reached more than 40% by the 1890s. At the time of the first parliamentary election, almost all direct taxes were still derived from land taxes and the majority of seats in parliament were held by those representing the interests of landlords, thus somewhat constraining government fiscal policy.[42] However, the level of agricultural employment remained virtually unchanged, at about 14 million, until as late as the beginning of the Asia-Pacific War. The practice of primogeniture in legal property rights and occupation meant that the heads of peasant households remained in the villages and engaged in farming, despite the severe conditions for lease contracting, while the same institution generated a redundant labour force composed of non-hereditary sons who were not rapidly absorbed into the labour force by industrial and urban development. In the 1930s, when the hegemony of the military bureaucracy was solidified, the redundant labour force was mobilized as soldiers in the Imperial Army as well as in the vanguard of immigrants to the Manchurian border, resulting in misguided complementarities between the military-led bureaucratic state and the outlived peasant economy, which has been dubbed by Leslie Young as *Japan's Total Empire* (1999).

4.2 Centralized Unification or Federalism in China?

In contrast to the Meiji Restoration, an alliance for the removal of the Qing dynasty was formed spontaneously among various agents during the last days of the Qing. However, once dynastic rule was bloodlessly removed by persuasion, differences in constitutional design were bound to become overt. Its quintessence was how to strike a balance between the traditional centralized unification and the emergent trend towards federalism or regionalism. The Provisional Constitution of 1912 stipulated a unitary state, but it did not define the

41. Kitaoka (1993).

42. In the 1890 election of the Lower House, 171 out of the 300 seats were won by members of the Liberal and Progressive parties. A large majority of the 500,000 qualified voters were landlords who paid more than 15 yen as a farmland tax.

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organizational position of the provincial governments within the framework of the unitary republic, relations between the (civic) administration and the army, and so on. Indeed, underlying the conflict between centralization and federalism, there was a fundamental political-economy issue about how the potential of the peasant-based economy could be linked to the political state in lieu of the Qing tax state. Although the prosperity of the federalist-oriented provinces prior to the transition was based on their market linkages to the developing peasant-based economy in their hinterlands, there was no clear political programme among the transition-seekers to explicitly link or mediate rural and urban interests. The so-called "egalitarian land property rights" (*pingjun diquan*), advanced as one of the four elements in Sun's revolutionary programme, was no more than a vague idealistic idea.[43] Its implementation would be far from realistic in terms of administrative burdens and would be inconsistent with the peasants' and landlords' incentives for economic development.

During his tenure as president of the Republic, Yuan Shikai succeeded in achieving a modicum of unification of the national economy, as evidenced by the expanded circulation of the national currency that was engraved with a design of Yuan's portrait. The national currency was originally introduced by the Qing court in 1910, but the appreciation of silver during World War I contributed to its wider acceptance as well as to a reduction in the real value of the government's debt obligations to foreigners. After the failure of the abortive attempt by Yuan Shikai to become Emperor, and his death in 1916, his subordinate generals began to compete with one another for military hegemony. Without any effective programme to link rural economic development to an effective political programme, the so-called warlords devastated the rural hinterland to reach a hurried militaristic solution for unification, thus creating a vicious cycle of a fragmentation of political governance and a fatigued rural economy.[44] They recruited soldiers from among the peasants and the unemployed, while extracting resources from the rural economy wherever their shifting territories happened to be in order to finance their military expenditures as well as to accumulate their own wealth. The military conflicts thus put colossal pressures on the public finance capacity of the provinces. In reaction, the idea of a "federation of self-governing provinces" (*liansheng zizhi*) widely captured the attention of provincial governments and activists in the southern provinces. Even young Mao expressed a federalist inclination, just three years prior to his joining in the formation of the Communist Party in 1921. In the journal of his reformist organization he wrote as follows:

> From our observation […] there is no hope for fully establishing people's rule in China within the next twenty years. During this period Hunan had best protect its own boundaries and implement its own self-rule, making Hunan a haven of peace without bothering about the other provinces or the central government. Thus it can place itself in a position similar to that of one of the states on the North American continent a hundred years ago. We should run our own education, promote our own industry, and construct our own railways and motor roads.[45]

The formal position of president of the Republic in Beijing was alternately taken over either by one of the quarrelling generals or by compromise. In 1923, a constitution, drawn up

43. In his speech at a reception by the Shanghai Newspaper Guild, Sun Yat-sen (1912) expressed his agricultural land policy as that parliaments were to determine farmland prices and government would then charge a tax in a fixed proportion, say 10%, of the value, and government would acquire a portion of the ownership equivalent to the subsequent appreciation in value.

44. For a thorough academic treatise on the so-called warlords based on primary historical sources, see Hatano (1973) and Ch'en (1979).

45. Mao (1920/92), p. 526.

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by Cao Kun, stipulated that local governments "shall be organized according to the Constitution and the laws concerning local autonomy," thus not making it clear whether China was to be a unitary state or a federalist state. Sun Yat-sen, who had incorporated a federalist idea into the programme of the clandestine Revive China Society in 1894, became an avowed centralist as he faced challenges from the generals in the north. He sought to launch the Northern Expedition to wipe them out. To finance its costs, Sun and his disciple Chiang Kai-Shek (Jiang Jieshi) were prompted to strike a military blow on the federalist movement led by Chen Jiongming in relatively resourceful Guangdong.[46] They then moved north to defeat or drive out the by-then exhausted warlord armies. Chiang Kai-Shek established the National Government in Nanjing in 1927, for all practical purposes putting an end to the constitutional issue of centralized unification versus federalism.

5. SUMMARY AND IMPLICATIONS REGARDING THE RELATIONS BETWEEN FORMAL RULES AND INSTITUTIONS

This paper has focused on a comparison of the institutional processes and transitions in Japan and China based on an examination of the Meiji Restoration and the Xinhai Revolution, respectively. An underlying motivation for this inquiry has been to understand the relationships between institutions and formal (legal) rules. Is it enlightening to identify institutions with formal rules, together with informal rules, such as norms, customs, routines, and so forth, as posited by North's (1990) seminal work on NIE? If this is the case, can institutional change be attained by a formal legal design and its implementation by the government? What is the relationship between formal and informal rules?

Having had the above questions in mind, this paper began with a brief description of the formal rules in the polities of Qing China and Tokugawa Japan, respectively. If we were to regard these formal rules as they were, we might be led to characterize the polities in Qing China and Tokugawa Japan simply as a Confucian-based, authoritarian hierarchy and a feudal state, respectively. However, in this paper we have explored the ways in which the formal rules were actually enforced, supplemented, or modified by the strategic interactions among the ruler, the intermediate organizations, and the peasants in each country. We have envisioned that as a result of such interactions the polities of both countries may be characterized as the quasi-tax state that complemented the peasant-based economy. One crucial difference was that in China these complementarities were intermediated by the strategic behaviour of the gentry organizations, whereas in Japan they were intermediated by the Han governments that embodied their own legitimate political violence and fiscal autonomy. The paper then described how these strategic complementarities between the ruler and the intermediate organizations were transformed into strategic rivalries in response to the changing economic situations and the deteriorating diplomatic relations, ultimately resulting in the demise of dynastic rule in each country. It is further argued that the post-transition constitutional design was affected by the ways in which the dynastic rulers were removed

46. For recent works on Chen's federalist movement based on detailed documentary evidence, see Chen (1999), and Duan and Ni (2009). Bertrand Russell, who was a visiting professor at Peking University in 1920, had a high opinion of Chen, as did John Dewey, who intimately observed the educational scene in China at the time. See Russell (1922), pp. 67, 268–9. Hatano (1973), chapter 6, characterizes Chen's opposition to Sun's Northern Expedition as political expediency, even though he recognizes Chen's popularity in Guangdong due to his platform based on a "self-determination alliance."

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through such strategic reconfigurations. In Japan, the centralized bureaucratic state replaced the coalition structure of the Han bureaucratic governments while retaining some elements of the rural-based tax state, whereas in China the emergent federalist trends towards the end of dynastic rule created unsettling conflicts in the constitutional design for unification of the nation that lasted for over one and one-half decades.

These comparative and historical observations suggest that the body of formal legal rules may not readily create an institution as "an integral pattern and process of social behavior and ideas,"[47] although the former may at times become one of the important artefacts that create and sustain institutions, at other times they may create destabilizing factors that generate institutional crisis and change. Adam Smith makes use of a game-theoretic analogy to state this insight:

> In the great chess-board of human society, every single piece has a principle of motion of its own, altogether different from that which the legislature might chose to impress upon it. If those two principles coincide and act in the same direction, the game of human society will go on easily and harmoniously, and is very likely to be happy and successful. If they are opposite or different, the game will go on miserably, and the society must be at all times in the highest degree of disorder.[48]

In order to pursue this insight further, let us follow a game-theoretic analogy and identify institutions with salient features of recursive states of play in societal games that the ruler, organizations, and individuals (such as the peasantry) endogenously generate through strategic interactions.[49] Readers should note that this conceptualization of institutions is comparable to the equilibrium notion in game theory. However, how do the agents come to form beliefs that are consistent with an equilibrium and thereby play in order to recursively generate a societal order? See Figure 1, spanned by the horizontal individual-societal dimension and the vertical action-cognition dimension.[50] In this space, the four cells, representing "(B) beliefs and valuations," "(S) strategic actions," "(R) recursive (equilibrium) states of play," and "(P) public representations (by formal and informal rules)," are arranged and linked clockwise. Classical game theory posits that players somehow have complete knowledge of the structure of the game, from which they can infer others' strategies (B), derive their own optimal strategies (S) based on such beliefs, and join together to form an equilibrium state of play (R). But philosopher David Lewis (1969) clarifies the logic by which this may not be possible even if all the players have complete knowledge of the game structure and even if they have a perfect ability of inference in cases where multiple equilibria are possible (which is indeed likely to be the case with equilibrium as an institution). This may not be possible either, even if each knows the choices of the others (which is called the "mutual knowledge" by game theorists). There are needs for the so-called "common knowledge," which requires that all know, all know that all know, and so on ad infinitum. Lewis's solution to escape the trap of infinite regression is a role analogous to the external-cognitive cell (P) in Figure 1. That is, there must be "a public proposition" which each knows that all know (period), and from which each infers that all infer that the same state of play will occur. But what kind of public proposition can accomplish this? Lewis refers to convention

47. Berman & Saliba, *supra* note 2, pp. 4–5

48. Smith (1759/1982), p. 234.

49. Aoki (2001, 2011, 2013b, Part III).

50. This figure is adapted from Figure 1 in Aoki (2011). It is used with a modification in a performativity-oriented restatement and interpretations of Hegel's theory of *Recht* and institutions by Herrmann-Pillath and Boldryev (2014).

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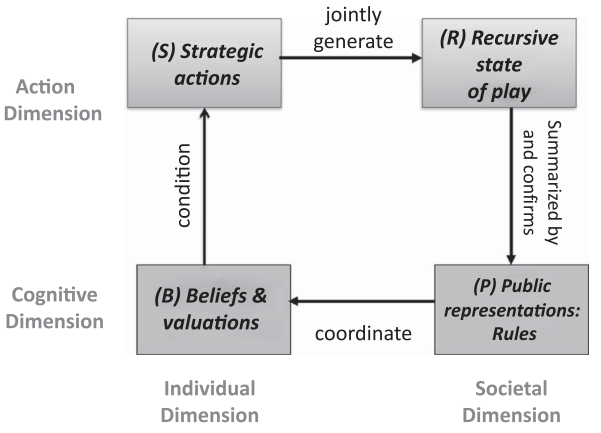

Figure 1. Rules as mediating the institutional process

that evolves through shared experiences by all. More broadly, we may posit that the reasonableness, trustworthiness, taken-for-grantedness, and the like of a public proposition need to be confirmed and reconfirmed by the recursive state of play as represented by the link from (R) to (P). We have to close the circular flow among the four cells in order to understand an institution as a process in which an integral pattern of play (R), a process of individuals' social behaviour (B, S), and ideas (P) are mutually reinforcing. In such a process, the Lewisian public proposition functions as an external cognitive resource for the players to form beliefs, enabling them to play in such a way that they contribute to and benefit from the sustained social order. As such, we may broadly think of formal rules, contracts, organizations, customs, norms, and even mythology as linguistic or symbolic representations of the institutional process.

While societal artefacts (P) are the missing ring in classical game theory premised on methodological individualism, NIE specifically regards the cell (P) in the form of the formal rules as the initial, driving force of the institutional process. Of course, depending on how the formal law is interpreted, the stable state of play (R) may be generated via the players' incentive-driven strategic actions (S) derived from it. But there is no guarantee that this will be consistent with the intended consequences of the rulers, politicians, and the like. At its worst, it may make the state of play destabilizing. In order to produce a stable, integral pattern of social behaviour, the proposed formal rules must be scrutinized and evaluated in the light of the emergent (or anticipated) state of strategic play for their enforceability, legitimacy, morality, and so on to be established and become public representations of institutions. Formal rules designed by the government per se are not, and do not, create institutions. A formal rule can function as a substantive form in the institutional process if and only if it can mediate between a recursive state of play in the societal game and individual belief formation in order to sustain the social order. This basic idea is stated here only in a stationary context, but, as shown elsewhere,[51] it can be extended to a dynamic, evolutionary context. Nevertheless, it is hoped that the present historical, comparative narrative has adequately illustrated the idea.

51. Aoki (2011).

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