Rethinking Japan's democracy: origins of “hybrid institutions” and their political consequences

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Abstract

This paper advances a way of thinking about the quality of Japan's democratic polity by reviewing a set of constitutive attributes that define and contribute to its governing structure and processes. In Japan, the basic characteristics that accompany modern democracy, such as rule of law, accountability, responsiveness, individual freedom, and fundamental rights, can be taken for granted. This paper addresses more nuanced features of these characteristics, their historical origins, and how they are born out in the actual working of Japan's democracy today. In particular, it highlights various aspects of “hybrid” institutions and their political consequences, including the coexistence of conflicting governing principles and the unusual procedure for the selection of the prime minister as stipulated in the constitution. Also discussed are inconsistencies in the electoral rules used for various levels of governments and how they have inhibited the development of political parties and stable party systems.

Keywords: Japan; democracy; political system.

日本の民主主義再考：「ハイブリッド化した制度」の起源とその政治的帰結

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本稿は、日本の統治構造と政治過程を規定するいくつかの重要な要因を考察することで、日本の民主主義体制の質についての理解を深めることを狙いとしている。日本では、法の支配、アカウンタビリティ、有権者からの要求への対応、個人の自由、基本的権利といった、近代以降の民主主義に伴う根本的特質が自明のものとみなされている。そこで、本稿では、こうした制度的側面のより細かな特徴に焦点を当て、

その歴史的起源を検討し、それらが今日の日本の民主主義が機能する中でどのように作用しているかを検証する。とりわけ、対立する統治原理が共存している点、珍しい首相選出手続きが取り入れられている点など、「ハイブリッド化」した制度的特徴およびその政治的帰結を明らかにする。また異なる政治体レベルで用いられる選挙制度の非一貫性、そしてこれらが政党の発展、政党システムの安定を妨げていることについても議論する。

1. Introduction

This paper advances a way of thinking about the quality of Japan's democratic polity by reviewing a set of constitutive attributes that define and contribute to its basic structure and processes. While addressing relevant issues widely, my aim is to highlight foundational dimensions of Japanese democracy: Japan's constitution and electoral institutions. Without a proper treatment of the effect that these factors entail, any appraisal of democratic quality of present Japan would be subject to a serious omitted-variable bias.

I start with the premise that Japan's democracy is as "advanced" as any other democracy in the world; I thus assume that in Japan the basic characteristics that accompany modern democracy, such as rule of law, accountability, responsiveness, individual freedom, and fundamental rights, can be taken for granted. The purpose of the paper, then, is to address more nuanced features of these characteristics, their historical origin, and how these are born out in the actual working of Japan's democracy today. It will be argued that the distinct quality of Japan's contemporary democracy stems from the "hybrid" nature of Japan's original institutions and the institutional developments thereafter, some of which reflect deliberate political choices and compromises, some the product of unintended consequences, and others the combination of both.

The rest is organized as follows. Section 2 will briefly review two historical developments – the pre-World War II experience of so-called "Taisho democracy", and the postwar one-party dominance by the Liberal Democratic Party – and discuss their relevance and saliency in exploring the quality of Japan's contemporary democracy. Section 3 turns to Japan's constitution and examines its fundamental ambiguity concerning the governance structure in general, and its unusual procedural provision for the selection of prime minister in particular, both of which are profoundly consequential for the responsiveness, rule of law, process of representation, and other democratic qualities of contemporary Japan. Section 4 focuses on past and current electoral rules and highlights institutional inconsistencies in the various types/levels

of public-office elections, inconsistencies that are detrimental to the development of political parties and a stable party system. The final section concludes with a discussion on more recent political developments and some examples of major institutional innovations.

2. Japan: not an anomaly

Japan, among its neighboring countries in Asia, presents an intriguing case for evaluating the experience of modern democracy. Japan is often treated as an exception in the region because of its unique historical path toward political and economic developments. Unlike most other Asian countries, Japan has had a long and virtually uninterrupted tradition of sovereign independence. Also, arguably, the roots of Japan's democracy are much deeper than those of other Asian nations. As early as the 1910s and 1920s, Japan enjoyed a period of stable parliamentary democracy, known as "Taisho Democracy", in which two to three major parties competed in regular elections and took turns forming majority and coalition governments. Furthermore, industrialization and capitalism took off much earlier in Japan, as did the integration of Japanese production and consumption into international trade and finance. Taken together, it is often assumed – and believed by many Japanese themselves – that the political, economic, and social systems that Japan has developed since the 1868 Meiji Restoration are more akin to Western Europe (and its offspring) than to Japan's Asian neighbors.

Japan's experience is also treated as "different" or "uncommon" in the literature of comparative democracies for another reason. For the major part of the postwar period, Japanese politics has been characterized by single party rule by the Liberal Democratic Party (LDP). Many observers have held the view that Japanese politics was dominated by a centralized bureaucracy, and that even the ruling LDP politicians had neither control of, nor access to, important policy-making processes (Johnson 1975, 1982). Precisely because the LDP continuously occupied a comfortable majority in both houses of the bicameral parliament, the argument goes, the ruling party had no hesitation in delegating its legislative power to diligent bureaucrats in the executive branch of government. As a result, cabinet-sponsored bills, or the bills drafted by bureaucrats of relevant ministries, always outnumbered those originally initiated within the parliament, relegating the role of Japan's Diet to the mere formality of "rubber stamping" (Baerwald 1974; Pempel 1974). On the basis of these observations, Japan is often claimed to be one of the "uncommon" democracies, together with Italy, Sweden, and others, which are distinguished from the more stereotypical forms of

modern democracy represented by Great Britain and the United States (Pempel 1990).

The tendency to view Japan as somehow displaying an anomaly in the family of democratic countries, however, is not productive. For, generally speaking, to label something “unique” or “exceptional” remains merely a typological exercise, which often signifies a halt in intellectual inquiries. For the purposes of this paper, two points in particular must be elaborated for clarification, namely the significance of Taisho Democracy in the prewar period and the implication of the postwar LDP dominance, which continued from 1955 to 2009.

First, the achievement of Taisho Democracy should neither be undervalued, nor should its legacy be overestimated in an assessment of Japan’s democracy today. It is certainly remarkable, on the one hand, that a healthy political pluralism flourished in the early twentieth century in Japan despite the cultural and behavioral persistence carried over from hundreds of years of pre-modern feudalism prior to the Meiji Restoration. In a short period of time, Japan was able to establish all the institutional ingredients necessary for Schumpeterian party competition to take place, including a constitution, parliament, electoral rules, as well as vibrant political parties themselves. True, suffrage was limited to males, but that should not discount Japan’s accomplishment, since such a limitation was the prevailing practice in most other “advanced” countries as well, including Great Britain (which adopted universal suffrage only in 1928). However, while all these facts add up to the conclusion that Taisho Japan was compatible with international standards of democracy *at the time*, they imply little about Japan’s democratic quality *today*. It should be recalled that, ultimately, the era of Taisho Democracy could not withstand the pressures of anti-democratic forces, and ended with the rise of militarism in the early 1930s. For the next 15 years or so, the accumulated democratic endowments were either destroyed or abused, as Japan became an extremely oppressive regime in order to engage in a series of wars with China, the United States, and much of the rest of the world. Furthermore, defeat in World War II led the United States and the allied forces to occupy Japan from 1945 to 1951, during which Japan was reborn as an entirely new political entity with a freshly adopted constitution and a completely different set of norms and rules for political processes. Given this discontinuity in the evolution of Japan’s democratic polity, any reference to the pre-war democratic experience, no matter how remarkable it was, would not justify treating Japan as an exceptional case for comparative purposes. The legacy of Taisho Democracy, if it remains at all, is not to be found in existing institutions, but merely in memories and history textbooks.

Second, turning to the LDP's one-party dominance in the postwar period, here again an appropriate understanding does not support treating Japan as an anomaly. It is true that, compared to other democracies, the LDP's long and virtually uninterrupted rule does indeed stand out. However, the *outcome* of one-party dominance does not imply the absence of a *process* in which political parties competed for votes, seats, and legislative influence, a competitive process that finally forced the LDP out of office in 2009. Moreover, even during the LDP's rule, postwar Japanese politics underwent significant changes, especially in the nature of its party system and the pattern of LDP's intra-party politics. These changes, too, can only be explained by the competitive and strategic interactions between parties, as well as among individual voters and politicians (Kohno 1997).

It should be noted that many mythical claims about the electoral system used for the House of Representatives, the Single Non-Transferable Vote (SNTV) system,¹ which had earlier been suspected as a major cause of the LDP's extraordinary success, have gradually been revealed as groundless in various rigorous studies. For example, Steven Reed demonstrated that the incumbency advantages under this electoral system were far less significant than had previously been believed, casting serious doubt on the system's direct bias for the governing party (Reed 1994). In a similar vein, Reed (1996) also showed that Japanese voters under this system were just as capable of punishing those politicians involved in major political scandals as under any other electoral system, pointing to the degree of accountability that this system provided. More generally, Reed (1990) demonstrated empirically – and later Cox (1994, 1997) formally – that the plurality nature of electoral contest under the SNTV system was hardly unique in that it could be regarded as a generalized version of “Duverger's Law”.² Taken together, these studies suggest that, despite the LDP's one-party dominance, the Japanese political process has been as competitive, responsive, and accountable as in any other democracy; the partisan (and intra-party) configuration has changed over time in response to the expressed will of voters, who in turn hold individual politicians accountable and can, if necessary, kick those “rascals” out of electoral contention.

My discussion so far about prewar Taisho Democracy and postwar LDP dominance is not to suggest that the past is entirely irrelevant in assessing the quality of Japan's democracy today. While irrelevant as the basis for Japan's supposed exceptionalism or uniqueness, history does have an enormous bearing on the actual trajectory in which Japan's democratic polity has unfolded, setting the fundamental context in which the governing institutions are set up and the rules and procedures carried out. The following two sections – one on the constitution

and the other on the electoral systems – attempt to show how the original institutions of postwar Japan were structured, and how their characteristics have evolved over time, to produce some distinctive, often unintended, consequences for the working of Japan's democracy.

3. Constitution

While countless books and articles have been written on various aspects of Japan's democratic system and processes, surprisingly little has been said in such scholarly works about the relevance of Japan's constitution (Constitution of the State of Japan), which was proclaimed in 1946 and became effective in 1947 (and has never been revised or amended since).³ The oversight is unfortunate because the constitution, being *the* foundational document that defines the structure of Japanese government, has had a profound impact on the democratic quality of contemporary Japan. What follows is in fact just a brief sketch of some of its important and previously neglected features.

How, in a word, can we summarize the important characteristics of Japan's constitution? In the interests of simplicity, I will describe it here as a "hybrid". The term hybrid, of course, immediately begs the question: a hybrid between what and what? For that matter, Japan's constitution represents a set of hybrids between many different governing principles and political traditions. The following focuses on two important features in particular, analyzing their origins and their effects, respectively.

3.1. *Parliamentary supremacy versus Madisonian constitutionalism*

Most fundamentally, Japan's constitution is torn between two opposing principles of government. On the one hand, the constitution clearly provides the basis of parliamentary democracy, whereby, as in the English tradition, the legislature is designated with supreme power as the branch of government representative of the sovereign people's will. As Article 41 states:

Article 41. The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State.

On the other hand, Japan's constitution also unmistakably embraces the principle of Madisonian constitutionalism, which can be in conflict with a typical parliamentary democracy. While Article 98 declares that the constitution overrides any legislative act, Article 81 defines judicial review.

Article 98. This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or their act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

Article 81. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

How can these two principles be reconciled? The answer is that they cannot. Parliamentary supremacy embodied in Article 41 is the principle governing majoritarian democracy. It is the principle that places the utmost importance in responsive representation for the working of democratic polity. By contrast, constitutionalism in general, and judicial review in particular, are the principles devised by James Madison (and other framers of the American Constitution and Bill of Rights) precisely to combat against the tyranny of majority. They constitute the “rule of law” safeguards under the majoritarian democracy for individual freedom and fundamental rights.⁴ Hence, logically, Japan’s constitution is self-contradictory or, at best, ambiguous about the fundamental structure of its government. How can the Diet still be the “highest organ of state power”, when the constitution declares itself “the supreme law” and designates the judicial branch to be the “last resort” to arbitrate legislative acts?

Of course, as any democratic theorist would insist, the representative responsiveness on the one hand, and the rule of law safeguards on the other, are both essential features of modern democracy. But, given the inherent tension, each democratic country must struggle in its own way to achieve an intricate balance between these two principles. The point here is that, in the case of postwar Japan, it is not so much a balance but rather an outright confusion that has been born out in the actual democratic practice. Two examples shall suffice to illustrate this.

First, despite the formal provision of judicial review, Japan’s Supreme Court has been hesitant about declaring the unconstitutionality of controversial legislation. Just a handful of legislative acts have been repealed as a result of judicial review over the entire postwar period. Furthermore, in politically controversial cases, where, for example, the constitutionality of Japan’s Self Defense Forces or the US–Japan Security Treaty was at issue, the Supreme Court intentionally and explicitly avoided handing down decisions by invoking the so-called Political Question Doctrine (*tōchi koi ron*), and insisting that politically controversial matters be resolved in the course of legislative debate. The obvious inactiveness of Japan’s judicial branch is not persuasive evidence that those judges sitting at the highest court are struggling to balance

parliamentary supremacy against the principle of constitutionalism. Rather, there seems to be confusion about the degree to which they can actually exercise their own power of judicial review.

Second, some recent exchanges in the debates about future constitutional revisions reveal that it is not only Japanese judges, but Japanese legislators and the general public too, that are confused about the inherent tension between the two governing principles. Currently, Japan's constitution stipulates that amending the constitution requires a two-thirds majority vote in each House, in addition to a majority vote in a popular referendum (Article 96). In recent debates, many incumbent politicians have expressed the view that this two-thirds majority clause for constitutional amendments is "anti-democratic" and hence should be the first to be revised. Such a view was backed by civic organizations, including the Japan Federation of Economic Organizations (Keidanren) and a think-tank organization, PHP Research Institute, when they publicized their own draft proposals for a new constitution. This line of reasoning completely misunderstands the principle of constitutionalism and misses the most basic point of safeguards against the tyranny of majority. Here, again, it is not so much an intricate balance between the opposing principles, but mere confusion that seems to be prevailing.

One can only speculate as to why a contradictory set of governing principles was originally introduced when Douglas McArthur and his staff in the American occupation forces were preparing their constitutional draft for postwar Japan. Most likely, the drafters rejected from the beginning the idea of imposing a presidential system in Japan, since such a system would be difficult to reconcile with Japan's emperor system. Hence, Article 41 ("The Diet shall be the highest organ of state power") had to be clear about the choice of parliamentary democracy. With regard to Article 81 ("The Supreme Court is the court of last resort with power to determine the constitutionality of any law...") it is possible that the drafters' aim was simply to introduce a clear separation of powers into the postwar Japanese government. Because they were so used to this US-born doctrine and the actual working of it at home, the American drafters may not have even considered the possibility that this article may stand in conflict with the principle of parliamentary supremacy set out in Article 41.

The hardest, and yet the most interesting, point of speculation is the origin of Article 98. The phrase, "the supreme law of the nation", was undoubtedly copied from Article 6 of the United States Constitution. For the United States, the insertion of such an article was necessary because, back in 1789, the Constitution was meant to consolidate the already existing 13 states into a new federation. It was vital that the

newly adopted federal constitution became the “supreme law of the land” above and beyond the existing state constitutions. But, unlike the United States, postwar Japan was never meant to become a federal nation, nor were there any pre-existing “state constitutions” to override. What, then, was the introduction of Article 98 meant to accomplish?

McArthur and his staff had abandoned the idea of abolishing Japan's emperor system early on in the occupation. Their judgment was political; it was evident that if they abolished the emperor system the Japanese people's resistance would have been insurmountable, and any reform, including constitutional revision, would stall. At the same time, however, the American drafters were convinced that under the new constitution the emperor must be deprived of all substantive political powers. Thus, they invented a new concept, that of the emperor being “the symbol” of the Japanese people, an idea embodied in the wording of Article 1. One minor problem that remained for the drafters was the existence of the Imperial House Law (*Koshitsu tempun*), originally enacted in 1889, which stipulated the line of imperial succession and administrative matters of the Imperial Household. When the American drafters decided to preserve the emperor system, they needed to make explicit somehow that this Law would also be subject to the new constitution. It was in this context that the otherwise confusing Article 98 had to be inserted. In other words, precisely because the drafters decided to take advantage of the emperor system for their own political cause, it was necessary for them to take an extra step to declare the supremacy of the new constitution.

The structure of Japanese government, torn between the principle of parliamentary supremacy and that of Madisonian constitutionalism was thus a product of conscious political choice. The American drafters at the time of occupation had their own good reasons for inserting both Article 41 and Article 98 in their attempts to implement democratic reforms in a politically feasible way. However, even the most calculated of decisions often entail unintended consequences. In retrospect, the drafters' decisions to incorporate the two opposing principles inevitably became a source of confusion in understanding Japan's constitution, and hence in understanding the nature of Japan's democracy. To the extent that Japan does not yet seem to have established a feasible balance between the two, the confusion not only remains an academic problem for intellectuals but it also plagues the actual working of Japan's democracy today.

3.2. *Parties: agents for representation, or more?*

Political parties are the essential feature of modern democracy. They are the agents of democratic representation and accountability in that

they translate and aggregate voters' interests into a coherent set of ideologies, policy preferences, and legislative priorities. Under a parliamentary system, in particular, political parties act as the basic units that seek to form a majority government and thus exercise political influence. It is easy to imagine, even without formal findings derived from social-choice theories, that parliamentary decision making would be cyclical, chaotic, and dysfunctional, were it not for organized, if not disciplined, political parties.

However, Japan's constitution makes no reference to political parties, despite their well-understood importance. Moreover, the constitution includes a peculiar provision, which could be seen to distort the proper democratic functioning of political parties in and outside of parliament. The case in point is Article 67, which defines the procedure for selecting Japan's prime minister. Although this article regulates a formal procedure within the legislative branch, it nevertheless has grave implications for the role of political parties more generally.

Article 67. The Prime Minister shall be designated from among the members of the Diet by resolution of the Diet. This designation shall precede all other business.

It should be noted that the procedure stipulated in this article deviates from the traditional practice of parliamentary democracies. In England, Canada, and elsewhere, the head of the party that has won the majority/plurality in the most recent general election becomes prime minister, without any secondary "designation" as in the Japanese case. In other words, under the conventional norms of parliamentary democracy, the people's votes at the time of a general election directly choose the national leader, and hence the composition of government. Japan's current system, however, which requires additional voting (designation) within parliament, is more akin to the electoral college system used in American presidential elections. In Japan, as far as formal procedures are concerned, it is not the voters themselves but the chosen representatives who, by acting more like delegates, choose the national leader and hence determine the composition of government.

On the surface, this difference between Japan's procedures and conventional procedures may seem trivial enough. On the contrary, this subtle difference has a significant impact on the quality of Japan's contemporary democracy. A series of political events that occurred in 1993 vividly illustrates this.

The year 1993 is now remembered as the year in which Japan's post-war party politics underwent a major change. After recurrent political scandals had paralyzed the government of the LDP, a group of self-

Table 1. *Lower House seat distribution after the 1993 General Election.*

Party	Seats	(Seats held previously)
Liberal Democratic Party	223	(222)
Independents (pro-LDP)	10	(8)
Japan Socialist Party	70	(134)
Clean Government Party	51	(45)
Renewal Party	55	(36)
Democratic Socialist Party	15	(13)
New Harbinger Party	13	(10)
Japan New Party	35	(0)
Social Democratic Federation	4	(4)
Independents (anti-LDP)	20	(7)
Japan Communist Party	15	(16)
Others	0	(2)
Total	511	

proclaimed reformers joined the opposition to pass a no-confidence bill, and eventually left the ruling party. In the subsequent general election, the LDP failed to obtain a majority in the lower house. After lengthy and intense bargaining, a non-LDP coalition government, consisting of eight political parties, was finally established, and the leader of a small party called the Japan New Party, Morihiro Hosokawa, was chosen as the new prime minister. This series of events was certainly epoch-making, because since its creation in 1955 the LDP had never been forced out of office.

This historical development would not have happened if Japan's procedure of selecting the prime minister had followed the conventions of other parliamentary democracies. Although the LDP failed to obtain a majority in the 1993 election, it still had an overwhelming plurality in the House of Representatives (see Table 1). Moreover, the LDP remained the largest party in the upper house as well, and thus its dominance in terms of seat shares in the entire Diet was without qualification. Had it not been for Article 67 of the constitution, the LDP would still have had a reasonable chance of forming a coalition government, or at least a minority government. Put another way, without Article 67, it would have been extremely difficult for Hosokawa, the head of such a small party, to be chosen as Japan's national leader.

From a general and theoretical point of view, the political events of 1993 reveal the fundamental problem that Article 67 poses for democratic representation in Japan. As can be seen in Table 1, Hosokawa's Japan New Party did not at all represent the will of the majority of Japanese voters in 1993. The fact that he was nevertheless chosen as

prime minister suggests that a different kind of political process, other than the process of representing the electorate, was at work. Because of the secondary “designation” procedure stipulated in Article 67, political parties in Japan can act not only as agents for representation but also like “delegates” with roles independent of representing voters, as happens when these parties engage in coalition-forming maneuvers once the election is over. In conventional parliamentary democracies, leeway for such maneuvering is minimized – at least at the time of an election – since the popular will is more directly translated into the choice of prime minister and the partisan composition of government.

Why, then, does Japan’s constitution have such a peculiar provision that seems to distort the important process of representation? More specifically, why was it necessary for the American constitutional drafters to insert Article 67, which clearly deviates from the traditional practice of parliamentary democracy? Were these Americans fond of their own electoral college system so much that they wanted to impose a similar system on Japan?

With all the drafters now deceased, the answer cannot be more than speculation. But the Americans seem to have had good reason to insert this seemingly odd article, a reason that had to do with the preservation of Japan’s emperor system. Suppose a general election produced a close result – a near tie among the major parties, for example. In such a case, without a formal procedure for selecting a prime minister, some other informal procedure would have to function to determine who should take the initiative of forming a government. In many other parliamentary democracies, such an informal role is performed, as conventions, by the head of state. For the American drafters of Japan’s constitution, however, it was unacceptable that the Japanese Emperor would perform such a role. The role to designate a prime minister, or even to decide who should take the initiative of forming a majority coalition, would be a role of political substance. In order to avoid informality, then, the rule for selecting a prime minister had to be formal and explicit. It was with this political consideration in mind, I suspect, that the American drafters thought of their own electoral college system as an institutional alternative.

Political decisions at one point in time, no matter how calculated and rational they might have been, sometimes produce unintended consequences, which the original decision makers would not have imagined. As was the case with Articles 41 and 89 discussed earlier, the decision to insert Article 67 for the designation of prime minister made sense politically to the American drafters, given the overall political constraints under which Japan’s postwar constitution had to be drafted. In retrospect, however, it is hard to deny that this peculiar procedural

provision has had a profound influence on Japan's democracy, especially on the nature of representation and the role of political parties in parliament. To the extent that this provision contributed to the formation of a non-LDP government in 1993, it must be concluded that it also changed quite significantly the actual course of Japan's political development.

In this section, I have described and analyzed Japan's constitution – or at least some important elements of it – which contains contradictory principles and traditions. Japan's governmental structure is indeed the product of institutional hybrids and, as such, there are some distinct consequences for Japan's democratic quality, including the unresolved tension between majoritarian representation and the rule of law, an inactive judiciary, nonresponsive coalition formation, and post-election maneuvering of political parties. This “hybrid” nature, it turns out, is not limited to Japan's constitution; it can also be found, more generally, in other institutional dimensions of Japanese democracy, including the electoral system as discussed in the following section.

4. Electoral rules

Compared to the surprisingly scant scholarly attention paid to important details of Japan's present constitution by comparative democratic theorists, numerous studies have been conducted on Japan's electoral system. Yet, despite the substantial volume, most of these studies focus narrowly on the working of the Single Non-Transferable Vote (SNTV) system and its political effects. This disproportionate focus is understandable, given that it was the system used for a long time (1947–1993) in elections for the House of Representatives, the more important lower house of Japan's bicameral parliament. Though a similar electoral system was used in Taiwan (and temporarily in South Korea), the SNTV system was an institutional feature characteristic to post-war Japan.

However, what is truly distinctive about Japan's electoral institutions lies not in this particular system but rather in the inconsistencies among various electoral rules used for different types/levels of Japanese government and assemblies. As discussed below, this “institutional hybrid” has had a major impact on Japan's democratic quality, especially on the development (or lack thereof) of a stable party system.

At present, as a result of the compromise struck in 1993 between various political parties under the non-LDP Hosokawa government, the House of Representatives no longer uses the SNTV system, but instead uses a complex system called “parallel (*heiritsu*) system”. Under this system, the total number of House seats (currently 480) is

divided into two separate categories (hence “parallel”), that is, into those seats (300) chosen from single-member plurality district competition, and those seats (180) chosen from proportional representation competition conducted regionally. Each voter casts two ballots, one for a candidate competing in his/her district, and the other for a party (list) competing in his/her proportional representation regional bloc. Hence, this system for the lower house by itself already exhibits the characteristic of an “institutional hybrid”.

Turning to the upper house, the House of Councillors, its electoral system also adopts a “parallel” system. Every three years, half of the upper-house members (currently 242) are elected from two separate categories of electoral competition, but the composition of these two categories is different from that of the lower house. One category of seats (73) is assigned proportionally to each prefecture, where one to five members are chosen depending on the relative size of the prefectural population. The other category of seats (48) is chosen based on a nationwide proportional representation. As in the lower house election, each voter has two ballots to cast, one for the prefectural competition and the other for the national proportional representation.

What are the political consequences of these electoral systems? As shown in the work of Maurice Duverger, there is a strong relationship between the choice of electoral rules and the nature of partisan configuration. More specifically, typical Anglo-American types of plurality competition are said to produce two-party systems, while European types of proportional representation competition are more likely to lead to multiparty systems (Duverger 1963). In the case of Japan, however, neither of Duverger’s predictions works exclusively, because each House’s electoral system – and Japan’s electoral system as a whole – is torn between different dynamics. For example, voters, who can vote sincerely for their preferred parties in elections decided by proportional representation, may face a severely limited number of political choices (candidates) running in the lower house district and/or upper house prefectural competitions.

Under such circumstances, the “parallel” system generates a strong incentive for voters to split their two votes. While such flexibility could be thought of as an asset for individual voters, it can be a liability from an institutional standpoint as it discourages voters to develop sustained support and/or psychological attachment for a particular political party. At the elite level as well, the hybrid nature of Japan’s electoral system works against the crystallization of a stable party system. Because the political opportunities open to candidates and parties vary significantly from one type/level of competition to another, the pattern of electoral

coalition and cooperation among them is likely to be ad hoc and short-lived. In other words, candidates and political parties have the incentive to be opportunistic, changing their campaign promises and platforms strategically in order to meet the demand of an electorate whose composition varies across different types of elections.

The hybrid nature of electoral systems in Japan extends even beyond national elections. For example, the chief executives of local governments at various levels, namely prefectural governors and city/town mayors, are elected by direct popular vote, as in the American-style presidential election system. Local assemblies in prefectures and cities/towns, on the other hand, still use the SNTV system to elect their members. Hence, together with the House of Representatives and House of Councilors elections, Japan's electoral system as a whole features many "parallel" systems existing side by side, leading to a situation that is too disorganized for a stable party system to develop at the grass-roots level.

The hybrid electoral institutions may provide an important key for the empirical findings consistently reported about postwar Japan, namely the weak party identification among Japanese voters. Indeed, scholars engaged in mass survey research on Japanese voting behavior abandoned the term "party identification" in their survey questionnaire, because they can never find a Japanese voter who "identifies" with a major political party. The question asked instead is: "Which party do you normally support?" However, the term "support" is not a good measure of psychological attachment as the answer may just reflect a behavioral response similar to the question, "Which party would you vote for if the election were held tomorrow?" But in any case, even using this alternative (in my view, dubious) measure, the sense of connection to political parties by Japanese voters is very weak. Many studies have shown that the number of "independents" who "do not normally support any party" has risen consistently, today reaching well over 50% of the entire Japanese electorate.

In assessing the quality of democracy in contemporary Japan, the extremely low level of party identification among Japanese voters must be viewed with due caution. Without a solid popular foundation upon which to operate, even dramatic electoral change, as happened in 2009, may result in many politicians on the losing side simply switching their partisan affiliation to the winning side. Such post-election bandwagoning behavior, if it were allowed to prevail, would considerably diminish Japan's democratic accountability. Hence, the hybrid nature of electoral institutions cannot be regarded as a positive aspect of Japan's democratic quality, an issue that future electoral reforms must address.

5. Conclusions

A qualitative inquiry into the working of modern Japan's democracy has revealed that there are intricate and nuanced patterns of interactions among various constitutive democratic elements. Such a mode of inquiry is advantageous and called for especially when the outcomes in question are counterintuitive and/or when the processes that have led to those outcomes are not readily obvious. As I have tried to demonstrate in this paper, the case of Japan is filled with such counterintuitive and non-obvious democratic features, including the coexistence of conflicting governing principles, the unusual procedural provision for the selection of a prime minister, and the inconsistencies among electoral rules used for various levels of government. These features, under the collective heading of "institutional hybrids", are particularly important ones among a host of other puzzling characteristics of contemporary Japan that need to be analyzed on their own qualitative terms in future research.

From a comparative perspective, Japan among other Asian countries is categorized not as a nation in the process of democratization but as an established democracy. This categorization, however, should not detract from the important fact that democracy itself is a dynamic, ongoing, and endless process. Some of the legislative innovations and political developments that have occurred recently in Japan document this. For example, in 1993, the Administrative Procedure Law (*Gyōsei tetsuzuki-hō*) was enacted. In 2001, the so-called Information Transparency Law (*Jōhō kōkai-hō*) or the Law Concerning Access to Information Held by Administrative Organs (*Gyōsei kikan no hoyū suru jōhō no kōkai ni kansuru hōritsu*) became effective. These two new laws took away a large portion of administrative discretion formally available to the Japanese bureaucracy, and they thus substantially improved the degree of accountability and transparency in public policy implementations. And, in 1998, the NPO Law (*Tokutei hieiri katsudō sokushin-hō*) was enacted to further promote the activities of voluntary and non-profit organizations, with the result that the number of such organizations increased exponentially, strengthening the "civil society" foundations of Japan's democracy. In 2009, the Democratic Party of Japan, after a decade struggling to become a viable alternative to the LDP, finally won the lower house election. The new government embarked on various new initiatives to increase policy accountability and transparency, including the so-called "project-sorting" (*jigyō shiwake*) measure, a tough and public monitoring procedure for administrative fairness and efficiency. The list could be extended, the point being simply that Japan, like other established democracies, is engaged in a constant effort to improve the quality of its democracy.

The ultimate dilemma that observers of any democracy or democratizing country face is that there is no way of knowing *ex ante* what constitutes an exhaustive list of relevant elements that contribute to the country's democratic system and processes. Qualitative and nuanced research, therefore, must go on and our analysis must continue, as Japan itself endlessly changes and renews its democratic features over time.

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Notes

1. Under the Single Non-Transferable Vote (SNTV) system, which was effective from 1947 to 1993 for the lower house, each voter cast one ballot for a candidate in his/her district where typically three to five representatives were to be elected (one-member, two-member, and six-member districts were occasional exceptions). Unlike the Irish Single Transferable Vote (STV) system, in Japan, votes for a candidate were non-transferable to other candidates of the same party.
2. In his study on the relationship between the number of political parties and the electoral system, Duverger (1963) argues that the Anglo-American single-ballot plurality system brings about two-party systems. According to Duverger, this law-like relationship exists because (i) rational politicians will leave losing parties that are under-represented and (ii) rational voters will not waste their votes on losers. Reed (1990: 336) has extended this notion to the Japanese SNTV system and showed empirically that "where n is the number of seats in the district [...] election in simple plurality elections with multimember districts tend to produce competition among $n+1$ candidates".
3. While beyond the scope of this paper, there are at least three reasons for this scholarly neglect. First, in Japan, the discipline of constitutional studies is highly autonomous, monopolized by self-proclaimed "constitutional scholars" who belong to university law departments and mostly engage in statutory interpretations. Political scientists, therefore, tend to shy away from transgressing their sphere of expertise, and have not included the constitution as something to be analyzed from the viewpoints of positive political theories. Second, Japan's constitution was originally drafted by the American occupation forces. Some observers, especially conservative ones with nationalistic inclinations, would probably have difficulties facing the constitution as a text for serious intellectual inquiry. Third, by contrast, for those scholars on the "left" of the ideological/political spectrum, the constitution is a sacred document, especially for Article 9 (the famous "peace clause" which forbids Japan to engage in war and abandons its war-conducting capabilities). For them, the constitution in its entirety is something untouchable, given

that it is a symbol of Japan's new democracy, a democracy that replaced the oppressive wartime regime.

4. The tension between the two principles is most clearly stated by Alexander Bickel (1962: 16–17), who coined the term “counter-majoritarian difficulty” in the American context to refer to constitutional law’s anti-democratic nature: “[W]hen the Supreme Court declares unconstitutional a legislative act or the action of the executive, it thwarts the will of representatives of the actual people here and now; it exercises control, not on behalf of the prevailing majority, but against it.”

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