

Terminology Surrounding the “Tripartite Separation of Powers”¹

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1. The Debate on “Forms of Government” (*seitai*政体) and the Concept of the “Tripartite Separation of Powers” (*sanken bunritsu*三権分立)

Having overthrown the Edo shogunate under the slogan of “restore imperial rule” (*ōsei fukko*王政復古), the regime of the Meiji Restoration next faced as a basic task before it the “form of government” into which it was to lead the Japanese nation that would follow. While a period of groping toward this end naturally ensued, I would like to elide this element of the story for now. The direction taken as a goal was constitutional monarchy based on the English model with a “tripartite separation [or division] of powers.”

Discussions of “governmental form” (or “polity”) in Japan prior to this time had touched on this issue somewhat in the *bakumatsu* period. The first to venture a discussion of “forms of government” was Katō Hiroyuki 加藤弘之(1836-1916, earlier known by the name Katō Hirozō 加藤弘蔵, from Izushi 出石 domain in Tajima 但馬), who was working as an assistant in the shogunate’s Bansho torishirabejo 蕃書取調所 (Institute for the study of barbarian books). At the age of 25 in 1861 (Bunkyū 1), Katō wrote, but did not publish, a work entitled *Rinsō* 鄰艸 (On our neighbor), the gist of which was a discussion of various different governmental systems and an examination of the political situation prevailing in Japan’s neighbor, China. In this work, he offered the first explanation in Japan of “forms of government” and the first discussion of this topic from a political science perspective.

As Katō wrote:

The world is an immense place, and the states formed [within it] are innumerable. However, there are no more than two *forms of government* to discuss: *kunshu seiji* 君主

¹ “‘Sanken bunritsu’ ni matsuwaru yōgo” 「三権分立」にまつわる用語, in *Nihon Kango to Chūgoku: Kanji bunkaken no kindai* 日本漢語と中国：漢字文化圏の近代 (Japanese terms in Chinese and China: The modernization of the cultural arena of Chinese characters) (Tokyo: Chūkō shinsho, 1981), pp. 3-60.

政治 (known as monarchy in the West) and *kansai seiji* 官宰政治 (known as a republic in the West).²

He soon moved on to an explanation of *kansai seiji*: “There is no sovereign above the people of the nation; the officials consult with one another and run the government.” He further elaborated the two conceivable forms of *kunshu seiji* and the two forms of *kansai seiji*, using the following terminology:

<i>kunshu seiji</i> (monarchy)	<i>kunshu akuken</i>	君主握權	(unlimited monarchy)
	<i>jōge bunken</i>	上下分權	(limited monarchy)
<i>kansai seiji</i> (republic)	<i>gōzoku senken</i>	豪族專權	(aristocratic republic)
	<i>banmin dōken</i>	万民同權	(democratic republic)

He then added explanations for each of these types of government, but I shall not discuss them here.

Soon thereafter, Fukuzawa Yukichi 福沢諭吉(1835-1901) offered the following three types in a passage entitled “Seiji ni san’yō ari” 政治に三様あり (There are three types of government) of a section entitled “Seiji” 政治 (Governments) at the beginning of the first volume of his *Seiyō jijō* 西洋事情 (Conditions in the West), published in July 1866 (Keiō 2): “*rikkun* 立君 (monarchy), *kizoku gōgi* 貴族合議 (aristocracy), *kyōwa seiji* 共和政治 (republic).” In “Seifu no shurui” 政府の種類 (Kinds of government) in the second part of the outer chapters of *Seiyō jijō*, published in 1867 (Keiō 3), he again offered these three forms of government. However, Fukuzawa still used the words “*seifu no teisai*” 政府の体裁 (styles of government) and not the two-character Chinese compound *seitai* (Ch. *zhengti*).

In this connection, it was Mitsukuri Shōgo 箕作省吾(1821-46) in his *Kon’yo zushiki* 坤輿図識 (Annotated maps of the world) of 1845 (Kōka 2) who coined the term *kyōwakoku* 共和国 as a translation for the Dutch word for “republic.” In his *Kon’yo zushiki ho* 坤輿図識補 (Addendum to Annotated Maps of the World), penned the next year (1846), he again used this term. Mitsukuri assigned the word *kyōwakoku* (Ch. *gongheguo*) because he was using the reign period *Gonghe* 共和 from the era of King Li 𠄎王 (trad. r. 878-827 B.C.E.) of the Zhou dynasty, at the instruction of Ōtsuki Bankei 大槻磐溪(1801-78). This point is mentioned in a section entitled “Kyōwa seiji” 共和政治 (Republican government) of Hozumi Nobushige’s 穂積陳重(1855-1926) book, *Hōsō yawa* 法窓夜話 (Evening chats on the law).³ Accordingly, when Katō wrote the *Rinsō*, the Japanese term “*kyōwa seiji*” already existed, although Katō took the bold step of changing it to “*kansai seiji*.”

It seems that Katō in his *Rinsō* was the first to use the expression *seitai* to give meaning to the form of a state’s governance. However, *seitai* (Ch. *zhengti*) in the sense

² Following the text of *Rinsō* as it appears in volume 3 of *Meiji bunka zenshū* 明治文学全集 (Collected writings of Meiji culture) (Tokyo: Nihon hyōronsha, 1927-1930). I have added punctuation marks and voiced sounds where needed. The same is true for passages cited below.

³ Tokyo: Yuhikaku, 1916.

of the way a regime should be governed can be found many times in classical Chinese sources, beginning with a citation from the annals of Emperor Guangwu 光武 (r. 25-58) in the *Hou Han shu* 後漢書 (History of the Later Han Dynasty) which lauds the morality of the emperor:

Although he personally achieved this great accomplishment, he continued to be diligent and ever striving as if he could never do enough. Thus, he was able to clarify and take great care in the [optimal] form of government (*zhengti*), and he was able to maintain full control over the web of authority. Carefully assessing each opportunity and gauging his strengths, in whatever he did there was no error.⁴

Nonetheless, the use of *seitai* meaning the form of rulership, the manner in which the state's sovereign power should be exercised—namely, the political science sense of the national polity—seems to have emerged as a result of Katō's concocting. In *Seiyō jijō*, Fukuzawa had written of “*seifu no teisai*” but not yet the term *seitai*.

In Mitsukuri Shōgo's *Kon'yo zushiki ho*, we see the term *seido* 政度 (in section three); and the *Lianbang zhi lue* 聯邦志略 (Brief survey of the United States of America, 1861 [Xianfeng 11]), published in China as a translation of a work by Elijah Coleman Bridgman (Bi Zhiwen 裨治文, 1801-61),⁵ used the term *guozheng* 國政 (J. *kokusei*). Thus, the possibility is strong that the emergence of *seitai* in a political science sense came into Japanese with Katō's *Rinsō*, but further, more detailed study is still needed on this topic.

E. C. Bridgman's *Lianbang zhi lue* was printed in Japan with Japanese reading punctuation by Mitsukuri Genpo 箕作阮甫 (1799-1863, the adopted heir of Mitsukuri Shōgo) in 1864 (Genji 1), and Katō Hiroyuki probably knew about it. This work notes that “there are, in general, three different kinds of polity (*guozheng*) in the world”:

1. Power (*quan* 權) arising from above.
2. The ruler and subjects sharing power, ruling through mutual consultation. [The text explains that Britain and France have such governments].
3. The ruler does not control the world, but is selected by the people. Power (*quan*) resides with the common people, while the ruler serves in his duties. [The United States is given as an example of this].

The “three styles of government” in Fukuzawa's *Seiyō jijō* are the same as the three given in Bridgman's work. However, the theory of four types of forms of government given in Katō's *Rinsō*, when compared to these, added something new of Katō's own devising. In his *Rikken seitai ryaku* 立憲政体略 (Outline of constitutional government) of 1868 (Keiō 4), he added further revisions to his theories in a discussion of the existence of five *seitai*, to which we shall return later.

⁴ “Annals of Emperor Guangwu” (*xia*), *Hou Han shu*: 雖身濟大業，競競如不及，故能明慎政體，總攬權綱，量時度力，舉無過事。

⁵ A publication date of 1862 is given for this work in Hiromu Momose, “Liang T'ing-nan,” in *Eminent Chinese of the Ch'ing Period (1644-1912)*, ed. Arthur W. Hummel (Washington, D.C.: Government Printing Office, 1943), pp. 504-05. (JAF)

Neither Katō's *Rinsō* nor Fukuzawa's *Seiyō jijō* yet mentioned the "tripartite division of powers," but the subject was raised in the "Seitaisho" 政体書 (On the polity) promulgated by the new Meiji government in 1868 (intercalary fourth month, 27th day) and in Katō's *Rikken seitai ryaku* of the same year. Thereafter, it became common knowledge that this "tripartite division of powers" was a premise of Restoration politics in Japanese society.

The "Seitaisho" was the first clear statement by the new government on its political direction. In it the new government explained in the following manner how it would proceed with the "tripartite division of powers":

* All power under heaven accrues as a rule to the Council of State (Dajōkan 太政官). This makes the affliction of government ordinances following two different routes impossible. The powers of the Council of State are divided into three: *legislative* (*rippō* 立法), *executive* (*gyōhō* 行法), and *judicial* (*shihō* 司法). This makes the affliction of bias impossible.

* Legislative officials cannot also be executive officials. Executive officials cannot also be legislative officials. However, provisional tours of inspection in Tokyo, Kyoto, and Ōsaka as well as receptions for foreign embassies are to be supervised by the legislative officials.

The "Seitaisho" was drafted by Junior Councilors Fukuoka Takachika 福岡孝弟 (1835-1919) and Soejima Taneomi 副島種臣 (1828-1905) who had also participated in drafting the "Gokajō no goseimon" 五箇条の御誓文 (Charter oath) which was promulgated in the third month of 1868, and the former was issued as a concrete manifestation of the spirit of the latter. It is thought that in the preparation of the "Seitaisho" the drafters consulted Bridgman's *Lianbang zhi lüe*, Fukuzawa's *Seiyō jijō*, and thus the spirit of the United States Constitution. Here they found the earliest pronouncement of the "tripartite division of powers."

The "tripartite separation of powers" in this case, though, simply referred to a distribution of powers and a division of rulership. It did not include issues concerning the rights of the people and, although speaking of the "tripartite division of the powers" of rulership, it in fact continued to speak in the same form as before. Nonetheless, the "Seitaisho" made clear that the government aimed at this "tripartite division" as its ideology or as an objective of it. One might say that it was an exceedingly important national plan in its intellectual import.

There are many issues that may be pursued along more specialized veins concerning the vicissitudes traveled by the idea of the "tripartite division of powers" in Europe as it came to dominate the mainstream of political society, but the conception of the "tripartite division of powers" in Japan and China can be understood as beginning with Montesquieu (1689-1755). For example, in his lectures entitled "Hyakugaku renkan" 百学連環 (Links of all sciences), given at the Ikueisha 育英舎 private academy (Tokyo) in 1870-71, Nishi Amane 西周 (1829-97) touched on the issue of the "tripartite powers" (*sanken*) in a section entitled "Seijigaku (hōgaku)" 政治学(法学) (Study of politics, legal studies):

The division of power (*kubetsu no ken* 區別之權). Although the power of the “ruler” originally engulfed all power, allowing for none other, when it was divided up there were three divisions. These divisions were devised by Montesquieu of France.⁶

In China as well, Liang Qichao 梁啟超(1873-1929) published in 1899 (Guangxu 25) an essay entitled “Geguo xianfa yitong lun”各國憲法異同論(On similarities and differences among the constitutions of various countries). In it he touched on what he called “*sanquan dingli*” 三權鼎立 (tripartite division of powers): “This theory was first advocated by the great French scholar Montesquieu.”

Japanese scholars of Western learning probably knew as a sort of rumor that Montesquieu’s views had strongly influenced the Constitution of the United States (drafted in 1787, ratified in 1788) and the French Revolution. The aforementioned article by Liang Qichao was written in Japan and carried in issue number 12 (1899/3/10) of his *Qingyi bao* 清議報 published in Yokohama. Thus, Liang may have learned of Montesquieu’s impact from the writings of Japanese. In any event, the idea of a “tripartite division of power” arose from Montesquieu. *The Spirit of the Laws*, Montesquieu’s representative work, was eventually translated into Chinese under the title *Mengdesijiu fayi* 孟德斯鳩法意 by Yan Fu 嚴復 (1853-1921) who systematically translated and introduced many Western schools of thought in China.

Furthermore, Japanese of that time knew that Great Britain had implemented a political system with a “tripartite division of power.” Gradually they became more interested in Britain’s governmental administration and inclined to favor rule along British lines. Of course, British politics of the eighteenth century had moved from John Locke’s (1632-1704) dual powers divided between legislative and executive branches to the “tripartite division” advocated by Montesquieu, but a detailed discussion of this matter is not my task here.

2. An Era of Searching for Terms for the “Tripartite Powers” (*sanken* 三權)

Although Katō Hiroyuki offered a detailed discussion of forms of government in the *Rinsō*, he did not go so far as to advocate a “tripartite division of power.” However, in his *Rikken seitai ryaku* which carried a “short preface” (dated the seventh lunar month of 1868, when he was 32 years of age), he did make mention both of constitutions and of “tripartite powers.” From the date attached to this preface we know that the *Rikken seitai ryaku* was published after the promulgation of the “Seitaisho.” Katō probably moved ahead this extra step and mentioned constitutions in order to show his recognition of the direction the new government was taking with the “Seitaisho.” Afterward, he was appointed officer in charge of investigating laws and governmental institutions and became involved in government affairs, but there remain some unclear points about his status while he was writing the *Rikken seitai ryaku*.

The “short preface” reads in part:

⁶ “Hyakugaku renkan,” in *Nishi Amane zenshū* 西周全集(Tokyo: Nihon hyōronsha, 1945), vol. 1. The words “The division of power” appeared in English as a translation for “*kubetsu no ken*.” (JAF)

The *constitutional form of government* (*rikken seitai* 立憲政体) firmly establishes the fair-minded, just, steadfast, and unswerving laws of the land. It is a *form of government* in which the people and the government seek out true principles of government.⁷

As can be seen in these words, the *Rikken seitai ryaku* was clearly a work aimed at the proper political course the new regime should adopt.

In the section entitled “Seitai sōron” 政体総論 (General discussion of forms of government) in the *Rikken seitai ryaku*, Katō made a number of revisions to the theory of politics he had enunciated in the *Rinsō*. He now wrote of the existence of five kinds of polity, and his terminology too changed in the following manner:

monarchy (<i>kunsei</i> 君政)	monarch monopolizes power	<i>kunshu sensei</i> 君主擅制
	monarchical rule, autocracy	<i>kunshu senji</i> 君主專治 (called <i>kunshu akuken</i> 君主握權 in the <i>Rinsō</i>)
	monarch shares power	<i>jōge dōji</i> 上下同治 (or <i>kunmin dōji</i> 君民同治; called <i>jōge bunken</i> 上下分權 in the <i>Rinsō</i>)
popular government (<i>minsei</i> 民政)	aristocratic rule	<i>kiken senji</i> 貴顯專治 (called <i>gōzoku senken</i> 豪族專權 in the <i>Rinsō</i>)
	democratic republic	<i>banmin kyōji</i> 萬民共治 (called <i>banmin dōken</i> 萬民同權 in the <i>Rinsō</i>)

Katō then proceeded with a detailed explanation of two of these in particular: *jōge dōji* under *kunsei* and *banmin kyōji* under *minsei*. He also pointed out that each of these systems had its own “constitution” (*kokken* 國憲) and “three great powers” (*san dai kenpei* 三大權柄). Of the five polities given, Katō explained his reasons for selecting these two for analysis:

As discussed in the preceding chapter, among these five forms of government the firm establishment of fair-minded, just, steadfast, and unswerving laws of the land [i.e., a constitution] to seek out true principles of government can be achieved only under two of these polities: *jōge dōji* (monarch and people share power) and *banmin kyōji* (democratic republic). Consequently, these are called constitutional forms of government. We shall describe the institutions of these two polities below; that is the principal aim of this work.

At this time Katō believed that when Japan would arise as a constitutional state its electoral body would be limited to one of these two: *jōge dōji* or *banmin kyōji*. Yet, Katō himself argued in a section entitled “Banmin kyōji”: “However, institutions of this sort cannot be put into effect unless they are found in extremely small states such as Athens. Even if they could be implemented, they would not turn out to be very efficacious institutions.” In Katō’s judgment Japan should certainly select as its future course the

⁷ Included in volume 3 of *Meiji bunka zenshū*.

sharing of power between monarch and populace. Accordingly, his explanation attached to the section entitled “Jōge dōji” is written with enthusiasm.

In any event, in the *Rikken seitai ryaku* he discussed the “constitution” and the “three great powers” (namely, the “tripartite powers”; the term used here for “powers,” *kenpei* 権柄 was also written as *kenpei* 憲柄 at the time) appropriate to both the *jōge dōji* and *banmin kyōji*. The following language was used for these “three great powers”:

<i>rippō kenpei</i>	立法権柄	[legislative power]
<i>shisei kenpei</i>	施政権柄	[executive power],
	(also called <i>gyōhō kenpei</i> 行法権柄)	
<i>shiritsu kenpei</i>	司律権柄	[judicial power]

The term “*sanken*” (meaning “tripartite powers”) in the “Seitaisho” referred to the three: *rippō*, *gyōhō*, and *shihō*. Katō used the term *shiritsu* for what the “Seitaisho” called *shihō*. Accordingly, the term “*sanken*” came into circulation at this time.

For the reader’s reference, what follows is the content of Katō’s work for the “constitution” and “three great powers” given under the section for *jōge dōji*.

Constitution (*kokken*)

Kokken is the great constitution for ruling the state. All the great principles of the institutions of this form of government are recorded in it. The affairs of state are carried out on the basis of this [document], and the government cannot change it at will. If changes are desired, then they must first be planned by the legislative office. This is an unswerving rule.

Legislative Power (*rippō kenpei*)

The constitution is the basis for ruling the state. The power to secure this is without a doubt the most important part of the three great powers. Thus, the ruler cannot take all power unto himself, but must share it with the populace. Together the ruler and the people, high and low, hold authority.

Executive Power (*shisei kenpei*)

The ruler implements the constitution which has been decided upon in consultation with the legislative office. The term for the power to carry out the affairs of the government on the basis of this constitution is *shisei kenpei* or *gyōhō kenpei*.

Judicial Power (*shiritsu kenpei*)

Shiritsu kenpei refers to the power to administer the laws. It prevents any malicious motives of men who fix the laws and install judicial officials, and it allows for the self-cultivation of men. Thus, this power establishes a separate judicial office to carry out its affairs, standing beside the two great legislative and executive authorities....

The officials of this office of government only adjudicate in litigation involving the laws and under no circumstances have the authority to determine the correctness or incorrectness of the law. Nonetheless, all litigation is entrusted to this office, and the ruler is to have hardly any of it remaining within his purview....

The foregoing discussion of *jōge dōji* which Katō Hiroyuki proposed in 1868 ultimately set the agenda for Japan later and even today. Eventually Katō became active in the new government as the officer in charge of investigating laws and governmental institutions. Thus, although his *Rikken seitai ryaku* was only a small pamphlet, it came to exercise an immense influence over people at that time. It might even be said that the

view of the constitution and the content of judicial authority advocated by Katō are current in Japan now.

Nishi Amane's lectures, "Hyakugaku renkan," occupy an important position in the process by which recognition of the "tripartite division of power" became established in Japanese society. Born into the home of the doctor to the local feudal lord in Tsuwano 津和野, Iwami 石見 [in what is now Shimane prefecture], Nishi, like Katō, rose from the position of feudal retainer. The first student formally sent overseas to study by the shogunate, he left for the Netherlands in June of 1862 (Bunkyū 2) with Tsuda Mamichi 津田真道 (1829-1903); he returned in December 1865 (Keiō 1) and became a teacher at the shogunate's Kaiseijo 開成所 (Institute of development). Later, he moved to Tokyo at the invitation of the new Meiji government, and for four years from 1870 (Meiji 3) ran the Ikueisha private academy in Tokyo. He gave the "Hyakugaku renkan" lectures there as a special series to explain European scholarship in a comprehensive manner. At the time Nishi was working as a lower level functionary in the Ministry of the Military and as an officer in charge of investigating educational systems in the Meiji government.

What remains at present from the "Hyakugaku renkan" is only the recorded text as taken down by Nagami Yutaka 永見裕 (1839-1907), Nishi's son-in-law and a scholar from Fukui 福井 domain; it is included in the first volume of the *Nishi Amane zenshū* 西周全集 (Collected works of Nishi Amane).⁸ In the section within it entitled "Seijigaku (hōgaku)," Nishi explains the issues surrounding "tripartite powers," and he describes how the "tripartite division of power" was a doctrine first enunciated by Montesquieu. He then continues and offers the following terms for the "tripartite powers":

Legislative	<i>rippō no ken</i>	立法ノ権
Executive	<i>gyōhō no ken</i>	行法ノ権
Judicial	<i>dantei no ken</i>	断定ノ権

In this instance Nishi used the vocabulary of *rippō* and *gyōhō* from the "Seitaisho" and the *Rikken seitai ryaku*, but in place of *shihō* in the "Seitaisho" and *shiritsuken* in the *Rikken seitai ryaku*, he used the term "*danteiken*." Later in the text he came to a discussion of *seitai* or "form of government."

Government (*seitai*) There are two kinds of government. One is Monarchy (*kunshu no chi* 君主の治) and one is Democracy (*minshu no chi* 民主の治)... "Monarchy" involves a sovereign controlling all political power and having jurisdiction over the populace, while in "democracy" there is no sovereign as the people confer together to carry out the affairs of government.

If we were to compare monarchy and democracy, then although monarchy is the very essence of government, when it is taken to extremes, it leads to the abuse of the monopolization of power. Democracy is not the essence of government, but when it is put into effect, it has the negative characteristic of all the people fighting for their own viewpoint and thus a lack of consistency.

⁸ Tokyo: Nihon hyōronsha, 1945.

What Nishi referred to as *kunshu* and *minshu* were termed *kunsei* and *minsei* in the *Rikken seitai ryaku*, but the idea that “monarchy is the very essence of government” is consistent with Katō Hiroyuki’s thinking. However, rather than seeing Katō’s influence over Nishi’s thinking, what we have here is a shared sense of reality among Japanese intellectuals in the early years of the Meiji era. Just after the Restoration, they could not help but focus on this area. Yet, while Nishi dared to replace Katō’s *kunsei* and *minsei* with *kunshu* and *minshu*, respectively, we should probably note Nishi’s coinage of terminology.

In addition to *kunshu* and *minshu*, Nishi added a third possibility into his discussion of politics: *bōzoku no chi* 望族の治 (aristocracy). Here is how he described it:

There is one further form of government that falls between the aforementioned two, and it is called Aristocracy (*bōzoku no chi*). In aristocracy men of wealth and pedigree assemble and carry out the affairs of state. Although we say it falls between monarchy and democracy, it is not the essence of government. Nonetheless, this form of government is sufficient to prevent the monopolization of power by a monarch and the discord of democracy. It is not the case, however, that in aristocracy there are no potential abuses. Each of these three forms of government have their own pitfalls.

The idea of *bōzoku no chi* is, for all intents and purposes, the same as *kiken senji* which was given by Katō as one formation of *minsei* in *Rikken seitai ryaku*. By trying to raise this form of government, we may be seeing something of Nishi’s sense of politics in the early Meiji period. Katō had defined *kiken senji* in the following manner:

Kiken senji The various members of the high-born and noble within the country control political power over the generations. In other words, the elite has sole possession of the realm.

Compared to this statement, Nishi’s conception of “aristocracy” said nothing of “controlling political power over the generations,” nor of “having sole possession of the realm.” Nishi’s advocacy was as if he endowed it with a certain hope and expectation. As a conclusion, though, he supported a “tripartite division of powers,” because aristocracy could not ultimately avoid harmful effects, and to preserve it from such eventualities, he urged the necessity of a constitution [using the English word]. Nishi attached to this word “constitution” the translation “*rittei seido*” 立定制度 and argued:

Although there are, generally speaking, only the three forms of government mentioned above, lest we be unable to avoid their respective deleterious effects “constitutions” have recently been invented.

Thus, in a monarchy the constitution is the form of government of France. In a democracy the constitution is that of the United States. Only the British form of government, lying between that of France and that of the United States, is a constitution combining all three. It is the superior form of government among all nations. Second best is that of the United States, and third is that of France.

After this, the *Nihon hyōronsha* edition of the *Nishi Amane zenshū* includes a note saying that the “Hyakugaku renkan” in Nagami’s account carried the following words at this point in red: “The British government combines the three: *Monarchy, Aristocracy,*

Democracy. It is the *best*—that is, *saijō* 最上 —form of government.”⁹ These words undoubtedly complied with Nishi’s intentions and were penned in red on the recorded text. Nishi’s lectures then continued in the following vein:

Ordinarily the three powers—*legislative, executive, judicial*—are under the control of the sovereign, but in Great Britain the sovereign does not hold all powers, entrusting legislative authority to the House of Lords and the House of Commons. The sovereign and the people, high and low, together run the government.¹⁰

Nishi’s discussion of forms of government in the “Hyakugaku renkan” clearly led to the position that the British system was the very best. His discussion of “aristocracy” was also situated in such a way as to elucidate the British system of government.

Nagami’s recording of the lectures noted in red above the portion describing the “tripartite powers”: “In the separation of three great powers, executive power resides with a sovereign, legislative power with an assembly, and judicial power with a judiciary.” Although this may have been added as further support for the British system of government, the position that “executive power” remains with the “sovereign” is completely in accord with the section in Katō’s *Rikken seitai ryaku* where he discussed “executive power” (*shisei kenpei*) under *jōge dōji*. The *Rikken seitai ryaku* argued: “This power falls solely under the control of the sovereign and may not be vested with the people.”

Despite the differences in vocabulary for the “tripartite powers,” Katō’s and Nishi’s respective conceptions were essentially quite similar. This may have been the view—or common denominator underlying the views—of enlightenment legal scholars of the early Meiji era. At the same time, it had a certain practicality about it. The language of the “tripartite powers” became current at this time, and the term *seitai*, beginning with Katō’s use of it in the *Rinsō*, was becoming the fixed term in Japanese society as could already be seen in the promulgation of the “Seitaisho.”

3. The Establishment of Terminology for the “Tripartite Powers”

Nowadays, everyone is familiar with the fact, as a matter of common sense, that the “tripartite powers” consist of “legislative” (*rippō* 立法), “executive” (*gyōsei* 行政), and “judicial” (*shihō* 司法) powers. When did these three terms become a set unit? The combination of these three emerged from Japanese practice. We know this because the term “*sanquan dingli*” 三權鼎立 in China and the coinage of terminology for the tripartite powers comprising it date to Guangxu 24 (1898), as will be discussed below. Thus, the Chinese came to use the three terms—*rippō* (Ch. *lifa*), *gyōsei* (Ch. *xingzheng*), and *shihō* (Ch. *sifa*)—precisely as they had emerged from Japanese convention. I shall return to the question of Chinese consciousness of the “tripartite powers,” but I would now like to consider when in Japan the terminology for these powers became fixed.

As pointed out earlier, in the “Seitaisho” (promulgated on the 27th day of the fourth intercalary month of Keiō 4 [1868]), the “tripartite powers” were given the names

⁹ The three English words in italics appear in English in the original. (JAF)

¹⁰ “Hyakugaku renkan,” in *Nishi Amane zenshū*, vol. 1, pp. 214-218.

rippō, *gyōsei*, and *shihō*. However, scholars at the time did not immediately endorse this nomenclature. In his “short preface” (of the seventh lunar month of 1868) to the *Rikken seitai ryaku*, Katō Hiroyuki used the language of *rippō*, *shisei*, and *shiritsu* for them, and added the note that *shisei* could also be called *gyōhō*. In the latter part of his 1870 work entitled *Shinsei taii* 真政大意 (The substance of true government), concerning the subject of “*kyōka buiku*” 教化撫育 (education and rearing), Katō noted: “In particular, this falls entirely within the authority of the executive (*shisei*).” He thus used the term *shisei* and not *gyōsei*. In the “Hyakugaku renkan” lectures of 1870-71, Nishi Amane used the three terms, *rippō*, *gyōhō*, and *dantei*.

The term *shihō* had already been used in the “Seitai-sho,” and on the ninth day of the seventh month of 1871 the Meiji government abolished the Gyōbushō 刑部省 (Ministry of Justice) and the Censorate and renamed them the Shihōshō 司法省. Thereafter, the term *shihō* became the ordinary term used by the government for matters concerned with trials.

When was *gyōhō* replaced by the term *gyōsei* (executive)? In truth the term *gyōsei* was being used comparatively early on by the Meiji regime. On the nineteenth day of the ninth lunar month of 1868 (Meiji 1), the new government announced the abolition of the legislature for a time and the inclusion of councilors and junior councilors in the Executive Council (*Gyōseikan* 行政官).¹¹ Again, on the thirteenth day of the fifth lunar month of 1869, the new government completely abolished the legislature, with the opening of the upper and lower chambers, and delegated the vice-ministers, the councilors, the junior councilors, and the lower functionaries to the Executive Council.¹² However, in the administrative reform of 7/8/1868, this Executive Council was renamed the Council of State (*Dajōkan*). These facts are laid out in the *Kinsei Nihon sōgō nenpyō* 近世日本総合年表 (General chronicle of early modern Japan), but we do know that within the government the term *gyōsei* was already being used by the early Meiji period. That *gyōhō* had given way to *gyōsei* at that time indicates that as government terminology it was already an issue of the era.

As noted above, in his “Hyakugaku renkan” lectures, Nishi Amane assigned “*gyōhō no ken*” to the term “Executive.” By the same token he explained “Political divisions of a state and their control” as: “Namely, the regional jurisdictions of a state. Inasmuch as all states are large, they cannot be ruled as a whole. Thus, they must be divided to be ruled.”¹³ In the extant recorded text of Nagami Yutaka, the term “*gyōseiken*” is written in red in the upper margin. The designation of this term *gyōseiken* appears to accord with Nishi’s own intentions. Intellectuals of the early Meiji period went to great pains to devise terms to attach to new concepts. Generally speaking, this terminology circulated and one senses that often a temporary or makeshift translation would be provisionally assigned. Nonetheless, the red marginal notation of *gyōseiken*, as well as the similar red notes in the text’s margins for “*rippōken*” (p. 214) and “*danteiken*” (p. 227), strike one as having a certain decisive quality about them. In the lectures, Nishi

¹¹ *Hōrei zensho* 法令全書 (Complete text of the laws).

¹² Tōkyō daigaku Shiryō hensanjo 東京大学史料編纂所, *Ishin shiryō kōyō* 維新史料綱要 (Essentials of historical materials on the Restoration) (Tokyo: Ishin shiryō hensan jimukyoku, 1937-43), 10 volumes.

¹³ “Hyakugaku renkan,” p. 224.

used the word *gyōhō*, but at the stage when the draft was finally completed, perhaps he saw the direction in which the government and society were moving and decided to change appellations to *gyōsei*.

It was thus nearly 1871 when the “tripartite powers” understood as *rippō*, *gyōsei*, and *shihō* became a general phenomenon. These three terms each appear frequently by themselves in the Chinese classics. For men with education in Chinese learning, these were not rare terms in the least, nor were they unnatural. The same is true of “*gyōhō*.” There were many examples of these terms that could be cited from Chinese materials from the *Peiwen yunfu* 佩文韻府 (Rhyming compendium of refined literature) which was compiled in the Qing dynasty. What sorts of examples can be seen by referring to the text of the *Peiwen yunfu*, and here I would like to look only at the term *shihō*. Few cases are given from the Chinese classics for this term; one such comes from the *Tongdian* 通典 (Encyclopedia) of Du You 杜佑 (735-812) wherein we find a record concerning the installation of an official position of the Tang era known as *sifa canjun* 司法參軍 (legal administrator).¹⁴ The *Tongdian* helped set the bureaucratic system in Japan from the Heian period and thus was a work much used there.

Terms such as *rippō* (Ch. *lifa*), *gyōhō* (Ch. *xingfa*), and *gyōsei* (Ch. *xingzheng*) in Chinese society, however, were taken as verbs with an object; thus, *lifa* meant “to establish the law,” *xingfa* meant “to carry out the law,” and *xingzheng* meant “to implement government.” The men of Meiji borrowed these terms, attached “*ken*” 權 or “*kan*” 官 to them, and came up with such expressions as *rippōken*, *gyōhōken*, and *gyōseikan*, and aside from these appended characters, they treated the two-character expressions—*rippō*, *gyōsei*, and *shihō*—as nouns. Hence, the effort to devise and make use of this terminology for the “tripartite division of powers,” which derived from European political thought, was unmistakably due to the resourcefulness of the Japanese of the early Meiji era.

The new Meiji government, soon after it came into being, set its political course in the spirit of the British tripartite separation of powers, and the convention of naming the “tripartite powers” as *rippō*, *gyōsei*, and *shihō* seems to have become fixed around 1871. The “tripartite powers” in the early years, though, were devised as a dispersal of power as a means of control, namely a partition of state power. The rights of the people (the ruled) were not contemplated, but eventually on January 17, 1874, eight men including Soejima Taneomi, Gotō Shōjirō 後藤象二郎 (1838-97), Etō Shinpei 江藤新平 (1834-74), and Itagaki Taisuke 板垣退助 (1837-1919) presented to the Left Chamber (Sa-in 左院) of the executive a “Petition for the Establishment of a Popularly Elected Diet.” Thereafter, a variety of different arguments pro and con arose in the agitation, and gradually a popular rights movement grew. In the process it can be inferred that the ideas of “tripartite powers” and the terminology for them passed into wide national usage.

Precisely at this time *Mei roku zasshi* 明六雜誌 (Journal of the Meiroku [or Meiji 6] Society) commenced publication, and it became the forum for this debate. For example, its third number (published in April 1874) contained the following two articles:

¹⁴ See under “Sifa” in “Zonglun junzuo” 總論郡佐 (General discussion of commandery assistants), “Zhoujun, xia” 州郡下 (Commanderies, concluding part), in “Zhiguan” 職官, in the *Tongdian*.

Mori Arinori 森有礼, “Critique of the Memorial to Establish a Popularly Elected Assembly”

Nishi Amane, “Refutation of the Opinions of the Former Ministers”

Both of these pieces were opposed to the petition, and Nishi, for example, had the following to say in the midst of his essay:

Will protection of the so-called rights of the people (*jinmin no kenri* 人民ノ権理) be secured in a popularly elected assembly or in the administration of the *judiciary* (*shihō*)? Popular rights should be protected in full without repressive government from above and when the *judiciary* becomes truly impartial.¹⁵

Here he was using the expression *shihō* which he had not used in the “Hyakugaku renkan.” The November 1875 issue of *Meiroke zasshi* (issue no. 43) carried an article by Nishimura Shigeki 西村茂樹 (1828-1902) entitled “On Transition.” In it he argued for the necessity of a “transition to popular rights [power?]” (*minken no tenkan* 民権ノ轉換). It carried the following lines:

If one were to ask when the transition to popular rights [power?] will transpire, that transition will occur when the people take control of their most revered, most prized *power of the legislature*.¹⁶

This “power of the legislature” meant, of course, the possession of a constitution in the hands of the populace. Thus, together with the rise of the popular rights [power] movement, the terminology of the “tripartite powers” entered deeply into the bosom of the people of the country.

It was, needless to say, the Meiji Constitution, promulgated on February 11, 1889, that legally stipulated the “tripartite powers” as *rippō*, *gyōsei*, and *shihō*. Thereafter, the spirit and language of the “tripartite powers” became the common vocabulary carrying authority for the Japanese people as a kind of eternal code of law.

4. Kang Youwei’s Advocacy of “*Sanquan dingli*” 三權鼎立

In the eleventh year of the Republican era, 1922, the “Five-Power Constitution,” based on Sun Zhongshan’s 孫中山(1866-1925) “Three Principles of the People,” was enacted. The “five powers” were given as *lifa* 立法 (legislative), *sifa* 司法 (judicial), *xingzheng* 行政 (executive), *jiancha* 監察 (inspection), and *kaoshi* 考試 (examination), and three of these five closely resemble the language used in Japan. As is also clear from this, it had become common knowledge that the “tripartite powers” in China, as it is even today, meant the first three of these, *lifa*, *sifa*, and *xingzheng*. For example, if you look up “*sanquan*” in the 1959 edition of the *Ri-Han cidian* 日漢辭典 (Japanese-Chinese

¹⁵ Nishi Amane, in *Meiroke zasshi* 3 (April 1874). See the translation of this essay, which differs only slightly from my own, in William Reynolds Braisted, trans., *Meiroke zasshi: Journal of the Japanese Enlightenment* (Cambridge, Mass.: Harvard University Press, 1976), pp. 40-43. (JAF)

¹⁶ Nishimura Shigeki, “Tenkan setsu” 轉換說 (On Transition). See also Braisted’s translation in his *Meiroke zasshi*, pp. 520-24. (JAF)

dictionary) published by the Commercial Press in Beijing, it explains this term as “legislative power, judicial power, and executive power.” The same definition will be found in the *Xin Ri-Han cidian* 新日汉辞典 (New Japanese-Chinese dictionary), published by the Liaoning People’s Press in 1979.

Just when did the Chinese convert to this language involving the “tripartite powers” that so closely resembled Japanese? Let us now take a moment to consider this issue. After the signing of the [Shimonoseki] peace treaty in 1895 that concluded the Sino-Japanese War, a small window of opportunity for political reform presented itself. There were men who believed that the Meiji Restoration in Japan provided a model for China’s political reform. The central advocates of this position were Kang Youwei and his disciple Liang Qichao. These two men were responsible for importing the idea of a “tripartite division of powers” to China, and it was they who saw to it that the widely accepted ideas of *lifa*, *sifa*, and *xingzheng* as the content of the “tripartite powers” gradually became fixed in Chinese society.

The call for reform (*bianfa* 變法) in China began with Liang Qichao’s essay, “Bianfa tongyi” 變法通議 (Comprehensive discussion of reform), published in 1896 in the Shanghai journal *Shiwubao* 時務報 when Liang was its editor. At the time Liang was a mere 23 years of age. Believing that the reform of Chinese society should begin with the enhancement of public education, he penned a long article devoting a great deal of space to his views on education, and it appeared serially in *Shiwubao*. This essay is now included at the very beginning of his collected writings, the *Yinbingshi wenji* 飲冰室文集 (Essays from an ice-drinker’s studio). Taking the view that to promote public education China needed to seriously consider the Japanese educational system, Liang enthusiastically discussed the general situation surrounding Japan’s educational system. At the very end of “Bianfa tongyi,” Liang argued:

In other words, under national circumstances of this sort, with such a *form of government* (*zhengti* 政體), and people’s minds and customs as they are, there is no doubt that those who live in China are seen as barbarians and that Westerners take us for a land of third-class barbarians. There is no room between heaven and earth for such a class of people. Thus, if we fail to become enlightened about contemporary legal (*falu* 法律) studies, we may cease to exist.

In this essay of 1896, Liang surprisingly adopted early on the Japanese term *seitai* (*zhengti*), and where he used the term *falu* Liang meant the “laws” of a constitution and hence a constitution itself. The term *falu* appears frequently in the Chinese classics, and although Liang used it here, there is nothing odd about it. At this time Liang did not espouse the “tripartite division of powers,” and thus the language surrounding the “tripartite powers” is not mentioned, but at the core of *bianfa* the idea of encouraging “legal studies” and the writing of “laws” (i.e., a constitution) for China was the very spirit of the 1898 Reform Movement which developed two years later.

The first person to advocate the “tripartite division of powers” in China was Liang’s teacher, Kang Youwei. Having acquired the deep trust of the Guangxu emperor, Kang in 1898 composed petitions in the form of “memorials” on behalf of “reform” (*bianfa*) and on many occasions presented them to the emperor. What remained of these drafts were arranged and later published by Kang’s disciples in 1911, the last year of the

Xuantong reign of the Qing dynasty, under the title *Wuxu zou gao* 戊戌奏稿 (Drafts of memorials from 1898). On a number of occasions in these writings, he proposed a “tripartite division of powers.” To preserve secrecy, a “memorial” (*zhe* 摺, *zhezou* 摺奏, or *zhezi* 摺子) was the formal written document in the Qing era presented directly for the emperor’s eyes. It was folded and hence acquired the name *zhe* [which means “fold”].

In recent years doubts have been raised about whether the texts included in the *Wuxu zou gao* were actually the documents themselves presented to the throne of the Guangxu emperor in 1898. We shall deal with this issue later, but for the time being let us look at Kang’s views on the “tripartite division of powers,” as expressed in *Wuxu zou gao*.

On the eighth day of the first lunar month of Guangxu 24 (1898), Kang presented his “Memorial on Coping with the Overall Situation in Reply to an Imperial Proclamation” (“Ying zhao tongchou quanju zhe” 應詔統籌全局摺) In it we find the following:

Recently, Westerners have all been involved in political discussions of the *tripartite powers*. They have *legislative* (*yizheng* 議政) officials, *executive* (*xingzheng*) officials, and judicial (*sifa*) officials. Once the tripartite powers are established, the government (*zhengti*) is prepared.¹⁷

Again, in the sixth lunar month of 1898, Kang presented a memorial in the name of Manchu Academician of the Grand Secretariat Kuo-pu-tong-wu 闊普通武. Entitled “Memorial Requesting the Establishment of a Constitution and the Convening of a National Assembly,” it read in part:

Your servant has heard that the reason countries, be they in the East or the West, are strong is that they have established a constitution and convened a *national assembly* (*guohui* 國會). In a *national assembly*, the ruler and the populace together discuss the laws of the nation. Emerging from the idea of the *tripartite separation of powers*, they *legislate* (*lifa*) with the national assembly, *adjudicate* (*sifa*) with legal officials, and carry out *executive* matters with the government. However, the ruler supervises all this, ratifies the constitution, and together with them enjoys order.¹⁸

Although the terms appearing in this text—*guohui* (national assembly), *xianfa* (constitution), *lifa* (legislative), *sifa* (judicial), and *xingzheng* (executive)—can be found in the Chinese classics, in fact these words were, of course, formed in and borrowed from modern Japanese.

In 1898 Kang Youwei was 40 years old, and at that time he presented to the Guangxu emperor his *Riben bianzheng kao* 日本變政考 (A study of the institutional reforms in Japan). In his memorials as well, there can be no doubt that Kang gave full play to his “studies of Japan.” Nonetheless, because the *Wuxu zou kao* itself was

¹⁷ The entire text of this memorial is also included in Liang Qichao, *Wuxu zhengbian ji* 戊戌政變記 (Record of the political reforms of 1898) (Shanghai: Zhonghua shuju, 1941), *juan* 1.

¹⁸ The text of this memorial, submitted in the name of Academician of the Grand Secretariat Kuo-pu-tong-wu, appears in the *Wuxu zou gao*.

published in 1911 by Kang's disciples (by that time Kang was still living as a refugee in Singapore and Hong Kong), whether what is included in this volume is truly the same as the texts of his memorials of 1898 may be open to serious doubt. Among works that have formed conclusions in this matter, we have Huang Zhangjian's 黃彰健 *Kang Youwei wuxu zhen zouyi* 康有為戊戌真奏議 (Kang Youwei's genuine memorials of 1898), published by the Institute of History and Philology of Academia Sinica in Taipei in 1974. Long known as a researcher on the 1898 Reform Movement, Huang asserted that the texts collected in the *Wuxu zou gao* are all "bogus memorials" rewritten during the Xuantong era (1908-11) and that the "genuine memorials" are different from them.

We find in the *Riben bianzheng kao*, presented by Kang to the Guangxu emperor in 1898, a fairly good account of the issue of the "tripartite separation of powers." Let us now turn to this. For materials on "reform," the *Riben bianzheng kao* provided in chrono-logical form a record from the Meiji Restoration until the opening of the Japanese Diet. Here and there in the text Kang added his own explanations in the form of "your servant respectfully offers a plan." Thus, much space is taken up, putting Japanese expressions to good use, explaining the institutional changes in Japanese society. First, Kang introduced the "Seitaisho" promulgated in 1868 (although he gave the incorrect date for it) and prepared virtually the entire text of it in Chinese. He wrote as follows of the portion of the "Seitaisho" concerning the "three powers":

* The official orders of the realm come from the Council of State. Thus, national power will not suffer the affliction of following two different routes. The Council of State divides its powers in three: *legislative*, *judicial*, and *executive*. Thus, it does not suffer the affliction of bias.

* *Legislative* officials cannot also serve as executive officials. Executive officials cannot also serve as legislators. This prevents confusion. However, provisional tours of inspection of Tokyo, Kyoto, and Ōsaka as well as receptions for foreign embassies are still to be supervised by *legislative* officials.¹⁹

If we tentatively compare this with the passages from the original text of the "Seitaisho," given above, we can see that Kang changed a number of expressions, but he used the vocabulary of the "tripartite powers"—legislative (*lifa*), judicial (*sifa*), executive (*xingfa*)—precisely as given in the "Seitaisho." The four characters, "yi du fenqi" 以杜分歧 ("This prevents confusion"), in the second item were added by Kang to make the circumstances more easily understood. He more or less translated the other portions of the "Seitaisho" directly into Chinese. After this, Kang added his own explanation as "your servant respectfully offers a plan":

In actuality, we still do not know if the strength of the West lies in the goodness of its governmental forms. They have three forms of political power: legislative officials, executive officials, and judicial officials.... When the three sorts of officials are put in place and the government is then securely established, then each of these officials will not intrude on the duties of the others, and politics will flourish. For a country to have a polity is like a person having limbs and a torso. The mind works in consultation and carries out legislative tasks. The hands and feet implement decisions and perform as

¹⁹ Kang Youwei, *Riben bianzheng kao*, juan 1.

executive [officials]. The ears and eyes observe and listen and serve as judicial [officials].²⁰

Furthermore, in the sixth *juan* of this work, he had the following to say in his record of the completion in early 1874 (Meiji 7) of the institutional investigation, and the presentation of a memorial to the throne and its acceptance:

The three powers—*legislative, executive, and judicial*—were established on an equal footing, and the fine institutions of Europe insure that there will be no preponderance of power in any direction. Our form of government should be patterned after this.²¹

He then mentioned that a bicameral assembly had been raised, but just what this “memorial” refers to in Japan I am unable at this point to ascertain. In any event, we need note at this time that the three terms, “legislative,” “executive,” and “judicial,” were fixed under Kang’s pen. When we recognize that these sentences were mentioned in Kang’s *Riben bianzheng kao*, which he presented to the Guangxu emperor as material supporting reform in 1898, it is not that odd to assume that he might have advocated the “tripartite separation of powers,” which appears in *Wuxu zou gao*, at the time.

The text of the *Riben bianzheng kao* in its present edition is called a “draft in the possession of Kang Youwei.” In 1947 Mary Wright discovered it in Beijing, and in 1980 what appears to have been the original text presented to the throne was discovered in the Palace Museum Archives. It is comprised altogether of twelve *juan*, written out clearly in brush. Compared to what has thus far appeared in printed form, there are a few discrepancies in characters which were reported,²² but inasmuch as the text in the Palace Museum Archives was not published, it is unclear which portions were accurate. There do not, however, appear to be any egregious discrepancies when we compare the printed versions of the text—in the *Kang Nanhai xiansheng yizhu huikan* 康南海先生遺著彙刊 (Collected writings of Kang Youwei)²³ and in the *Kang Youwei wuxu zhen zouyi* by Huang Zhangjian—with the original text submitted to the emperor, at least insofar as Kang’s added personal notes are concerned.

In the *Riben bianzheng kao*, Kang Youwei effectively took over without change into Chinese a large number of Japanese linguistic coinages (in Chinese characters) which Japanese of the Meiji period were using. In her introduction, Kang’s eldest daughter, Kang Tongwei 康同薇 (Wenxian 文憫, b. 1879), noted that he was fluent in Japanese and had taken notes on numerous Japanese books.²⁴ Certainly Kang himself knew that the majority of the many terms contained in his work came from Japanese. In my view, Kang acknowledged the functionality of Japanese at that time, even in his memorials of 1898, and chose to make the most of them in his original drafts. Thus, the fact that such language remains in his *Wuxu zou gao* is not at all strange. If he did not put

²⁰ Ibid.

²¹ Ibid., *juan* 6. Because Kang was summarizing a memorial written by Japanese here, the “our” referred to naturally meant Japan.

²² According to an article by Wang Xiaoqiu 王曉秋, in *Lishi yanjiu* 歷史研究 3 (June 1980).

²³ Ed. Jiang Guilin 蔣貴麟 (Taipei: Hongye shuju, 1976), 22 *ce*.

²⁴ She was the wife of Mai Zhonghua 麥仲華 who served as editor when *Wuxu zou gao* was published.

the language of Meiji Japan to good use, he would not have been able to offer such a vivid description of events in Japan of the post-Restoration era and advocate a future course [for China] filled with its spirit.

Still, though, because Kang held only the lowly position in 1898 of a secretary in the Ministry of Works (he had passed the metropolitan examination the previous year and had been specially appointed secretary in the Ministry of Works at the appointment of the Guangxu emperor), when he submitted his memorials to the throne he often wrote in the name of high-level officials who shared his aspirations, such as Song Bolu 宋伯魯(1854-1932), Yang Shenxiu 楊深秀(1849-98), or Xu Zhijing 徐知靖(1826-1900). He thus felt compelled to take the approach of “having another present one’s memorial” (*daizou* 代奏).

High officials of that time were expected to inspect the contents of draft memorials before submitting them to the throne. On such an occasion, it is surely conceivable that such a text packed with Japanese expressions in Chinese would have been rewritten or censured. When such a work had been rewritten and was considered a “genuine memorial,” Kang himself would have retained the originals so as to elucidate his own views. Perhaps these drafts eventually made their way into the *Wuxu zou gao*.

Huang Zhangjian claims that what was included in *Wuxu bianfa dang’an shiliao* 戊戌變法檔案史料 (Archival materials on the 1898 Reform Movement),²⁵ published in 1958 in the People’s Republic of China, were the “genuine memorials” presented to the throne. Among them, however, is one entitled “Memorial Seeking Rapid Imperial Decisions to Rescue a Dangerous Situation, for Reform Has An Order of Its Own” (submitted in the name of Song Bolu on the 29th day of the fourth lunar month of 1898). In it we find the following views:

Your servant has been contemplating Western arguments about government, and there is a principle of the “*tripartite separation of powers*.” The tripartite powers are comprised of *legislative* (*yizheng*) officials, *executive* (*xingzheng*) officials, and *judicial* (*sifa*) officials. The polity of a country is like the body of a human being. Those who legislate are like its mind. Those who act as executive officials are like its hands and feet. Those who adjudicate are like its eyes and ears. Each protects its own official functions, and together they form a body so that affairs will be successfully completed.²⁶

The three terms mentioned here that comprise the “tripartite powers” are *yizheng*, *xingzheng*, and *sifa*. The parts in which he compared the “tripartite powers” to the human body are exactly the same as that of the note Kang wrote in the first *juan* of the *Riben bianzheng kao*. Huang argues that the original draft of the “memorial” submitted in the name of Song Bolu was written by Kang Youwei, but from this one instance alone Kang clearly in 1898 made use of Japanese terminology to advocate the “tripartite separations of powers.”

Kang was the first in China to call for the necessity of this “tripartite division of powers” as a political viewpoint, and he did so in the twenty-fourth year of the reign of

²⁵ Beijing: Zhonghua shuju, 1958.

²⁶ Included in Huang Zhangjian, *Wuxu zhen zouyi*.

the Guangxu emperor or 1898. At the time Kang knew of the “tripartite separation of powers” from studying the legal institutions of Japan, and he seems to have borrowed the terms for the content of these “three powers” from Japanese, though the selection of Japanese terms was still in flux. Because his support for this point of view was directed primarily at the person of the emperor, high court officials probably understood a bit of what he was proposing. General awareness of the views inherent in the “tripartite division of powers” was still far, far away. Furthermore, the 1898 Reforms, as indicated in the term—100 Days Reform—by which it would be known, became convulsed in a coup after only a little more than three months. Kang Youwei and others were banished, and the dreams of a new government tragically ended in utter defeat.

5. The Spread of the Idea of the “Tripartite Powers” by Liang Qichao and Yan Fu

The idea of the “tripartite powers” in China was strongly encouraged by Kang Youwei’s disciple, Liang Qichao, and Liang made full use of the new Japanese vocabulary in advocating this cause. In this sense, the export of the Japanese language to China in connection with the issue of the “tripartite powers” was the work of Liang Qichao.

In 1898 Liang was 25 years of age. He assisted his teacher Kang in furthering the Reform Movement, and in the fifth lunar month of 1898 he was ordered specially by the Guangxu emperor to administer a Translation Office (Yishuju 譯書局). Later, the following month, an imperial edict went out to Kang Youwei, too, to take on work in the Official Gazette and translation.

Nevertheless, that September the person who held real power, the Empress Dowager (1835-1908)—aunt of the Guangxu emperor, she had been a concubine of the Xianfeng emperor (r. 1851-61), and Guangxu was the third son of her younger sister—linked forces with Beiyang warlord Yuan Shikai 袁世凱(1859-1916) and began the suppression of the reformers. These events became known as the “1898 *coup d’état*.” Sensing these developments unfold, Kang Youwei fled Beijing on the fifth day of the eighth lunar month of that year and headed from Tianjin toward Hong Kong by sea. The following month he left Hong Kong aboard a British vessel and sailed to Kōbe, Japan. Meanwhile, Liang Qichao took refuge in the Japanese Legation, and thanks to the concern shown by Itō Hirobumi 伊藤博文(1841-1909), who had arrived on an investigative mission to China precisely at that moment in time, he and a handful of disciples boarded a Japanese battleship anchored at Tanggu and landed in Tokyo in the ninth month of the year. What transpired at this time is recorded in *Waga shichijū nen o kataru* わが七十年を語る(Account of my seventy years),²⁷ the commemorative volume for the 77th birthday of Hayashi Gonsuke 林権助 (b. 1860) who worked as a secretary for Itō—see Chapter 26, “Itō kō Pekin raihō no hanashi” 伊藤公北京来訪の話 (The story of Count Itō’s coming to Beijing), and Chapter 27, “Kaidanji Ryō Keichō o sukku hanashi” 快男児梁啓超を救ふ話(The story of of the rescue of that fine fellow, Liang Qichao).

²⁷ Tokyo: Daiichi shobō, 1936.

Kang travelled the next year from Yokohama to Canada and then later to Singapore. He spent a long period thereafter in exile before finally returning to China in 1914 at age 56. Liang Qichao lived mostly in Japan from 1898 until 1912, and he devoted his time to journalistic activities, continually advocating the necessity of “reform” (*bianfa*) from Yokohama toward the Chinese mainland. From Yokohama he published *Qingyi bao* (issued successively until it stopped publication with number 100 in the eleventh month of 1901) and *Xinmin congbao* 新民叢報 (New people’s miscellany; issued from early 1902 until it ceased publication in the seventh month of 1907). In addition, he published China’s first literary magazine, *Xin xiaoshuo* 新小說 (New fiction).

Using *Qingyi bao* and *Xinmin congbao* as a stage for his views, Liang spoke out continually on behalf of what he felt China needed and engaged in vigorous literary activities. In order to assimilate contemporary European civilization, Liang believed that China had to rapidly absorb the Chinese expressions coined in Japanese that had already become fixed there. In his “Bianfa tongyi,” written in 1896 in Shanghai, he had already shown a penchant for using a fair number of these expressions. In his work particularly with *Qingyi bao*, he actively put this Japanese vocabulary to good use as modern terminology and continued to advocate a direction toward modernization.

In his article “Geguo xianfa yitong lun,” Liang argued in a logical fashion for the “tripartite separation of powers.” This piece was published in the twelfth volume of *Qingyi bao* which appeared in 1899. Liang divided his argument into seven parts advocating the best form of government for the modern state, and the language which made up the principal structure of his arguments was the Japanese neologisms in Chinese. In the first section he described “forms of government” (*zhengti*; J. *seitai*), and in the second section he described the “tripartite powers of the executive (*xingzheng*; J. *gyōsei*), the legislative (*lifa*; J. *rippō*), and the judicial (*sifa*; J. *shihō*).”

Liang explained the issue of the “tripartite powers” in the following manner:

There is a tripartite separation of *executive*, *legislative*, and *judicial* powers which do not intrude on one another. Hence, this guards against arbitrariness on the part of the government and thus protects the people’s freedom. It was the great scholar Montesquieu who led the way with this theory. He investigated the political situation prevailing in Great Britain, considered the situation at home, and came up with general principles for the study of politics. Thus, his theory was such that later men did not change it. Today, all countries with constitutions have separately established three great powers.²⁸

In this article Liang used the Japanese terms for “executive,” “legislative,” and “judicial” unmodified, and in other essays as well, he frequently made use of these expressions.

Kang Youwei had been the first in China to advocate the “tripartite separation of powers,” and Liang carried on this tradition, using precisely the Japanese terminology that would ultimately become a fixture of the Chinese language. What was transpiring within China while Liang was active with this work in Japan? Yan Fu was the first

²⁸ Liang Qichao, “Geguo xianfa yitong lun,” part 2: “Xingzheng, lifa, sifa zhi sanquan” 行政·立法·司法之三權 (The Three Executive, Legislative, and Judicial Powers), *Qingyi bao*, vol. 12. Reprinted in *Yinbingshi wenji*, juan 4, pp. 72-73.

person in China to systematically translate and introduce the ideas of European humanities and social sciences. It was he who translated in full Montesquieu's *The Spirit of the Laws* into Chinese under the title *Mengdesijiu fayi*. Yan was a naval officer who had studied in the British naval academy, but he is most famous as the man who introduced to China the social sciences and humanities of Western Europe.

It is not entirely certain just when Yan Fu began his translation of Montesquieu's *The Spirit of the Laws*, but generally speaking the thesis that he completed the first part of a draft in 1905 and that the full translation was published in 1909 is now currently accepted. If this is correct, then it postdates Liang Qichao's "Geguo xianfa yitong lun" which advocated the "tripartite division of powers."

The portion of Montesquieu's *The Spirit of the Laws* that touches on the "tripartite separation of powers" can be found in the sixth chapter—entitled "On the Constitution of the England"—of book eleven. Yan translated the beginning of this chapter as follows:

No matter which government one speaks of, within them all one finds a separation of three powers. They are called: *legislative (lifa)* power, *executive (xingzheng)* power, and *judicial power (xingfa 刑法)*.

What Montesquieu actually wrote here is:

Il y a dans chaque État trois sortes de pouvoirs: la puissance législative, la puissance exécutrice des choses qui dépendent du droit des gens, et la puissance exécutrice de celles qui dépendent du droit civil.

(In each state there are three sorts of powers: legislative power, executive power over things depending on the rights of nations, and executive power over things depending on civil rights).²⁹

Comparing these two passages, Yan Fu's translation offers as well an explanation that jumps somewhat from the text. In China which had no customs of "natural law" or "civil law," it was difficult to explain this portion of Montesquieu's work. Perhaps he thus borrowed the explanation of the "tripartite division of powers" from the perspective of rulership, for at the time he was trying to state clearly this division of powers for rulers. His use of *lifa* and *xingzheng* came directly from Japanese, with only the difference of using *xingfa* instead of *sifa* for judicial in the content of the "tripartite powers." At the time, then, we can see that this terminology, advocated by Liang Qichao, was for all intents and purposes becoming commonplace on the Chinese mainland as well.

Eventually the terms for the tripartite powers—*lifa*, *sifa*, and *xingzheng*—as called for by Liang became set in China. In 1922 the "Five Power Constitution" (namely, a governmental organization based on five powers), in accordance with the spirit of Sun Zhongshan's "Three Principles of the People," was promulgated. The Nationalists' government organization created on its basis was constructed around five *yuan* 院 (offices or ministries)—the Executive Yuan (*Xingzheng yuan* 行政院), the Legislative Yuan (*Lifa yuan* 立法院), the Judicial Yuan (*Sifa yuan* 司法院), the Inspection Yuan (*Jiancha*

²⁹ In *The Spirit of the Laws*, trans. Anne M. Cohler, Basia Carolyn Miller, and Harold Samuel Stone (Cambridge, Eng.: Cambridge University Press, 1989), p. 156. (JAF)

yuan 監察院), and the Examination Yuan (*Kaoshi yuan* 考試院)—known to the world as the Five Yuan system. Three of these five *yuan* have names employing the terms for the “tripartite powers” as devised in Japan. Thus, the words *lifa*, *sifa*, and *xingzheng*, born in Japanese society, became recognized and used unchanged as terminology in Chinese politics and society. In contemporary China as well, it has become commonplace to speak of the tripartite powers using this very language.

Coined and brought forth in Japanese society, the terms for the “tripartite powers” thus became a language common to both China and Japan.

6. Rights and Duties (or Obligations)

In connection with the idea of the “tripartite powers,” the terms for “rights” (*kenri* 權利) and “duties” (*gimu* 義務) were born in Japan. Let us move now to see the process by which these words emerged. The term *kenri* has been in use as early as the 1868 publication of Katō Hiroyuki’s *Rikken seitai ryaku*. In a section discussing the “public and private rights of the citizenry,” he wrote:

In regimes such as those in which the monarch monopolizes power (*kunshu senshi* 君主擅制), autocracy (*kunshu senji* 君主專治), or aristocratic rule (*kiken senji* 貴顯專治), the people of the realm are treated as private servants and concubines of the sovereign and the aristocracy. It is perfectly reasonable for servants and concubines to obey their masters’ orders. Thus, it goes without saying that they cannot enjoy a single right (*kenri*). This is, however, not the case in the two forms of government with constitutions [namely, a monarchy in which there is sharing of power or *jōge dōji* and a democratic republic or *banmin kyōji*; see above]. A realm which is not the private property of the sovereign and aristocracy is a “realm of realms.” For this reason, those who are subjects possess rights. There are two sorts of rights: private rights (*shiken* 私權) and public rights (*kōken* 公權). Private rights are rights involving one’s own person, called by some the right to freedom (*nin’i jizai* 任意自在). Public rights are rights involving national affairs.³⁰

Katō then proceeded to discuss “private rights” under eight categories: “the right to life” (*seikatsu no kenri* 生活ノ權利), “the right of independence” (*jishin jishu no kenri* 自身自在ノ權利), “the right to carry out functions freely” (*gyōji jizai no kenri* 行事自在ノ權利), “the right to form associations and conduct meetings” (*kessha oyobi kaigō no kenri* 結社及ビ会合ノ權利), “the right to freedom of thought, speech, and writing” (*shigensho jizai no kenri* 思・言・書自在ノ權利), “the right to religious freedom” (*shinpō jizai no kenri* 信法自在ノ權利), “equality of rights for all people” (*banmin dōitsu no kenri* 万民同一ノ權利), and “the right of all people to freely dispose of their property” (*kakumin shoyū no mono o jizai ni shochi suru no kenri* 各民所有ノ物ヲ自在ニ処置スルノ權利). Under “public rights” he noted: “Public rights are rights involving national affairs, and the most important among them is the right to vote.” And,

³⁰ In volume 3 of *Meiji bunka zenshū*.

thus, the term “*kenri*” at this time, 1868, as a word for legal scholars or political scientists was born.

Later, when Katō’s *Shinsei taii* was published in 1870, he described *kenri* in conjunction with *gimu* (duty, obligation). For example:

If I have a *right*, then others must have the same *right* as well. Thus, I most certainly may not have a *right* all to myself. If I carry out my obligation to respect the *rights* of others and dare not to obstruct them, then this supports the principle that the way of mankind has been upheld. To fulfill one’s obligation and respect the *rights* of others in accord with such a principle of behavior, this should be called *duties* (*gimu*). One must never forget, not even for an instant, what it is to be a person. Thus, at the present point in time, both *rights* and *duties* are absolutely essential. *Rights* and *duties* work together, as true *rights* work with *duties*. If one of the two is absent, it will not be enough for *rights* to be called true *rights*, nor for *duties* to be called true *duties*.³¹

He further claimed: “The government has *rights* and *duties* of its own, as does the populace have *rights* and *duties* of its own. Furthermore, among the populace there are mutual *rights* and *duties*.”

In order for Katō to use the terms “*kenri*” and “*gimu*” frequently in the *Shinsei taii*, he extended his argument to the necessity of a constitution. He had earlier argued that government had the “rights” and “duties” of government and that the people had “rights” and “duties” of the people. By thus lining “rights” up with “duties” he began the *Shinsei taii*.

In a section of text from the lectures of the “Hyakugaku renkan” describing “international law,” Nishi Amane too explained fourteen items from the “contents” (the original text gives the Japanese word *mokuroku* 目録 beside the English term) of this law as set down by Sir James Mackintosh (1765-1832) of Scotland, and as indicated below he used the words *kenri* and *gimu* as translation terms:

6. The mutual duties of belligerent and neutral powers (*kōgo gimu no sengoku narabi ni kyokugaikoku* 交互義務之戦国並局外国).

8. The rights of conquest (*kenri no shōgun* 權利之捷軍). This discusses such matters as the obtaining of indemnities when an army is victorious.

12. The nature and obligation of alliance (*jōjō narabi ni gimu no dōmei* 情状並義務之同盟). “Nature” here refers to the manner in which the bond of an alliance is forged. “Obligation” refers to what must be done for the alliance and how it is to be handled.

In Nishi’s case, the word *gimu* is used as a translation for both “duties” and “obligations.” Elsewhere in this same part of his lectures, there is a section entitled: “The obligation of contract” (*gimu no yakusoku* 義務之約束). In any event, at the time Nishi was giving the lectures that comprise the “Hyakugaku renkan,” we can see that the Japanese terms *kenri* and *gimu* were no longer strange.

I have just now intimated that *kenri* and *gimu* are Japanese terms, as translating “right” as *kenri* and assigning “duty” or “obligation” to *gimu* to understand them were

³¹ In volume 2 of *Meiji bunka zenshū*.

practices conceived in Japanese society of the early Meiji period. If we search for examples of the use of the term *kenri*, we can locate any number of instances from the world of the Chinese classical language. However, *kenri* (Ch. *quanli*) as a classical Chinese expression merged *quanli* 權力(power) with *liyi* 利益 (advantage, profit), and neither of them terms set off positive associations. For example, we read in the *Xunzi* 荀子:

[When he has truly learned to love what is right,] his eyes will take greater pleasure in it than in the five colors; his ears will take greater pleasure than in the five sounds; his mouth will take greater pleasure than in the five flavors; and his mind will feel keener delight than in the possession of the world. When he has reached this stage, he cannot be subverted by *power or the love of profit (quanli)*.³²

Inasmuch as human beings always have desires, it is impossible to subvert the mind that seeks influence and advantage (*quanli* 權利). And, according to the *Xunzi*, human nature is bad.

In the *Shi ji* 史記 (Records of the grand historian) and *Han shu* 漢書 (History of the Han dynasty) as well, the term *quanli* was used, but not in a good sense. For instance,

The Grand Historian said: “There is a saying that goes as follows, ‘Those who come together by force or by [mutual] interest (*quanli*) find their interactions dwindle when that force or [mutual] interest ceases to exist.’”³³

He revered benevolence and righteousness, while denigrating force [or expediency] and personal profit (*quanli*). He held sincerity and generosity in high esteem, while holding flattery and cleverness in low esteem.³⁴

³² 目好之五色，耳好之五聲，口好之五味，心利之有天下，是故權利不能傾也。 *Hsün Tzu: Basic Writings*, trans. Burton Watson (New York: Columbia University Press, 1963), pp. 22-23. See also *Xunzi*, trans. John Knoblock (Stanford: Stanford University Press, 1988), vol. 1, p. 142, wherein the latter part of this citation is rendered: “the exigencies of time and place and consideration of personal profit cannot influence him.” In an earlier English translation, Homer H. Dubs translated *quanli*, apparently anachronistically, simply as “by force.” See *The Works of Hsüntze* (London: Arthur Probsthain, 1928), p. 41. In the German translation of Hermann Köster, it is translated as “Macht oder irgendein Vorteil,” in *Hsün-tzu ins Deutsche übertragen* (Steyley Verlag, 1967), p. 10. (JAF)

³³ 太史公曰，語有之，「以權利合者，權利盡而交疎」。Sima Qian 司馬遷，“Zheng shi jia” 鄭世家 (The hereditary house of Zheng), *Shi ji*. To my knowledge, this section of the *Shi ji* has as yet not been translated into English. Édouard Chavannes translated it into French as follows: “Le duc grand astrologue dit: Il y a une diction ainsi conçue: “Ceux qui sont réunis par les circonstances et par l’intérêt, quand les circonstances and l’intérêt ont pris fin, leurs relations se relâchent.” See *Les Mémoires historiques de Se-ma Ts’ien*, transl. and annot. by Édouard Chavannes (Paris: Librairie d’Amérique et d’Orient, 1967), vol. 4, p. 484. (JAF)

³⁴ 貴仁義，賤權利，上篤厚，下佞巧。Ban Gu 班固，“Yan An zhuan” 嚴安傳 (Biography of Yan An), *Han shu*, from a memorial submitted by Yan An.

Quanli, as used in these cases, combines the meanings of *li* 力 or power (or force) and *li* 利 or advantage (profit, personal interest). Furthermore, *quan* was used in Chinese in the sense of an out-of-the-ordinary expediency. In the *Mencius*, for men and women not to “give and receive” things directly was considered proper ritual (*li* 禮), but, Mencius argued, when one’s sister-in-law was on the verge of drowning, it was *quan* (expedient) for a man to directly extend a hand to save her. The text reads:

Sao ni yuan zhi yi shou zhe quan ye 嫂溺援之以手者，勸也。

(When a sister-in-law is drowning, to rescue her with the hand is a peculiar exigency).

The commentary by Kong Yingda 孔穎達 (574-648) of the Tang dynasty concerning this passage explains: “It is acceptable [here] to go against the norm; this is called the way of *quan*.” The mode of thought that sees irregular expediency as the “way of *quan*” has another side to it in China as well. We find the term *quanli* 權利 in the following phrase from the *Yan tie lun* 鹽鐵論 (Discourses on salt and iron), a Han-era text, being used in the sense of a search for unusual profit: “Now the sources of *power* and *profit* (*quanli*) are assuredly in the mountain fastnesses and the depths of the marshes. Only aggressive people can come at their wealth.”³⁵

There is an extremely strong possibility, incidentally, that the expression *gimu* was an original Japanese coinage, and we cannot now point to its being used anywhere in the world of the Chinese classics. Despite a search through the massive Qing period compendium of the classical Chinese language, the *Peiwen yunfu*, ultimately no indications of the use of *gimu* (Ch. *yiwu*) are forthcoming, and there are no citations for the term in the *Dai Kan-Wa jiten* 大漢和辭典 (Great Chinese-Japanese dictionary) of Morohashi Tetsuji 諸橋徹次 (1883-1983).

It would seem that the Japanese conception of *giri* 義理 (duty, obligation) was shadowing the term *gimu*. If the expression *giri* (Ch. *yili*) means the proper road along which people should walk, then there are a number of examples that can be marshalled from the Chinese classical lexicon. Those in the Zhu Xi 朱熹 (or Song) School were particularly fond of using this term, but *giri* as used in Japanese society had the meaning of the dignity and friendship toward others in social relations, and as expected it was used in this distorted Japanese way. The Japanese expression *giri ninjō* 義理人情 (duty and human emotions) was a part of commoners’ society in Japan. It would appear that to the *gi* of *gimu* was added the Japanese sense of *giri*. Thus, the term *gimu* (*yiwu*) gradually became Japanese.

Because the term *quanli* 權利 too could not avoid echoing the negative sense from the Chinese classics, noted above, there were among intellectuals of the Meiji period those who replaced it with *quanli* 權理 (J. *kenri*). For example, Nishimura

³⁵ 夫權利之處，必在深山窮澤之中，非豪民不能通其利。 “Jin geng” 禁耕 (Hindrance to farming), chapter 5, *Discourses on Salt and Iron: A Debate on State Control of Commerce and Industry in Ancient China*, transl. Esson M. Gale (Taipei: Ch’eng-wen Publishing Company, 1967 reprint), p. 30. (JAF)

Shigeki offered an explanation for the term *kenri* 權利 in the *Meiroku zasshi*, but he replaced it with *kenri* 權理 . He wrote:

Kenri 權理 is the translation in Chinese characters for the English word “right.”... Now the term “right” has the meaning of a claim that accords with the law. It is also a term that may be used to substantiate a claim legally, or to establish that claim of another’s legal guilt when one has suffered injury.... Rights and obligations (*gimu*) form a mutual relationship. If one person has a right, then another person is under an obligation to that person.³⁶

In his *Meiroku zasshi* article, “Refutation of the Opinions of the Former Ministers” (which appeared in the March 1874 issue), Nishi Amane used both *kenri* 權利 and *kenri* 權理 :

They [the “former ministers”] also claim that there is a universal principle at work in the world by which the people have a *right* (權理) to know the affairs of their government because they have an *obligation* to pay taxes to that government. What does it mean to say that this is a “universal principle?” People already pay taxes and thus should have the right (權利) to expect the protection of their [government] accordingly.³⁷

Mori Arinori (1847-89) also tried to use *kenri* 權理. For example, he wrote the following:

Mr. Tsuda has argued that the best policy is to select the very best religion in the world and make it our national religion. On the basis of the principles accruing to religion and government, Mr. Nishi argues that the best plan is to separate church and state and establish a permanent *right* (權理) to freedom of religion.... Recently I have obtained a number of chapters from the sections concerning religion in the legal works of [Emeric de] Vattel [1714-1767] and [Robert Charles] Phillimore [1810-1885]; these involve such matters as international relations, national institutions, people’s *rights*, and the evils of religion. Now, dear friends, I present [these chapters in translation] so that you may offer your criticisms and that through discussion we may address these weighty matters. April 1, 1874.³⁸

On the subject of *gimu*, Nishi Amane attached the translation “obligation” in a *Meiroku zasshi* article, when he argued:

Thus, individuals live up to their principles by honoring their own three great treasures, diligently getting rid of their three calamities, and vigilantly guarding against others’ crimes. This is called a “right” (權利) in law. Furthermore, to honor others’

³⁶ Nishimura Shigeki, “Kenri kai” 權理解 (Explanation of “Right”), *Meiroku zasshi* 42 (October 1875). See also Braisted’s translation in his *Meiroku zasshi*, p. 510. (JAF)

³⁷ Compare with Braisted, *Meiroku zasshi*, p. 41. (JAF)

³⁸ Mori Arinori, “Shūkyō” 宗教 (Religion), *Meiroku zasshi* 6. Compare with Braisted, *Meiroku zasshi*, p. 78. (JAF)

three great treasures while controlling one's own three calamities, without the slightest violation, this is called an "obligation."³⁹

Following Katō Hiroyuki's discussion of *kenri* and *gimu* in his *Shinsei taii*, the terms *kenri* (権利 or 權理) or "right" and *gimu* or "duty" ("obligation") seem to have become the fashionable expressions among intellectuals around 1874-1875 (Meiji 3-4). In this sense as well, the above cited articles from *Meiroku zasshi* are interesting.

7. The Flow to China of *kenri* (*quanli*) and *gimu* (*yiwu*)

"Right" and "obligation" as terms in politics and society were born in Japan and came to be used as terms of Japanese social custom. Eventually, these two words (*kenri* and *gimu*) came to China and became Chinese. Today, both terms are used as Chinese. As for *kenri* (Ch. *quanli*), it is probably more common in China simply to use *quan*, but *quanli* too is widely used in the same sense that it is used in Japan.

Who were the people who brought the Japanese terms *kenri* and *gimu* into Chinese society? Again, it was Kang Youwei and Liang Qichao.

Quanli existed as a frequently employed expression in the classical Chinese language, and thus it might seem as though Chinese of the modern era would find it rather easy to start using it. However, as the following example shows, the term *quanli* as used in Yan Fu's *Tianyan lun* (On evolution, published 1898), as one case in point, was not far removed from its classical Chinese usage and thus did not convey the meaning of the English word "right."

If one is to gain more *quan* (power) and *li* (advantage) of what is available than ordinary folk, then all the realm will be invigorated with talent and intelligence. Hence, it is an inevitable destiny to seek more than one's station.

If one acts according to the struggle for existence and natural selection, then peace in the world will soon be at hand. This way is for all people to live in freedom and not perforce to cause injury to oneself or to the public duty of society. One thus must have the idea of *quanli*, and with it enhance one's self-sustained personal interest.⁴⁰

Quanli, as evidenced by this example, was one's own personal rights, close at first glance to the way in which *kenri* was used in Japan, but in fact it conveyed the sense of personal "power" (*li* 力) or "profit" (*li* 利), which was its usage in ancient China.

³⁹ Nishi Amane, "Jinsei sanpō setsu" 人世三寶說 (Thesis of the three human treasures), *Meiroku zasshi* 39 (June 1875). By the "three treasures," Nishi meant "health," "intelligence," and "wealth"; by the "three calamities" or "three evils," he meant "sickness," "ignorance," and "poverty." Compare with Braisted, *Meiroku zasshi*, p. 477. (JAF)

⁴⁰ The terms Yan Fu used for "struggle for existence" (*wujing* 物競) and "natural selection" (*tianze* 天擇) were his own coinages for evolutionary theory. These correspond, respectively, to the Japanese terms, *seizon kyōsō* 生存競爭 and *shizen tōta* 自然淘汰. In contemporary China the terms Yan Fu struggled to coin have become obsolete, and the Japanese expressions have come into common usage for the terminology of evolutionary theory. The expression translated here as the "public duty of society" (*qun zhi gongzhi* 羣之公職) seems to mean working on behalf of society as a public.

Nonetheless, Kang Youwei's use of *quanli* was different form that of Yan Fu and approaching the sense it bore in Japanese.

Foreigners who come here rule over their own people and do not accord us equal rights (*pingdeng zhi quanli* 平等之權利). This is, indeed, a national humiliation.⁴¹

Since the emergence of the debate on revision of the [unequal] treaties, the Western countries have all been averse to treaty revision because Japanese national law had had a clause banning Christianity. [Kido Kōin 輝度孝允(1833-77)] recalled deputy ambassadors Ōkubo and Itō and said: "When our country had this prohibition, the various countries [of the West] considered us uncivilized and did not accord us equal rights (*duideng quanli* 對等權利)." ⁴²

The expressions for "equal rights" given in these two examples are close in meaning to the contemporary Japanese term "*riken*" 利權 (rights and interests). At least, they are far removed from *quanli* as an expression in the classical Chinese lexicon and approaching the Japanese *kenri*.

The term *quanli* occurs too frequently in Liang Qichao's writings to be enumerated here, but early on he used it in the same way as Kang Youwei, close to the sense of the Japanese word *riken*.

Those Western officials who plan on China's behalf actually are protecting their home countries' interests (*quanli*).

Commercial interests are under British control. Railway interests are under Russian control. The interests in border defenses are under French, Japanese, and other countries' control.⁴³

Liang's use of the term *quanli* seems to have moved a bit away from *riken* and closer to *kenri* meaning "right." Liang penned an essay entitled "Aiguo lun" 愛國論 (On patriotism), published serially in three parts in January 1899 in *Qingyi bao*, which corresponded to this process of change. We see here the phenomenon of Liang's using the same term *quanli*, while slightly switching the meaning. In the first part of "Aiguo lun," he used *quanli* in the following way:

When traveling overseas you observe the *quanli* (rights/interests) that people A enjoy in country B and the protection people B enjoy in country C. When our people are in other countries, with what shall we provide for their *quanli* and protection? When we compare these two cases, there is no one who can avoid being deeply concerned and want to revamp the entire system.⁴⁴

⁴¹ From the same citation as noted in footnote 17. Included in *Wuxu zou gao* and Liang Qichao, *Wuxu zhengbian ji*.

⁴² In Kang, *Riben bianzheng kao*, *juan* 1.

⁴³ Liang Qichao, "Lun bianfa buzhi benyuan zhi hai" 論變法不知本原之害 (The harm of not understanding origins in reform), in "Bianfa tongyi," *Yinbingshi heji* 1:8-14. By "Western officials" (*xiguan* 西官), Liang meant bureaucrats sent from Europe.

⁴⁴ Liang Qichao, "Aiguo lun" (1), *Qingyi bao* 6 (1/11/1899). "Aiguo lun" was later put together and included in *juan* 3 of *Yinbingshi wenji*.

Quanli here is essentially equivalent to *riken*. However, in part 2 of “Aiguo lun,” Liang wrote:

Depending of which country it is, every one has various *quanli* (rights) that it has acquired, and each also has *yiwu* (duty, obligation) that it must fulfill toward other countries. People understand this principle, and they are sympathetic to this sentiment. Herein lies the reason that the patriotic mind ties [people] together and does not unravel.⁴⁵

The duty (*zhiwu* 職務) of the nation lies in protecting the *quanli* of the populace.⁴⁶

We shall elide here any further citations to *quanli* in the writings of Liang Qichao. Liang spoke of *quanli* together with *yiwu*, the latter being a direct borrowing from Japanese. However, one cannot deny the fact that a sense of *riken* was attaching itself to the Chinese term *quanli*. Perhaps something of this is conveyed in the post-World War II Japanese conception of *kenri*. When we know that the consciousness of *kenri* for someone who has had to endure suffering has been exercised, then perhaps it will move in the direction of *riken*. Yet, perhaps this may be a somewhat reckless remark to make.

As concerns the term *yiwu*, a search through the writings of Kang Youwei for cases of its use reveals not an instance, but Liang Qichao was already using it fondly from 1899. We see this in the case of “Aiguo lun,” and in “Shanghai yi” 上海會議 (1899) the expressions “duty of the nation” (*guojia zhi yiwu* 國家之義務) and “duty of the populace” (*guomin zhi yiwu* 國民之義務).

Liang Qichao also wrote a section entitled “Diliuzhang chenmin zhi quanli ji yiwu” 第六章 臣民之權利及義務 (Chapter 6: The rights and duties of the populace) for his essay “Geguo xianfa yitong lun” of 1899. We can say that the transmission to China of the term *yiwu* in tandem with the term *quanli* began with Liang Qichao. Indicative of this were his three essays, “Aiguo lun,” “Shanghai yi,” and “Geguo xianfa yitong lun.” Together with the rise of a modern consciousness within China, the Japanese terms *kenri* and *gimu* which necessarily accompanied modern politics and society later spread to Chinese society and became fixed terms.

Eventually, the words *kenri* and *gimu* which were first born in Japanese society, as well as the words *rippō*, *shihō*, and *gyōsei* which comprised the “tripartite separation of powers, spread and came to be used widely as shared terms in the greater society that made up the *Kanji* cultural realm. The “modernization” of Asian societies began with Japan, and Japanese terminology that went along with “modernization” came to circulate broadly within the societies of the *Kanji* cultural arena.

⁴⁵ Liang Qichao, “Aiguo lun” (2), *Qingyi bao* 7 (1/21/1899).

⁴⁶ Liang Qichao, “Shanghai yi” 上海會議 (On commercial associations), *Qingyi bao* 10 (2/21/1899); later included in *Yingbingshi wenji*, *juan* 4.