CHAPTER 1

The Dutch Constitution of 1848 and the Meiji Restoration

1 Dutch Jurisprudence and the Development of Constitutional Thought

In this chapter we bring to light the specifics of what Nishi Amane and Tsuda Mamichi learned from Simon Vissering’s lectures on natural law and constitutional law, placing this within the context of trends in Dutch society and politics during the latter half of the nineteenth century. We then examine how, after returning to Japan in the midst of the political crisis surrounding the transfer of sovereignty from Tokugawa shogun to emperor, Nishi attempted to make practical use of what he learned in a proposal for a new form of government.

One of the pioneering scholars in the history of Japanese law, Osatake Takeki, wrote in 1938 (Shōwa 13) in his masterwork *Nihon kenseishi taikō* (An Outline of Japanese Constitutional History) that:

The establishment of a constitution for the modern state required that the self-restraint exercised by the rulers themselves within the feudal polity could no longer be deemed sufficient; it was based on the demand for the creation of a parliament, and we cannot ignore the fact that constitutional thought, in this sense, was something that was transplanted to our country.1

From the time of Osatake’s classic study, one of the major themes for research on the history of political thought in late Tokugawa and early Meiji Japan has been to trace the process by which constitutional government was established, focusing on the importation of Western parliamentary systems and the development of parliamentary politics in Japan. From this perspective, the first article of Gokajō no Goseimon 五箇条の御誓文 (the Charter Oath of 1868) promulgated by the new Meiji government—“Deliberative assemblies shall be

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widely established and all matters decided by public discussion”—has come to be seen as evidence for the development of constitutional thought during the early years of the Restoration. In this context, the Confucian scholar Yokoi Shōnan has received particular attention as a leading thinker of the late Tokugawa years. Shōnan’s struggle with Neo-Confucianism led him to seek a return to Chinese antiquity—“The Way of Yao and Shun, and of Confucius” (Gyō Shun Kōshi no michi 堯舜孔子之道)—in which he perceived a public spirited politics (kōkyō no sei 公共之政) founded in the concept of a universal heaven (ten 天) and an egalitarian ideal of humanity (jin 仁). Primed in this way, he was one of the first to take an active interest in Western parliamentary systems, making proposals for deliberative assemblies that led more or less directly to the first article of the Charter Oath. For example, in Kokuze sanron (Three Theses on State Policy), written in 1860 (Man’nen 1), Shōnan asserted:

In America three major policies have been set up since Washington's presidency: First, to stop wars in accordance with divine intentions, because nothing is worse than violence or killing among nations; second, to broaden enlightened government by learning from all the countries of the world; and third, to work with complete devotion for the peace and welfare of the people by entrusting the power of the president of the whole country to the wisest instead of transmitting it to the son of the president, and by abolishing the code in the relationship between ruler and minister. All methods of administrative laws and practices and all men who are known as good and wise throughout the world are put into the country's service and a very beneficial administration—one not completely in the interests of the rulers—is developed.

In England the government is based entirely on the popular will, and all government actions—large and small—are always debated by the people. The most beneficial action is decided upon, and an unpopular program is not forced upon the people… Furthermore, all countries, including Russia, have established schools and military academies, hospitals, orphanages, and schools for the deaf and dumb. The governments are entirely based on moral principals, and they work hard for the benefit of the people, virtually as in the three ancient periods of sage-rule in China.2

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